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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 253 and 254

RIN 0584–AC65

Food Distribution Program on Indian Reservations: Disqualification Penalties for Intentional Program Violations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: The Food and Nutrition Service is amending Food Distribution Program regulations in response to an audit recommendation by the Department of Agriculture's Office of Inspector General. The changes are intended to improve program integrity and promote consistency with the Food Stamp Program. This rule defines intentional program violations, establishes penalties for them, and requires Indian Tribal Organizations and State agencies that administer the Food Distribution Program to take appropriate action on suspected cases of intentional program violations. It also addresses the establishment and collection of claims against households for overissuances under the Food Distribution Program, and makes technical changes to correct erroneous regulatory references.

EFFECTIVE DATE: This rule is effective February 28, 2000.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 510, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or by telephone at (703) 305–2662.

SUPPLEMENTARY INFORMATION:

I. Procedural Matters
II. Background and Discussion of Final Rule

I. Procedural Matters

Executive Order 12866

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

Public Law 104–4

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. Under Section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Therefore, this rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Executive Order 12372

The programs addressed in this action are listed in the Catalog of Federal Domestic Assistance under Nos. 10.550 and 10.570, and for the reasons set forth in the final rule in 7 CFR 3015, Subpart V, and related Notice (48 FR 29115), are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The Administrator of the Food and Nutrition Service has certified that this action will not have a significant impact on a substantial number of small entities. Indian Tribal Organizations and State agencies that administer the Food Distribution Program, and program participants will be affected by this rulemaking, but the economic effect will not be significant.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions, or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Paperwork Reduction Act

This rule does not contain information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

II. Background and Discussion of the Final Rule

On July 22, 1999, the Food and Nutrition Service (FNS) published a rule at 64 FR 39432 proposing amendments to the regulations for the Food Distribution Program at 7 CFR Parts 253 and 254. These proposed changes would have defined intentional program violations (IPV), established penalties for them, and required Indian Tribal Organizations (ITOs) and State agencies that administer the Food Distribution Program to take appropriate action on suspected cases of IPV. This proposed rule was prompted, in part, by an audit recommendation by the Department of Agriculture's Office of Inspector General. Please refer to the proposed rule for a discussion of the audit and its findings.

Comments were solicited through September 20, 1999, on the provisions of the proposed rulemaking. FNS received two comment letters, which are discussed in detail below. For a full understanding of the provisions of this

final rule, the reader should refer to the preamble of the proposed rule.

In preparing the final rule, we identified several areas discussed in the proposed rule that needed further explanation to ensure that the Department's position is clear. We wish to emphasize that these changes to the final rule are made for the purposes of clarification, and that the Department's position with regard to the necessity of the proposed changes has not altered.

In the discussion and regulatory text below, we have used the term ''State agency,'' as defined at 7 CFR 253.2 and 254.2, to include ITOs authorized to administer the Food Distribution Program.

1. Initiating Administrative Disqualification Procedures

Section 253.8(a) of the proposed rule would define IPV, in part, as an act committed by an *individual* who willingly, knowingly and with deceitful intent misrepresents the household's circumstances or withholds facts in order to obtain benefits that the household is not entitled to receive. In preparing the final rule, we realized that there may be some confusion relating to the use of the term ''individual'' in the proposed rule. By ''individual'' we meant the *individual household member*. We wanted to differentiate between the individual household member and the household as a whole. Since ''household'' is a term defined in the Food Distribution Program regulations, we believe the use of the term ''household member,'' rather than the term ''individual,'' is preferable for the purposes of this rule. Therefore, we are revising the final rule to remove the term ''individual'' and replace it with the term ''household member'' throughout the regulatory text pertaining to IPVs.

2. Referral to Authorities for Prosecution

Section 253.8(e)(7) of the proposed rule would require State agencies to refer all substantiated cases of intentional program violations to *Federal, State, or local authorities* for prosecution under applicable statutes. It was our intent that the term ''local'' include Tribal authorities. However, in preparing the final rule we realized that ''local'' is commonly used to refer to County-level entities. Some readers may not associate ''Tribal authorities'' with the term ''local authorities.'' To avoid such confusion, we are revising the final rule to specifically include the term ''Tribal,'' as appropriate, throughout regulatory text.

3. Notification Requirements

Section 253.8(e)(2) of the proposed rule would require State agencies to inform households in writing of the disqualification penalties for intentional program violation each time they apply for benefits (including recertifications). This notice is intended to advise the household of the consequences of committing an intentional program violation. One of those consequences may be prosecution by Tribal, Federal, State, or local authorities. In preparing the final rule we realized that the notification requirements did not clearly specify that households be informed of the possibility of prosecution. To ensure that households are properly informed of all the consequences of committing an intentional program violation, we are revising section 253.8(e)(2) to require State agencies to include a statement in the notice informing households of the possibility of prosecution by authorities.

4. Application of the Disqualification Penalties

We wish to clarify that the procedures proposed at section 253.8(h) would require imposition of the disqualification penalties without regard to the household member's current eligibility status. Because of an oversight, this policy was not stated correctly in one section of the preamble to the proposed rule that concerns fair hearing notices. However, it was stated correctly elsewhere in the preamble and the regulatory text. We apologize for any confusion caused by this oversight. Although there is no change to the final rule, we wish to confirm that the State agency must proceed with imposition of the disqualification penalty, even if the household member is not certified to participate in the Food Distribution Program at the time the disqualification is to begin.

5. Claims Against Households

One commenter suggested that we allow households to repay an overissuance claim by voluntarily taking less commodities than they are entitled to receive. The value of the commodities not taken each month would be applied to the outstanding claim.

Current policy on the collection of overissuance claims is addressed in FNS Handbook 501, Chapter V, Section 6, State Agency Claims Procedures Against Households. Subsection 5670 prohibits the recovery of benefits from households through a reduction in the amount of commodities the household would otherwise receive. We do not feel that this policy should be changed by this action. Such a change would place an undue burden on State agencies. They would be required to determine the value of each commodity not selected by the household each month. They would also be required to track the ''payments'' until the claim is paid in full. We are reluctant to impose a new burden on State agencies and make a change in policy without first providing an opportunity for public comment. Therefore, we are not incorporating the commenter's proposal in the final rule.

Another commenter, who expressed strong support for administrative disqualification penalties for intentional program violations, recommended stronger penalties against households that fail to repay overissuance claims. The procedures for the collection of overissuance claims and actions to be taken against households that fail to repay claims are addressed in FNS Handbook 501, Chapter V, Section 6, State Agency Claims Procedures Against Households. We are reluctant to change these procedures by instituting a new penalty without first providing an opportunity for public comment. Therefore, we are not incorporating the commenter's recommendation in the final rule.

List of Subjects

7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 254

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 253 and 254 are amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

1. The authority citation for part 253 is revised to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2036).

2. In § 253.2, redesignate paragraphs (f) through (i) as paragraphs (g) through (j), respectively, and add new paragraph (f) as follows:

§ 253.2 Definitions.

* * * * *

(f) *Overissuance* means the dollar value of commodities issued to a

household that exceeds the dollar value of commodities it was eligible to receive.

* * * * *

§ 253.5 [Amended]

3. In § 253.5:

a. Amend paragraph (a)(1) by removing the reference ''§ 253.9'' and adding, in its place, the reference ''part 250 of this chapter'';

b. Amend paragraph (a)(2)(vii) by removing the reference ''part 283 of this subchapter'' and adding, in its place, the words ''this part'';

c. Amend paragraph (d)(1) by removing the references ''§ 283.7(a)(2) and (b)(3)'' and adding, in its place, the references ''§ 253.7(a)(2) and (b)(3)'', and by removing the reference ''§ 283.7(c)'' and adding, in its place, the reference ''§ 253.7(c)'';

d. Amend paragraph (k)(1) by removing the reference ''§ 283.9(g) of this part'' and adding, in its place, the reference ''§ 253.11(g)'';

e. Amend paragraph (k)(2) by removing the reference ''§ 283.4'' and adding, in its place, the reference ''§ 253.4'';

f. Amend paragraph (l)(1)(iii) by removing the reference ''§ 283.5(k) or § 283.9(g)'' and adding, in its place, the reference ''paragraph (k) of this section or § 253.11(g)''; and

g. Amend paragraph (l)(3)(i) by removing the reference ''§ 283.4(d)(2)'' and adding, in its place, the reference ''paragraph (m) of this section'', and removing the reference ''§ 283.5'' and adding, in its place, the reference ''§ 253.4(e)(2)''.

§ 253.6 [Amended]

4. In § 253.6:

a. Amend paragraph (a)(3) by removing the reference ''§ 283.7(a)(10)(i) and § 283.7(a)(10)(ii)'' and adding, in its place, the reference ''§ 253.7(a)(10)(i) and § 253.7(a)(10)(ii)'';

b. Amend paragraph (b)(2) by removing the reference ''§ 283.6(a)(3)(iv)'' and adding, in its place, the reference ''paragraph (a)(2)(iv) of this section'';

c. Amend paragraph (c)(1) by removing the reference ''§ 283.6(a)(2)(ii)'' and adding, in its place, the reference ''paragraph (a)(2)(ii) of this section'';

d. Amend paragraph (d)(2)(iii) by removing the reference ''§ 283.7(b)(1)(iii)'' and adding, in its place, the reference ''§ 253.7(b)(1)(iii)'';

e. Amend paragraph (e)(1)(i) by removing the reference ''§ 283.6(a)(2)(ii)'' and adding, in its place, the reference ''paragraph (a)(2)(ii) of this section'', and removing the reference ''§ 283.6(c)'' and adding, in its place, the reference ''paragraph (c) of this section'';

f. Amend paragraph (e)(2)(ii)(F) by removing the reference ''§ 283.7'' and adding, in its place, the reference ''§ 253.7''; and

g. Amend paragraph (e)(3)(ix) by removing the reference ''§ 283.7(b)(1)(iii)'' and adding, in its place, the reference ''§ 253.7(b)(1)(iii)''.

5. In § 253.7:

a. Amend paragraph (a)(2) by removing the reference ''§ 283.7(f)'' and adding, in its place, the words ''paragraph (g) of this section'';

b. Amend paragraph (a)(5) by removing the reference ''§ 283.7(a)(7) or § 283.7(a)(9)'' and adding, in its place, the reference ''paragraphs (a)(7) and (a)(9) of this section'';

c. Add two new sentences to the end of paragraph (b)(3)(iii)(A);

d. Amend the second sentence of paragraph (b)(3)(iii)(B) by removing the words ''and no more than 20'', and by removing the word ''mailed'' and adding, in its place, the word ''issued'';

e. Revise paragraph (b)(3)(iii)(C);

f. Add new paragraph (b)(3)(iii)(E);

g. Amend paragraph (c)(1) by removing the reference ''§ 283.6(e)(1)'' and adding, in its place, the reference ''§ 253.6(e)(1)'';

h. Remove paragraph (e)(3);

i. Redesignate paragraphs (f) and (g) as paragraphs (g) and (h), respectively, and add a new paragraph (f);

j. Amend newly redesignated paragraph (g)(1) by removing the reference ''§ 283.6(c)(2)'' and adding, in its place, the reference ''§ 253.6(c)(2)'';

k. Amend newly redesignated paragraph (g)(2) by removing the reference ''§ 283.7(a)(7) and § 283.7(a)(9)'' and adding, in its place, the reference ''paragraphs (a)(7) and (a)(9) of this section'';

l. Revise newly redesignated paragraph (h)(2)(i);

m. Revise newly redesignated paragraph (h)(11)(iii); and

n. Add new paragraph (h)(11)(iv).

The revisions and additions read as follows:

§ 253.7 Certification of households.

* * * * *

(b) *Eligibility determinations.* * * *

(3) *Certification notices.* * * *

(iii) *Notice of adverse action.*

(A) * * * The notice must be issued within 10 days of determining that an adverse action is warranted. The adverse action must take effect with the next scheduled distribution of commodities that follows the expiration of the advance notice period, unless the household requests a fair hearing.

* * * * *

(C) The notice of adverse action must include the following in easily understandable language:

(*1*) The reason for the adverse action;

(*2*) The date the adverse action will take effect;

(*3*) The household's right to request a fair hearing and continue to receive benefits pending the outcome of the fair hearing;

(*4*) The date by which the household must request the fair hearing;

(*5*) The liability of the household for any overissuances received while awaiting the outcome of the fair hearing, if the fair hearing official's decision is adverse to the household;

(*6*) The telephone number and address of someone to contact for additional information; and

(*7*) The telephone number and address of an individual or organization that provides free legal representation, if available.

* * * * *

(E) If the State agency determines that a household received more USDA commodities than it was entitled to receive, it must establish a claim against the household in accordance with § 253.9. The initial demand letter for repayment must be provided to the household at the same time the notice of adverse action is issued. It may be combined with the notice of adverse action.

* * * * *

(f) *Treatment of disqualified household members.* (1) The following are not eligible to participate in the Food Distribution Program:

(i) Household members disqualified from the Food Distribution Program for an intentional program violation under § 253.8. These household members may participate, if otherwise eligible, in the Food Distribution Program once the period of disqualification has ended.

(ii) Household members disqualified from the Food Stamp Program for an intentional program violation under § 273.16 of this chapter. These household members may participate, if otherwise eligible, in the Food Distribution Program once the period of disqualification under the Food Stamp Program has ended. The State agency must, in cooperation with the appropriate food stamp agency, develop a procedure that ensures that these household members are identified.

(iii) Households disqualified from the Food Distribution Program for failure to pay an overissuance claim. The circumstances under which a disqualification is allowed for such failure are specified in FNS Handbook 501.

(2) During the time a household member is disqualified, the eligibility and food distribution benefits of any remaining household members will be determined as follows:

(i) *Resources.* The resources of the disqualified member will continue to count in their entirety to the remaining household members.

(ii) *Income.* A pro rata share of the income of the disqualified member will be counted as income to the remaining members. This pro rata share is calculated by dividing the disqualified member's earned (less the 20 percent earned income deduction) and unearned income evenly among all household members, including the disqualified member. All but the disqualified member's share is counted as income to the remaining household members.

(iii) *Eligibility and benefits.* The disqualified member will not be included when determining the household's size for purposes of assigning food distribution benefits to the household or for purposes of comparing the household's net monthly income with the income eligibility standards.

* * * * *

(h) *Fair hearing.* * *

(2) *Timely action on hearings*—(i) *Time frames for the State agency.* The State agency must conduct the hearing, arrive at a decision, and notify the household of the decision within 60 days of receipt of a request for a fair hearing. The fair hearing decision may result in a change in the household's eligibility or the amount of commodities issued to the household based on household size. The State agency must implement these changes to be effective for the next scheduled distribution of commodities following the date of the fair hearing decision. If the commodities are normally made available to the household within a specific period of time (for example, from the first day of the month through the tenth day of the month), the effective date of the disqualification will be the first day of that period.

* * * * *

(11) *Hearing decisions.* * * *

(iii) Within 10 days of the date the fair hearing decision is issued, the State agency must issue a notice to the household advising it of the decision.

(A) If the decision upheld the adverse action by the State agency, the notice must advise the household of the right to pursue judicial review.

(B) If the decision upheld a disqualification, the notice must also include the reason for the decision, the date the disqualification will take effect, and the duration of the disqualification (that is, 12 months; 24 months; or permanent). The State agency must also advise any remaining household members if the household's benefits will change, or if the household is no longer eligible as a result of the disqualification.

(iv) The State agency must revise the demand letter for repayment issued previously to the household to include the value of all overissued commodities provided to the household during the appeal process, unless the fair hearing decision specifically requires the cancellation of the claim. The State agency must also advise the household that collection action on the claim will continue, in accordance with FNS Handbook 501, unless suspension is warranted.

* * * * *

§ 253.8 [Redesignated as § 253.10 and Amended]

6. § 253.8 is redesignated as § 253.10 and amended as follows:

a. Amend paragraph (c)(12) by removing the reference ''§ 283.7(b)(9)'' and adding, in its place, the reference ''§ 253.7(a)(9)'';

b. Amend paragraph (e) by removing the words ''the State agency's agreement with the Department under § 250.6(b) of part 250 of this chapter and the requirements of § 250.6(l) of this same chapter'' and adding, in its place, the reference ''§ 250.13 and § 250.15 of this chapter''; and

c. Amend paragraph (f) by removing the reference ''§ 250.7 of part 250'' and adding, in its place, the reference ''§ 250.13(f)''.

7. Add new § 253.8 to read as follows:

§ 253.8 Administrative disqualification procedures for intentional program violation.

(a) *What is an intentional program violation?* An intentional program violation is considered to have occurred when a household member knowingly, willingly, and with deceitful intent:

(1) Makes a false or misleading statement, or misrepresents, conceals, or withholds facts in order to obtain Food Distribution Program benefits which the household is not entitled to receive; or

(2) Commits any act that violates a Federal statute or regulation relating to the acquisition or use of Food Distribution Program commodities.

(b) *What are the disqualification penalties for an intentional program violation?* Household members determined by the State agency to have committed an intentional program violation will be ineligible to participate in the program:

(1) For a period of 12 months for the first violation;

(2) For a period of 24 months for the second violation; and

(3) Permanently for the third violation.

(c) *Who can be disqualified?* Only the household member determined to have committed the intentional program violation can be disqualified. However, the disqualification may affect the eligibility of the household as a whole, as addressed under paragraphs (e)(5) and (h) of this section.

(d) *Can the disqualification be appealed?* Household members determined by the State agency to have committed an intentional program violation may appeal the disqualification, as provided under § 253.7(h)(1).

(e) *What are the State agency's responsibilities?*

(1) Each State agency must implement administrative disqualification procedures for intentional program violations that conform to this section.

(2) The State agency must inform households in writing of the disqualification penalties for intentional program violations each time they apply for benefits, including recertifications. This notice must also advise households that an intentional program violation may be referred to authorities for prosecution.

(3) The State agency must attempt to substantiate all suspected cases of intentional program violation. An intentional program violation is considered to be substantiated when the State agency has clear and convincing evidence demonstrating that a household member committed one or more acts of intentional program violation, as defined in paragraph (a) of this section.

(4) Within 10 days of substantiating that a household member has committed an intentional program violation, the State agency must provide the household member with a notice of disqualification, as described in paragraph (f) of this section. A notice must still be issued in instances where the household member is not currently eligible or participating in the program.

(5) The State agency must advise any remaining household members if the household's benefits will change or if the household will no longer be eligible as a result of the disqualification.

(6) The State agency must provide the household member to be disqualified with an opportunity to appeal the disqualification through a fair hearing, as required by § 253.7(h).

(7) The State agency must refer all substantiated cases of intentional

program violations to Tribal, Federal, State, or local authorities for prosecution under applicable statutes. However, a State agency that has conferred with its legal counsel and prosecutors to determine the criteria for acceptance for possible prosecution is not required to refer cases that do not meet the prosecutors' criteria.

(8) The State agency must establish claims, and pursue collection as appropriate, on all substantiated cases of intentional program violation in accordance with § 253.9.

(f) *What are the requirements for the notice of disqualification?*

(1) Within 10 days of substantiating the intentional program violation, the State agency must issue to the household member a notice of disqualification. The notice must allow an advance notice period of at least 10 days. The disqualification must begin with the next scheduled distribution of commodities that follows the expiration of the advance notice period, unless the household member requests a fair hearing. A notice must still be issued in instances where the household member is not currently eligible or participating in the program.

(2) The notice must conform to the requirements of § 253.7(b)(3)(iii)(C) for notices of adverse action.

(g) *What are the appeal procedures for administrative disqualifications?*

(1) *Appeal rights.* The household member has the right to request a fair hearing to appeal the disqualification in accordance with the procedures at § 253.7(h).

(2) *Notification of hearing.* The State agency must provide the household member with a notification of the time and place of the fair hearing as described in § 253.7(h)(7). The notice must also include:

(i) A warning that if the household member fails to appear at the hearing, the hearing decision will be based solely on the information provided by the State agency; and

(ii) A statement that the hearing does not prevent the Tribal, Federal, State, or local government from prosecuting the household member in a civil or criminal court action, or from collecting any overissuance(s).

(h) *What are the procedures for applying disqualification penalties?*

(1) If the household member did not request a fair hearing, the disqualification must begin with the next scheduled distribution of commodities that follows the expiration of the advance notice period of the notice of adverse action. If the commodities are normally made available to the household within a specific period of time (for example, from the first day of the month through the tenth day of the month), the effective date of the disqualification will be the first day of that period. The State agency must apply the disqualification period (that is, 12 months, 24 months, or permanent) specified in the notice of disqualification. The State agency must advise any remaining household members if the household's benefits will change or if the household is no longer eligible as a result of the disqualification.

(2) If the household member requested a fair hearing and the disqualification was upheld by the fair hearing official, the disqualification must begin with the next scheduled distribution of commodities that follows the date the hearing decision is issued. If the commodities are normally made available to the household within a specific period of time (for example, from the first day of the month through the tenth day of the month), the effective date of the disqualification will be the first day of that period. The State agency must apply the disqualification period (that is, 12 months, 24 months, or permanent) specified in the notice of disqualification. No further administrative appeal procedure exists after an adverse fair hearing decision. The decision by a fair hearing official is binding on the State agency. The household member, however, may seek relief in a court having appropriate jurisdiction. As provided under § 253.7(h)(11)(iii)(B), the State agency must advise any remaining household members if the household's benefits will change, or if the household is no longer eligible as a result of the disqualification.

(3) Once a disqualification has begun, it must continue uninterrupted for the duration of the penalty period (that is, 12 months; 24 months; or permanent). Changes in the eligibility of the disqualified household member's household will not interrupt or shorten the disqualification period.

(4) The same act of intentional program violation continued over a period of time will not be separated so that more than one penalty can be imposed. For example, a household intentionally fails to report that a household member left the household, resulting in an overissuance of benefits for 5 months. Although the violation occurred over a period of 5 months, only one penalty will apply to this single act of intentional program violation.

(5) If the case was referred for Tribal, Federal, State, or local prosecution and the court of appropriate jurisdiction imposed a disqualification penalty, the State agency must follow the court order.

§ 253.9 [Redesignated as § 253.11]

8. Redesignate § 253.9 as § 253.11.

9. Add new § 253.9 to read as follows:

§ 253.9 Claims against households.

(a) *What are the procedures for establishing a claim against a household for an overissuance?*

(1) The State agency must establish a claim against any household that has received more Food Distribution Program commodities than it was entitled to receive.

(2) The procedures for establishing and collecting claims against households are specified in FNS Handbook 501, The Food Distribution Program on Indian Reservations.

(b) *Who is responsible for repaying a household overissuance claim?*

(1) All adult household members are jointly and separately liable for the repayment of the value of any overissuance of Food Distribution Program benefits to the household.

(2) Responsibility for repayment continues even in instances where the household becomes ineligible or is not participating in the program.

PART 254–ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR INDIAN HOUSEHOLDS IN OKLAHOMA

1. The authority citation for part 254 continues to read as follows:

Authority: Pub. L. 97–98, sec. 1338; Pub. L. 95–113.

2. In § 254.2, redesignate paragraphs (f) and (g) as paragraphs (g) and (h), respectively, and add new paragraph (f) to read as follows:

§ 254.2 Definitions.

* * * * *

(f) *Overissuance* means the dollar value of commodities issued to a household that exceeds the dollar value of commodities it was eligible to receive.

* * * * *

Dated: December 23, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–33932 Filed 12–29–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000

[DA–97–12]

Milk in the New England and Other Marketing Areas; Order Amending the Orders; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; Correction.

SUMMARY: The Agricultural Marketing Service (AMS), USDA, published in the **Federal Register** of December 17, 1999, a final rule that implemented and modified a previous rule published in the **Federal Register** on September 1, 1999, which consolidated the current 31 Federal milk marketing orders into 11 orders. The December 17 final rule also made changes to the Class I differentials contained in the September 1, 1999, rule to comply with the Consolidated Appropriations Act, 2000. Class I differentials in 89 of the 3,110 counties, parishes and cities listed were published incorrectly. This document corrects the Class I differentials for the 89 counties.

EFFECTIVE DATE: This correction is effective January 1, 2000.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274, e-mail address John.Borovies@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction amended § 1000.52 by modifying the table containing the Class I differentials adjusted for location.

Need for Correction

The table listing the Class I differentials adjusted for location by county, parish, and city contains inadvertent errors. The differentials listed in the table do not reflect all of the modifications made to the Class I differentials contained in a correction docket published in the **Federal Register** on July 14, 1999 (64 FR 37892).

Correction of Publication

Accordingly, the publication of the final regulations (DA–97–12), which was the subject of FR Doc. 99–32366 (64 FR 70868, December 17, 1999) is corrected as follows:

1. In § 1000.52, the following Class I Differentials adjusted for location contained in the table beginning on page 70869 are corrected to read as follows:

County/parish/city	State	Fips__Code	Class I differential adjusted for location
FAIRFIELD	CT	09001	3.15
HARTFORD	CT	09003	3.15
MIDDLESEX	CT	09007	3.15
NEW HAVEN	CT	09009	3.15
NEW LONDON	CT	09011	3.15
TOLLAND	CT	09013	3.15
WINDHAM	CT	09015	3.15
KENT	DE	10001	3.05
NEW CASTLE	DE	10003	3.05
SUSSEX	DE	10005	3.05
DE SOTO	FL	12027	4.00
HARDEE	FL	12049	4.00
HIGHLANDS	FL	12055	4.00
MANATEE	FL	12081	4.00
OKEECHOBEE	FL	12093	4.00
SARASOTA	FL	12115	4.00
ST. LUCIE	FL	12111	4.00
CARROLL	MD	24013	2.90
CECIL	MD	24015	3.05
FREDERICK	MD	24021	2.90
WASHINGTON	NC	37187	3.20
ATLANTIC	NJ	34001	3.05
BURLINGTON	NJ	34005	3.05
CAMDEN	NJ	34007	3.05
CAPE MAY	NJ	34009	3.05
CUMBERLAND	NJ	34011	3.05
GLOUCESTER	NJ	34015	3.05
SALEM	NJ	34033	3.05
ALBANY	NY	36001	2.70
BROOME	NY	36007	2.70
CHEMUNG	NY	36015	2.50
CHENANGO	NY	36017	2.50
CLINTON	NY	36019	2.30
COLUMBIA	NY	36021	2.70
CORTLAND	NY	36023	2.50
DELAWARE	NY	36025	2.70
ESSEX	NY	36031	2.30
FRANKLIN	NY	36033	2.30
FULTON	NY	36035	2.50
GREENE	NY	36039	2.70
HAMILTON	NY	36041	2.50
HERKIMER	NY	36043	2.50
JEFFERSON	NY	36045	2.30
LEWIS	NY	36049	2.30

County/parish/city	State	Fips__Code	Class I differential adjusted for location
MADISON	NY	36053	2.50
MONTGOMERY	NY	36057	2.70
ONEIDA	NY	36065	2.50
ONONDAGA	NY	36067	2.50
OTSEGO	NY	36077	2.50
RENSSELAER	NY	36083	2.70
SARATOGA	NY	36091	2.70
SCHENECTADY	NY	36093	2.70
SCHOHARIE	NY	36095	2.70
ST. LAWRENCE	NY	36089	2.30
TIOGA	NY	36107	2.50
TOMPKINS	NY	36109	2.50
WARREN	NY	36113	2.50
BRADFORD	PA	42015	2.50
BUCKS	PA	42017	3.05
CENTRE	PA	42027	2.50
CHESTER	PA	42029	3.05
CLINTON	PA	42035	2.50
COLUMBIA	PA	42037	2.70
DELAWARE	PA	42045	3.05
FULTON	PA	42057	2.70
JUNIATA	PA	42067	2.70
LACKAWANNA	PA	42069	2.70
LANCASTER	PA	42071	2.90
LUZERNE	PA	42079	2.70
LYCOMING	PA	42081	2.50
MIFFLIN	PA	42087	2.70
MONTGOMERY	PA	42091	3.05
MONTOUR	PA	42093	2.70
NORTHUMBERLAND	PA	42097	2.70
PERRY	PA	42099	2.70
PHILADELPHIA	PA	42101	3.05
POTTER	PA	42105	2.50
SNYDER	PA	42109	2.70
SULLIVAN	PA	42113	2.50
SUSQUEHANNA	PA	42115	2.50
TIOGA	PA	42117	2.50
UNION	PA	42119	2.70
WAYNE	PA	42127	2.70
WYOMING	PA	42131	2.50
YORK	PA	42133	2.90
CHITTENDEN	VT	50007	2.50
ESSEX	VT	50009	2.40
LAMOILLE	VT	50015	2.50
WINDSOR	VT	50027	2.80

Dated: December 22, 1999.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–33726 Filed 12–29–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29885; Amdt. No. 1967]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800

Independence Avenue, SW., Washington, DC 20591; or

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

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

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

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

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

The Rule

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

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on December 23, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 95.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

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

* * * *Effective Upon Publication*

FDC Date	State	City	Airport	FDC number	SIAP
12/01/99 ...	CA	Vacaville	Nut Tree	FDC 9/9622	GPS RWY 20 AMDT 1...
12/03/99 ...	HI	Kailua-Kona	Keahole-Kona Intl	FDC 9/9519	VOR/DME OR TACAN OR GPS Rwy 17, AMDT 3... This corrects NOTAM Published IN TL 00–01.
12/08/99 ...	PA	Pottstown	Pottstown-Limerick	FDC 9/9584	NDB Rwy 28 AMDT 1...
12/08/99 ...	TX	Laredo	Laredo Intl	FDC 9/9596	NDB OR GPS Rwy 17R. AMDT 9A...
12/08/99 ...	TX	Laredo	Laredo Intl	FDC 9/9601	NDB OR GPS Rwy 17L, AMDT 2A...

FDC Date	State	City	Airport	FDC number	SIAP
12/08/99 ...	TX	Longview	Gregg County	FDC 9/9602	NDB Rwy 13, AMDT 14...
12/09/99 ...	NC	Siler City	Siler City Muni	FDC 9/9616	VOR OR GPS–A, AMDT 1A...
12/09/99 ...	NC	Siler City	Siler City Muni	FDC 9/9620	NDB OR GPS Rwy 22, ORIG–A...
12/09/9	TX	Laredo	Laredo Intl	FDC 9/9609	VOR/DME OR TACAN OR GPS Rwy 32, AMDT 9A...
12/09/99 ...	TX	Laredo	Laredo Intl	FDC 9/9610	VOR/DME OR TACAN OR GPS Rwy 14, AMDT 9...
12/09/99 ...	TX	Laredo	Laredo Intl	FDC 9/9611	LOC BC Rwy 35L, AMDT 1...
12/13/99 ...	LA	Slidell	Slidell	FDC 9/9672	VOR/DME OR GPS Rwy 18, AMDT 3A...
12/13/99 ...	MS	Aberdeen Amory	Aberdeen/Monroe County	FDC 9/9661	VOR OR GPS Rwy 18, AMDT 6A...
12/14/99 ...	AK	Homer	Homer	FDC 9/9697	GPS Rwy 3, ORIG–A...
12/14/99 ...	IL	Chicago	Chicago-O'Hare Intl	FDC 9/9712	ILS Rwy 9L, AMDT 6A...
12/14/99 ...	MD	Cumberland	Greater Cumberland Regional	FDC 9/9710	LOC/DME Rwy 23, AMDT 5D...
12/14/99 ...	MD	Cumberland	Greater Cumberland Regional	FDC 9/9711	LOC–A AMDT 3C...
12/14/99 ...	TN	Nashville	Nashville Intl	FDC 9/9716	ILS Rwy 2R (CAT I, II, III) AMDT 5A...
12/14/99 ...	TX	Midland	Midland Intl	FDC 9/9706	LOC BC Rwy 28, AMDT 12A... This Replaces FDC 9/9393
12/15/99 ...	FL	Fort Pierce	St. Lucie County Intl	FDC 9/9753	GPS Rwy 9, ORIG–A...
12/15/99 ...	NC	Albemarle	Stanly County	FDC 9/9741	NDB OR GPS Rwy 22L, ORIG–C...
12/15/99 ...	NC	Albemarle	Stanly County	FDC 9/9742	GPS Rwy 4R, ORIG–B...
12/15/99 ...	NC	Albemarle	Stanly County	FDC 9/9743	ILS Rwy 22L, ORIG–A...
12/15/99 ...	TX	Gainesville	Gainesville Muni	FDC 9/9774	NDB Rwy 7, AMDT 8... This Replaces FDC 9/9274.
12/15/99 ...	TX	Greenville	Greenville/Majors	FDC 9/9775	NDB OR GPS Rwy 17, AMDT 5...
12/15/99 ...	WY	Casper	Natrona County Intl	FDC 9/9744	ILS Rwy 3, AMDT 5...
12/20/99 ...	TX	Gainesville	Gainesville Muni	FDC 9/9923	GPS Rwy 17, ORIG... This Replaces FDC 9/9275.
12/21/99 ...	NE	North Platte	North Platte Regional Airport Lee Bird Field.	FDC 9/9961	NDB OR GPS Rwy 30R, AMDT 3...
12/21/99 ...	NE	North Platte	North Platte Regional Airport Lee Bird Field.	FDC 9/9962	ILS Rwy 30R, AMDT 5B...
12/21/99 ...	TX	Midland	Midland Intl	FDC 9/9963	VOR/DME OR TACAN Rwy 34L, AMDT 9A... This Replaces FDC NOTAM 9/9392.

[FR Doc. 99–33936 Filed 12–29–99; 8:45 am]
BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 228, 229, and 240

[Release No. 34–42266; File No. S7–22–99]

RIN 3235–AH83

Audit Committee Disclosure

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting new rules and amendments to its current rules to require that companies' independent auditors review the companies' financial information prior to the companies filing their Quarterly Reports on Form 10–Q or Form 10–QSB with the Commission, and to require that companies include in their proxy statements certain disclosures about their audit committees and reports from their audit committees containing certain disclosures. The rules are designed to improve disclosure related to the functioning of corporate audit committees and to enhance the reliability and credibility of financial statements of public companies.

DATES: *Effective Date:* January 31, 2000.

Compliance Dates: Registrants must obtain reviews of interim financial information by their independent auditors starting with their Forms 10–Q or 10–QSB to be filed for fiscal quarters ending on or after March 15, 2000. Registrants must comply with the new proxy and information disclosure requirements (*e.g.*, the requirement to include a report of their audit committee in their proxy statements, provide disclosures regarding the independence of their audit committee members, and attach a copy of the audit committee's charter) for all proxy and information statements relating to votes of shareholders occurring after December 15, 2000. Companies who become subject to Item 302(a) of Regulation S–K as a result of today's amendments must comply with its requirements after December 15, 2000. Registrants voluntarily may comply with any of the new requirements prior to the compliance dates.

FOR FURTHER INFORMATION CONTACT: Mark Borges, Attorney-Adviser, Division of Corporation Finance (202–942–2900), Meridith Mitchell, Senior Counselor, Office of the General Counsel (202–942–0900), or W. Scott Bayless, Associate Chief Accountant, or

Robert E. Burns, Chief Counsel, Office of the Chief Accountant (202–942–4400).

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rule 10–01 of Regulation S–X,[1] Item 310 of Regulation S–B,[2] Item 7 of Schedule 14A [3] under the Securities Exchange Act of 1934 (the ''Exchange Act''),[4] and Item 302 of Regulation S–K.[5] Additionally, the Commission is adopting new Item 306 of Regulation S–K[6] and Item 306 of Regulation S–B.[7]

I. Executive Summary

We are adopting new rules and amendments to current rules to improve disclosure relating to the functioning of corporate audit committees and to enhance the reliability and credibility of financial statements of public companies.[8] As more fully described in the Proposing Release, the new rules and amendments are based in large measure on recommendations made by the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (the ''Blue Ribbon Committee'').[9] The new rules and amendments have been adopted in most respects as proposed, with modifications discussed below.

Audit committees play a critical role in the financial reporting system by overseeing and monitoring management's and the independent auditors' participation in the financial reporting process. We have seen a number of significant changes in our markets, such as technological developments and increasing pressure on companies to meet earnings expectations,[10] that make it ever more important for the financial reporting process to remain disciplined and credible.[11] We believe that additional disclosures about a company's audit committee and its interaction with the company's auditors and management will promote investor confidence in the integrity of the financial reporting process. In addition, increasing the level of scrutiny by independent auditors of companies' quarterly financial statements should lead to fewer year-end adjustments, and, therefore, more reliable financial information about companies throughout the reporting year.

Accordingly, the new rules and amendments:

- Require that companies' independent auditors review the financial information included in the companies' Quarterly Reports on Form 10–Q or 10–QSB prior to the companies filing such reports with the Commission (see Section III.A below);
- Extend the requirements of Item 302(a) of Regulation S–K (requiring at fiscal year end appropriate reconciliations and descriptions of any adjustments to the quarterly information previously reported in a Form 10–Q for any quarter) [12] to a wider range of companies (see Section III.A below);
- Require that companies include reports of their audit committees in their proxy statements;[13] in the report, the audit committee must state whether the audit committee has: (i) Reviewed and discussed the audited financial statements with management; (ii) discussed with the independent auditors the matters required to be discussed by Statement on Auditing Standards No. 61,[14] as may be modified or supplemented; and (iii) received from the auditors disclosures regarding the auditors' independence required by Independence Standards Board Standard No. 1,[15] as may be modified or supplemented, and discussed with the auditors the auditors' independence (see Section III.B below);
- Require that the report of the audit committee also include a statement by the audit committee whether, based on the review and discussions noted above, the audit committee recommended to the Board of Directors that the audited financial statements be included in the company's Annual Report on Form 10–K or 10–KSB (as applicable) for the last fiscal year for filing with the Commission (see Section III.B below);
- Require that companies disclose in their proxy statements whether their Board of Directors has adopted a written charter for the audit committee, and if so, include a copy of the charter as an appendix to the company's proxy statements at least once every three years (see Section III.C below);
- Require that companies, including small business issuers,[16] whose securities are quoted on Nasdaq or listed on the American Stock Exchange (''AMEX'') or New York Stock Exchange (''NYSE''), disclose in their proxy statements whether the audit committee members are ''independent'' as defined in the applicable listing standards,[17] and disclose certain information regarding any director on the audit committee who is not ''independent''(see Section III.D below); require that companies, including small business issuers, whose securities are not quoted on Nasdaq or listed on the AMEX or NYSE disclose in their proxy statements whether, if they have an audit committee, the members are ''independent,'' as defined in the NASD's, AMEX's or NYSE's listing standards, and which definition was used (see Section III.D below); and
- Provide ''safe harbors'' for the new proxy statement disclosures to protect companies and their directors from certain liabilities under the federal securities laws (see Section III.E below).

To provide companies with the opportunity to evaluate their compliance with the revised listing standards of the NASD, AMEX, and NYSE and to prepare for the new disclosure requirements, we are providing transition periods for compliance with the new requirements (see Section V below).

II. Background

As discussed in the Proposing Release, given the changes in our markets, such as the increasing number of investors entering our markets and changes in the way and speed with which investors receive information, it is vitally important for investors to remain confident that they are receiving the highest quality financial reporting. The demand for reliable financial information appears to be at an all time high, as technology makes information

[1] 17 CFR 210.10–01.

[2] 17 CFR 228.310.

[3] 17 CFR 240.14a–101.

[4] 15 U.S.C. § 78a *et seq.*

[5] 17 CFR 229.302.

[6] 17 CFR 229.306.

[7] 17 CFR 228.306.

[8] The new rules and amendments were proposed in Exchange Act Release No. 41987 (Oct. 7, 1999) [64 FR 55648] (the ''Proposing Release'').

[9] *See* Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (1999) (the ''Blue Ribbon Report''). The Blue Ribbon Report is available on the internet at http://www.nasd.com and http://www.nyse.com.

[10] *See, e.g.*, Jack Ciesielski, Editorial, *More Second-Guessing: Markets Need Better Disclosure of Earnings Management*, Barrons, Aug., 24, 1998, at 47.

[11] The Commission recently filed 30 enforcement actions against 68 individuals and companies for fraud and related misconduct in the accounting, reporting, and disclosure of financial results by 15 different public companies. *See* SEC Press Release 99–124 (Sept. 28, 1999).

[12] 17 CFR 229.302(a).

[13] References in this release to proxy statements also include information statements.

[14] *See* Codification of Statements on Auditing Standards, AU § 380 (''SAS 61'').

[15] Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees* (''ISB Standard No. 1''). A copy of ISB Standard No. 1 can be obtained at www.cpaindependence.org.

[16] ''Small business issuer'' is defined in Item 10(a)(1) of Regulation S–B, 17 CFR 228.10(a)(1), as a company with less than $25 million in revenues and market capitalization.

[17] The listing standrds of the National Association of Securities Dealers (''NASD''), AMEX and NYSE are available on their websites at: http://www.nasd.com, http://www.amex.com, and http://www.nyse.com, respectively. *See infra* note 27 regarding recent changes to the listing standards of the NASD, AMEX, and NYSE.

available to more people more quickly. The new dynamics of our capital markets have presented companies with an increasingly complex set of challenges. One challenge is that companies are under increasing pressure to meet earnings expectations.[18] We have become increasingly concerned about inappropriate ''earnings management,'' the practice of distorting the true financial performance of the company.[19]

The changes in our markets and the increasing pressures on companies to maintain positive earnings trends have highlighted the importance of strong and effective audit committees. Effective oversight of the financial reporting process is fundamental to preserving the integrity of our markets. Audit committees play a critical role in the financial reporting system by overseeing and monitoring management's and the independent auditors' participation in the financial reporting process. Audit committees can, and should, be the corporate participant best able to perform that oversight function.

As discussed more fully in the Proposing Release, since the early 1940s, the Commission, along with the auditing and corporate communities, has had a continuing interest in promoting effective and independent audit committees. Most recently, the NYSE and NASD sponsored the Blue Ribbon Committee in response to ''an increasing sense of urgency surrounding the need for responsible financial reporting given the market's increasing focus on corporate earnings and a long and powerful bull market.'' [20] The new rules and amendments affirm what have long been considered sound practice and good policy within the accounting and corporate communities.[21]

While almost all of the commenters that provided comment letters on the Proposing Release [22] supported our goals of improving disclosure about audit committees and enhancing the reliability and credibility of financial statements, many commenters suggested alternative approaches to achieving those goals. Some commenters believed that we should impose more rigorous requirements.[23] Other commenters recommended that we not adopt certain aspects of the proposals. In this regard, the concern most frequently expressed was that as a result of the new requirements to provide certain disclosures in a report, audit committees may be exposed to additional liability, and that consequently it may be difficult for companies to find qualified people to serve on audit committees.[24]

It is not our intention to subject audit committee members to increased liability. We addressed concerns about liability by modifying our initial proposals from the Blue Ribbon Committee's recommendations and by providing safe harbor protections. Nevertheless, we appreciate that many commenters continue to be concerned about the audit committee report generally, and specifically the requirement that the audit committee state whether anything has come to the attention of the members of the audit committee that caused the audit committee to believe that the audited financial statements included in the company's Annual Report on Form 10–K or 10–KSB contain an untrue statement of material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading.

In response, we have modified that disclosure item, which was the subject of most of the commentary. We are adopting, instead, one of the other alternatives proposed—the audit committee must state whether, based on the review and discussion of the audited financial statements with management and discussions with the independent auditors, the audit committee recommended to the Board that the audited financial statements be included in the company's Annual Report on Form 10–K or 10–KSB (as applicable) for the last fiscal year for filing with the Commission. As we discussed in the Proposing Release, we do not believe that improved disclosure about the audit committee and increased involvement by the audit committee should result in increased exposure to liability. Consequently, we believe that this modification, together with the safe harbors, should further alleviate concerns about increased liability exposure, while promoting our goal of improving the financial reporting process.

Some commenters expressed concern about applying the new requirements to small businesses, particularly the interim financial review requirement. We have considered those comments carefully. We think that improvements in the financial reporting process for companies of all sizes is important for promoting investor confidence in our markets.[25] In this regard, because we have seen instances of financial fraud at small companies as well as at large companies,[26] we think that improving disclosures about the audit committees of small and large companies is important. As discussed in the Proposing Release, interim financial information generally may include more estimates than annual financial statements, but interim financial statements have never been subject to the discipline provided by having auditors associated with these statements on a timely basis. Investors, however, rely on and react quickly to quarterly results of companies, large and small. Accordingly, we believe that it is appropriate to require small business issuers to obtain reviews of interim financial information. As discussed below, however, small business issuers are not included in the expanded group of issuers subject to Item 302(a) disclosure requirements. In addition, we think that the transition period should help small businesses prepare for and adapt to the new requirements.

The Blue Ribbon Committee also made recommendations that call for action by the NASD, the NYSE, and the AICPA. In response, the NASD and NYSE proposed, and the Commission

[18] *See, e.g.,* Carol J. Loomis *et al., Lies, Damned Lies, and Managed Earnings,* Fortune, Aug. 2, 1999, at 74; Thor Valdmanis, *Accounting Abracadabra,* USA Today, Aug. 11, 1998, at 1B; Bernard Condon, *Pick a Number, Any Number,* Forbes, Mar. 23, 1998, at 124; Justin Fox & Rajiv Rao, *Learn to Play the Earnings Game,* Fortune, Mar. 31, 1997, at 76.

[19] *See, e.g.,* Arthur Levitt, Chairman, SEC, Address to the NYU Center for Law and Business (Sept. 28, 1998). A copy of this speech is available on the SEC's website at www.sec.gov.

[20] Blue Ribbon Report, *supra* note 9, at 17.

[21] *See* Advisory Panel on Auditor Independence (''Kirk Panel''), *Strengthening the Professionalism of the Independent Auditor,* Report by the Oversight Board of the SEC Practice Section, American Institute of Certified Public Accountants (''AICPA'') (Sept. 13, 1994) (the ''Kirk Panel Report''); *see also* Report of the National Commission on Fraudulent Financial Reporting (Oct. 1987) (the ''Treadway Report'').

[22] You may read and copy the comment letters in our Public Reference Room at 450 Fifth Street, N.W., Washington, D.C. 20549. Ask for File No. S7–22–99. You may view the comment letters that were submitted by electronic mail at the Commission's web site: www.sec.gov.

[23] *See, e.g.,* Letter dated November 8, 1999 from Sarah A.B. Teslik, Executive Director, Council of Institutional Investors; Letter dated October 14, 1999 from Robert B. Hodes, Willkie Farr & Gallagher.

[24] *See, e.g.,* Letter dated November 29, 1999 from Stephanie B. Mudick, General Counsel—Corporate Law, Citigroup Inc. (''Citigroup Letter''); Letter dated November 22, 1999 from Michael L. Conley, Executive Vice President and CFO, McDonald's Corporation.

[25] *See, e.g.,* Letter dated November 19, 1999 from the New York State Bar Association, Committee on Securities Regulation (''NYS Bar Letter'') and Letter dated November 17, 1999 from KPMG LLP (''KPMG Letter'') supporting application of the amendments and new rules to companies of all sizes.

[26] *See supra* note 11; *see also* Beasley, Carcello, and Hermanson, Fraudulent Financial Reporting: 1987–1997, An Analysis of U.S. Public Companies (Mar. 1999) (study commissioned by the Committee of Sponsoring Organizations of the Treadway Commission) (the ''COSO Report'').

approved, changes to their listing standards,[27] and the Auditing Standards Board (''ASB'') recently proposed amendments[28] to SAS 61[29] and SAS 71.[30]

III. Discussion of New Rules and Amendments

A. Pre-Filing Review of Quarterly Financial Statements; Item 302(a)

We are adopting, as proposed, amendments to Rule 10–01(d) of Regulation S–X and Item 310(b) of Regulation S–B to require that a company's interim financial statements be reviewed by an independent public accountant prior to the company filing its Form 10–Q or 10–QSB with the Commission.[31] The amendments would require that independent auditors follow ''professional standards and procedures for conducting such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission.'' Under current auditing standards, this means that the auditors would be required to follow the procedures set forth in SAS 71, or such other auditing standards that may in time modify, supplement, or replace SAS 71.

As noted above, we believe that more discipline is needed for the quarterly financial reporting process.[32] We believe that the reviews required will facilitate early identification and resolution of material accounting and reporting issues because the auditors will be involved earlier in the year. Early involvement of the auditors should reduce the likelihood of restatements or other year-end adjustments and enhance the reliability of financial information. In addition, as a result of changes in the markets, companies may be experiencing increasing pressure to ''manage'' interim financial results. Inappropriate earnings management could be deterred by imposing more discipline on the process of preparing interim financial information before filing such information with the Commission.

Many commenters supported the interim review requirement.[33] Several commenters expressed concern, however, about the cost of obtaining interim reviews, particularly for small business issuers.[34] As discussed above, we believe that improving the interim reporting process is important for companies of all sizes. As noted in the Proposing Release, we understand that the five largest U.S. accounting firms and other firms have policies to require that their clients have reviews of quarterly financial statements as a condition to acceptance of the audit.[35] Consequently, those firms already have implemented the new requirement for the companies that are audited by those firms.

In the Proposing Release, we solicited comment on whether, in light of the proposal to require interim reviews, we should require all companies to comply with Item 302(a) of Regulation S–K. Currently, under Item 302(a) of Regulation S–K, larger, more widely-held companies[36] supplement their annual financial information with disclosures of selected quarterly financial data. Item 302(a) requires appropriate reconciliations and descriptions of any adjustments to the quarterly information previously reported in a Form 10–Q for any quarter. The selected financial data must be reviewed by the independent auditors in accordance with SAS 71, but the review can occur at the end of the year and as part of the audit of the annual financial statements. We are amending Item 302(a) to extend the requirements to all companies[37] (except small business issuers filing on small business forms) that have securities registered under Sections 12(b)[38] or 12(g)[39] of the Exchange Act regardless of the size of the company or public float.[40]

Regulation S–B does not require small business issuers to provide Item 302(a) type disclosures. Today's amendments continue to exclude small business issuers filing under Regulation S–B from

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[27] *See* Order Approving Proposed Rule Change by the NASD, Exchange Act Release 42231, File No. SR–NASD–99–48; Order Approving Proposed Rule Change by the NYSE, Exchange Act Release No. 42233, File No. SR–NYSE–99–39. While the Blue Ribbon Committee's recommendations were directed to the NYSE and the NASD, the AMEX proposed, and the Commission approved, rule changes to AMEX's listing standards. *See* Order Approving Proposed Rule Change by the AMEX, Exchange Act Release No. 42232, File No. SR–Amex–99–38.

[28] *See* Exposure Draft for Proposed Statement on Auditing Standards: Amendments to Statements on Auditing Standard No. 61, Communication with Audit Committees and Statements on Auditing Standard No. 71, Interim Financial Information (Oct. 1, 1999) (''ASB Exposure Draft''). A copy of the ASB Exposure Draft can be obtained at www.aicpa.org/members/div/auditstd/drafts.htm.

[29] SAS 61 requires independent auditors to communicate certain matters related to the conduct of an audit to those who have responsibility for oversight of the financial reporting process, specifically the audit committee. Among the matters to be communicated to the audit committee are: (1) Methods used to account for significant unusual transactions; (2) the effect of significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus; (3) the process used by management in formulating particularly sensitive accounting estimates and the basis for the auditor's conclusions regarding the reasonableness of those estimates; and (4) disagreements with management over the application of accounting principles, the basis for management's accounting estimates, and the disclosures in the financial statements.

[30] *See* Codification of Statements on Auditing Standards, AU § 722. SAS 71 provides guidance to independent accountants on performing reviews of interim financial information.

[31] In the Proposing Release, we solicited comment on whether to require companies to disclose whether their quarterly financial statements have been reviewed by independent auditors. We are not adopting that requirement, but are retaining the current requirement of Rule 10–01(d) of Regulation S–X, 17 CFR 210.10–01(d), that if a company discloses that an independent auditor has performed a review of interim financial information, it must file a copy of the auditor's report. A conforming change to Item 310(b) has been made as proposed.

[32] In 1989, the Commission issued a concept release on whether it should propose amendments to its rules to require more involvement of the independent accountant in the preparation of interim financial information. *See* Exchange Act Release No. 26949 (June 20, 1989) [54 FR 27023]. The Treadway Commission recommended that the SEC require independent public accountants to review quarterly financial data before a company releases it to the public. Treadway Report, *supra* note 21, at 53.

[33] *See, e.g.,* Letter dated November 29, 1999 from The Business Roundtable (''We believe that a requirement for such a review would not impose a substantial burden and would help to improve the investor's comfort with interim statements''); Letter dated November 23, 1999 from Mark Wovsaniker, Vice President—Accounting Policy, America Online Incorporated (''To promote the accuracy and the high quality of the quarterly results, the auditor's regular involvement throughout the year, not just once at the end of each year, is necessary''); Letter dated November 22, 1999 from the Association for Investment Management and Research—Advocacy Advisory Committee (''AIMR Letter'') (''[The proposal] will require auditor involvement throughout the year, which should help mitigate earnings management, as well as reduce the likelihood of restatements or other year-end adjustments'').

[34] *See, e.g.,* Letter dated December 3, 1999 from the American Bar Association—Section of Business Law (''ABA Letter'').

[35] One firm's policy apparently applies only to clients filing selected quarterly financial data under Item 302(a) of Regulation S–K, 17 CFR 229.302(a).

[36] Prior to today's amendments, Item 302(a) required registrants to provide Item 302(a) information if the registrant met certain tests, but not limited to: (1) Two of the three following requirements: (a) Shares outstanding have a market value of at least $2.5 million; (b) the minimum bid price is at least $5 per share; or (c) the registrant has at least $2.5 million of capital, surplus, and undivided profits; and (2) the registrant and its subsidiaries: (a) Have had net income after taxes but before extraordinary items and the cumulative effect of a change in accounting of at least $250,000 for each of the last three fiscal year; or (b) had total assets of at least $200 million for the last fiscal year end.

[37] *See, e.g.,* KPMG Letter, *supra* note 25, supporting this amendment.

[38] 15 U.S.C. § 78*l*(b).

[39] 15 U.S.C. § 78*l*(g).

[40] We are eliminating the requirement for large, widely-traded insurance companies, which file periodic reports solely pursuant to Section 15(d) of the Exchange Act, to provide Item 302(a) information. It is noted in this regard that other types of issuers reporting solely pursuant to Section 15(d) are not required to provide Item 302(a) information. The Item 302(a) amendments will accord insurance companies the same treatment under Item 302(a) as other issuers that report solely pursuant to Section 15(d).

those disclosure requirements,[41] but we will continue to consider whether and how such requirements should apply to small business issuers.

We believe that the amendments to Item 302(a) are consistent with the new requirement to obtain interim reviews. Both new measures should add discipline to the process of preparing and reporting quarterly financial information. Both should also encourage early identification of accounting issues and resolution of those issues before they must be subject to an auditor's review or a ''reconciling'' disclosure under Item 302(a)(2). Because the information to be disclosed should be readily available from each company's Form 10–Q filings, no additional audit or review costs will be imposed by the amendments to Item 302(a).

B. The Audit Committee Report

We are adopting new Item 306 of Regulations S–K and S–B and Item 7(e)(3) of Schedule 14A that require the audit committee to provide a report in the company's proxy statement. The required disclosure will help inform shareholders of the audit committee's oversight with respect to financial reporting, and underscore the importance of that role.

Many commenters were concerned that a report by the audit committee that indicates whether various discussions have occurred would expose the audit committee members to increased scrutiny and liability.[42] We do not believe that will be the case. Under state corporation law, the more informed the audit committee becomes through its discussions with management and the auditors, the more likely that the ''business judgment rule'' will apply and provide broad protection.[43] Those discussions should serve to strengthen the ''information and reporting system'' that should be in place.[44] Adherence to a sound process should result in less, not more, exposure to liability.[45]

Accordingly, we are adopting, as proposed, the requirement that the audit committee disclose whether the audit committee has reviewed and discussed the audited financial statements with management and discussed certain matters with the independent auditors.[46] Under paragraphs (a)(1), (a)(2), and (a)(3) of Item 306 (paragraph (a)(4) is discussed separately, below), audit committees must state whether:

(1) The audit committee has reviewed[47] and discussed the audited financial statements with management;

(2) The audit committee has discussed with the independent auditors the matters required to be discussed by SAS 61, as may be modified or supplemented;[48] and

(3) The audit committee has received the written disclosures and the letter from the independent auditors required by ISB Standard No. 1, as may be modified or supplemented, and has discussed with the auditors the auditors' independence.

If the company does not have an audit committee, the board committee tasked with similar responsibilities, or the full board of directors, would be responsible for the disclosure.

The disclosure required by paragraph (a)(3) relates to written disclosures, a letter from the independent auditors, and discussions between the audit committee and the independent auditors required by ISB Standard No. 1. The Commission has long recognized the importance of auditors being independent from their audit clients.[49] Public confidence in the reliability of a company's financial statements depends on investors perceiving the company's auditors as being independent from the company.

As noted above, paragraph (a)(4) was the subject of the most criticism. Commenters expressed concern about increased liability exposure, which they believed may result in qualified audit committee members resigning or companies having difficulty recruiting qualified members.[50] Some commenters, on the other hand, were skeptical that there would be increased liability exposure.[51]

Because of concerns about liability, we did not propose the disclosure requirement recommended by the Blue Ribbon Committee,[52] but instead proposed that the audit committee indicate whether, based on its discussions with management and the auditors, its members became aware of material misstatements or omissions in the financial statements. As discussed in the Proposing Release, we did not intend, nor do we believe, that the proposed disclosure about the audit committee and increased involvement by the audit committee would result in increased exposure to liability. Because commenters continued to be concerned, however, we are adopting an alternative contained in the Proposing Release. We believe that the revised language, together with the safe harbors, addresses those concerns.

As adopted, new paragraph (a)(4) requires the audit committee to state whether, based on the review and discussions referred to in paragraphs (a)(1) through (a)(3), it recommended to the Board of Directors that the financial statements be included in the Annual Report on Form 10–K or 10–KSB for the last fiscal year for filing with the Commission.[53] Because the new

[41] *See* Letter dated November 29, 1999 from Ernst & Young recommending that the criteria for Item 302(a) compliance be based on a company's market capitalization, such as above $25 million.

[42] *See, e.g.*, Letter dated November 24, 1999 from Tommy Chisholm, Secretary, Southern Company; Citigroup Letter, *supra* note 24. *But see* Letter dated November 26, 1999 from Peter C. Clapman, Senior Vice President and Chief Counsel, Investments, Teachers Insurance and Annuity Association College Retirement Equities Fund (''TIAA-CREF Letter'').

[43] *See* 1 American Law Institute, *Principles of Corporate Governance: Analysis and Recommendations* 134–98 (1994); *In re Caremark Int'l Inc. Derivative Litig.*, 698 A.2d 959, 967–70 (Del. Ch. 1996).

[44] *Caremark*, 698 A.2d at 970 (boards must assure ''themselves that information and reporting systems exist in the organization that are reasonably designed to provide to senior management and to the board itself timely, accurate information sufficient to allow management and the board, each within its scope, to reach informed judgments concerning both the corporation's compliance with law and its business performance'').

[45] *See generally* Report of the Public Oversight Board (''POB''), ''Directors, Management, and Auditors: Allies in Protecting Shareholder Interests,'' in which the POB discusses, among other things, a recommendation of the Kirk Panel to require audit committees to discuss with management and the auditors the quality of the accounting principles and judgments used in preparing financial statements. The POB notes its belief that compliance with that recommendation would not increase the exposure of board members to litigation because, among other things, the procedures will reduce the possibility that the financial statements are in fact misleading, thereby reducing the danger of finding directors at fault, and the additional steps taken should be persuasive in convincing courts and juries that the financial statements were prepared with care.

[46] At least in some measure, these discussions are already prescribed by the auditing literature. *See* SAS 61. *See, e.g.*, Letter dated November 29, 1999 from America's Community Bankers and Letter dated November 22, 1999 from the Massachusetts Financial Services Company supporting the requirements of paragraphs (a)(1), (2) and (3).

[47] We recognized that the auditing literature defines the term ''review'' to include a particular set of required procedures. *See* SAS 71. In using the term ''reviewed'' in the new disclosure requirement, we are not suggesting that the audit committee members can or should follow the procedures required of auditors performing reviews of interim financial statements.

[48] *See* ASB Exposure Draft, *supra* note 28.

[49] The federal securities law recognize the importance of independent auditors. *See, e.g.*, Items 25 and 26 of Schedule A of the Securities Act and Sections 12(b)(1)(J) and 13(a)(2) of the Exchange Act, 15 U.S.C. 78*l*(b)(1)(J) and 78m(a)(2).

[50] See *supra* note 24.

[51] *See, e.g.*, TIAA–CREF Letter, *supra* note 42.

[52] The Blue Ribbon Committee recommended that the audit committee state that, in reliance on the review and discussions with management and the auditors, the audit committee ''believes that the company's financial statements are fairly presented in conformity with Generally Accepted Accounting Principles (GAAP) in all material respects.'' Blue Ribbon Report, *supra* note 9, at 35.

[53] For closed-end investment companies, paragraph (a)(4) clarifies that this requirement applies to financial statements included in a fund's annual report to shareholders required by Section 30(e) of the Investment Company Act of 1940 and

Continued

language in paragraph (a)(4) focuses on the annual audited financial statements and the filing of those financial statements with the Commission, we believe that this requirement will provide investors with a better understanding of the audit committee's oversight role in the financial reporting process. The audit committee's recommendation that the financial statements be used in Commission filings already is implicit in, and is consistent with, board members signing the company's Annual Report on Form 10–K or 10–KSB.[54] Further, several commenters preferred this alternative.[55]

In addition, in performing its oversight function, the audit committee likely will be relying on advice and information that it receives in its discussions with management and the independent auditors. Accordingly, the text of the new requirement acknowledges that the audit committee had such discussions with management and the auditors, and, based on those discussions, made decisions about the financial statements and the filing of the company's Form 10–K or 10–KSB. This approach is consistent with state corporation law that permits board members to rely on the representations of management and the options of experts retained by the corporation when reaching business judgments.[56] The Blue Ribbon Committee noted the ''impracticability of having the audit committee do more than rely upon the information it receives, questions, and assesses in making this disclosure.'' [57]

We are adopting, as proposed, the requirement that the new disclosure appear over the printed names of each member of the audit committee.[58] This requirement will emphasize for shareholders the importance of the audit committee's oversight role in the financial reporting process.

The disclosures are required in the company's proxy statement because they could have a direct bearing on shareholders' voting decisions, and because the proxy statement is actually delivered to shareholders and is accessible on the SEC's web site. Companies must provide the disclosure only in a proxy statement relating to an annual meeting of shareholders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). The disclosure needs to be provided only one time during the year (*e.g.*, in a proxy statement for an annual meeting at which directors are to be elected, but not in proxy solicitation material used in a subsequent election contest during that same year).

C. Audit Committee Charters

We are adopting, as proposed, the requirement that companies disclose in their proxy statements whether their audit committee is governed by a charter, and if so, include a copy of the charter as an appendix to the proxy statement at least once every three years. The requirement appears in new paragraph (e)(3) under Item 7 of Schedule 14A. The new disclosure regarding audit committees' charters should help shareholders assess the role and responsibilities of the audit committee.

We believe that audit committees that have their responsibilities set forth in a written charter are more likely to play an effective role in overseeing the company's financial reports. The amendments, however, will not require companies to adopt audit committee charters, or dictate the content of the charter if one is adopted.[59]

Several commenters expressed concern that the requirement to attach the charter would result in boilerplate charters.[60] We believe that it is useful for shareholders to know about the responsibilities and the duties of audit committees,[61] and while it is inevitable that some of the same provisions will appear in charters of different audit committees, we encourage companies to tailor the charters to their specific circumstances.

Consistent with some of the comments regarding the audit committee report, some commenters recommended that the charter be attached to the Form 10–K instead of the proxy statement because of concerns about expanding the length of the proxy statement.[62] We believe that information about the responsibilities and the duties of audit committees is most relevant to shareholders when they are electing directors and reviewing their performance. Accordingly, we have determined to require, as proposed, that the charter be attached to the proxy statement every three years.

D. Disclosure About ''Independence'' of Audit Committee Members

As early as 1940, the Commission encouraged the use of audit committees composed of independent directors. As the Commission staff stated in a report to Congress in 1978, ''[i]f the [audit] committee has members with vested interests related to those of management, the audit committee probably cannot function effectively. In some instances this may be worse than having no audit committee at all by creating the appearance of an effective

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rule 30d–1. These reports must be filed with the Commission pursuant to Rule 30b2–1, 17 CFR 270.30b2–1, under the Investment Company Act of 1940. Commenters disagreed about whether closed-end funds be excluded altogether from the new proxy statement disclosure requirements. *See, e.g.*, ABA Letter, *supra* note 34; Letter dated November 29, 1999 from Stuart M. Strauss, Morgan Stanley Dean Witter; Letter dated November 29, 1999 from Arthur Andersen LLP; Letter dated November 3, 1999 from the Investment Company Institute. We have concluded, however, that the application of these requirements to closed-end funds is warranted because of the critical role that audit committees play in overseeing the financial reporting process.

[54] The signature requirement is described in General Instruction D of Form 10–K and General Instruction C of Form 10–KSB. The Commission amended the signature requirements for Form 10–K in 1980 in order to ''enhance director awareness of and participation in the preparation of the Form 10–K information.'' *See* Securities Act Release No. 6176 (Jan. 15, 1980) [45 FR 5972].

[55] *See, e.g.*, Letter dated December 1, 1999 from Ira M. Millstein, Weil Gotshal & Manges LLP, and John C. Whitehead. Messrs. Millstein and Whitehead were co-chairmen of the Blue Ribbon Committee; Letter dated November 29, 1999 from Deloitte & Touche LLP; Letter dated November 29, 1999 from James E. Kelly, General Counsel, Dime Bancorp, Inc.; Letter dated November 23, 1999 from Michael A. Rocca, Senior Vice President, Chief Financial Officer, Mallinckrodt Inc. (''This type of report better describes the audit committee's oversight role * * *. Moreover, in our view this alternative language would create a less significant litigation risk to audit committees''); NYS Bar Letter, *supra* note 25; Letter dated November 16, 1999 from Ernst & Young LLP. *See also* Letter dated August 20, 1999 from Ernst & Young LLP to Harvey J. Goldschmid, General Counsel, and Lynn E. Turner, Chief Accountant, SEC, commenting on the recommendations of the Blue Ribbon Committee and recommending a variation of this alternative.

[56] Delaware General Corporation Law, for example, states that board members are ''fully protected in relying on good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees * * * or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence * * *.'' Del. Code Ann. tit. 8, § 141(e).

[57] *See* Blue Ribbon Report, *supra* note 9, at 34.

[58] This approach is consistent with the current treatment for the report from the company's compensation committee. *See* Instruction 9 to Item 402(a)(3) of Regulation S–K, 17 CFR 229.402(a)(3).

[59] We note, however, that the revised listing standards of the NYSE, NASD, and AMEX require the audit committee to: (1) Adopt a formal written charter that is approved by the full board of directors and that specifies the scope of the committee's responsibilities, and how it carries out those responsibilities, including structure, processes, and membership requirements; and (2) review and reassess the adequacy of the audit committee's charter on an annual basis. *See supra* note 27.

[60] *See, e.g.*, Letter dated November 29, 1999 from William E. Eason, Jr., Senior Vice President and General Counsel, Scientific-Atlanta, Inc.; Letter dated November 29, 1999 from Paul V. Stahlin, Senior Vice President and Comptroller, Summit Bancorp.

[61] *See, e.g.*, TIAA–CREF Letter, *supra* note 42.

[62] Letter dated November 29, 1999 from David K. Owens, Edison Electric Institute.

body while lacking the substance.'' [63] Further, as the Blue Ribbon Committee noted, ''* * * common sense dictates that a director without any financial, family, or other material personal ties to management is more likely to be able to evaluate objectively the propriety of management's accounting, internal control and reporting practices.'' [64]

As noted in the Proposing Release, because of the importance of having an audit committee that is comprised of independent directors,[65] we believe that shareholders should know about the independence of the members. We believe that the new disclosures will accomplish that goal.

Under the revised listing standards of the NYSE, AMEX, and NASD, under exceptional and limited circumstances, companies may appoint to their audit committee one director who is not independent if the Board determines that membership on the committee by the individual is required by the best interests of the corporation and its shareholders, and the Board discloses, in the next annual proxy statement subsequent to such determination, the nature of the relationship and the reasons for that determination. We are adopting, as proposed, the requirement that companies whose securities are listed on the NYSE or AMEX or quoted on Nasdaq that have a non-independent audit committee member disclose the nature of the relationship that makes that individual not independent and the reasons for the Board's determination to appoint the director to the audit committee. Small business issuers are not required to comply with this requirement.

In addition, companies, including small business issuers, whose securities are listed on the NYSE or AMEX or quoted on Nasdaq, must disclose whether the audit committee members are independent, as defined in the applicable listing standards.[66] While companies are required to provide in their proxy statements certain disclosures that relate to the independence of directors,[67] we thought that it was important to make the disclosure about all of the audit committee members' independence explicit and clear for shareholders. For example, if we required disclosure about only those audit committee members who are not independent, there would have been an implication that all of the other members are independent. Because of the importance of having independent directors on the audit committee, shareholders should be informed explicitly, rather than implicitly, of each member's status.

While we recognize that the new requirements of the NYSE, AMEX, and NASD regarding independence of audit committees need not be complied with for 18 months, we think that companies will be able to provide the new disclosures in the first proxy season after year 2000 because, as a practical matter, to meet the 18-month deadline, most companies will elect new directors during the year 2000. For other companies, this will show their progress in moving toward compliance with the listing requirements.

We are also adopting, as proposed, the requirement that companies, including small business issuers, whose securities are not listed on the NYSE or AMEX or quoted on Nasdaq, disclose in their proxy statements whether, if they have an audit committee, the members are independent as defined in the NYSE's, AMEX's, or NASD's listing standards, and which definition was used. These companies would be able to choose which definition of ''independence'' to apply to the audit committee members in making the disclosure. Whichever definition is chosen must be applied consistently to all members of the audit committee.

E. Safe Harbors

We are adopting, as proposed, ''safe harbors'' for the new disclosures.[68] The ''safe harbors'' would track the treatment of compensation committee reports under Item 402 of Regulation S–K.[69] The safe harbors are in paragraph (c) in new Item 306 of Regulations S–K and S–B and paragraph (e)(v) of Schedule 14A. Under the ''safe harbors,'' the additional disclosure would not be considered ''soliciting material,'' ''filed'' with the Commission, subject to Regulation 14A or 14C (and, therefore, not subject to the antifraud provisions of Rules 14a–9 or 14c–6) [70] or to the liabilities of Section 18 of the Exchange Act, except to the extent that the company specifically requests that it be treated as soliciting material, or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.

Several commenters recommended that the Commission also provide a safe harbor from private litigation.[71] After careful consideration, we do not believe an additional safe harbor is necessary or appropriate. As discussed more fully above, in adopting the new rules and amendments, we do not intend to subject companies or their directors to increased exposure to liability under the federal securities laws, or to create new standards for directors to fulfill their duties under state corporation law. We do not believe that the disclosure requirements will result in increased exposure to liability or create new standards. We have modified the disclosure required in Item 306 in response to commenters' concerns. To the extent the disclosure requirements would result in more clearly defined procedures for, and disclosure of, the operation of the audit committee, liability claims alleging breach of fiduciary duties under state law actually may be reduced. Accordingly, we believe that the safe harbors adopted are appropriate and sufficient.

IV. Applicability to Foreign Private Issuers and Section 15(d) Reporting Companies

A. Foreign Private Issuers

We proposed to exclude from the new requirements foreign private issuers with a class of securities registered under Section 12 of the Exchange Act or that file reports under Section 15(d) of the Exchange Act.[72] Foreign private issuers currently are exempt from the proxy rules, are not required to file Quarterly Reports on Form 10–Q or 10–QSB,[73] and are subject to different corporate governance regimes in their

[63] Staff of the SEC, 95th Cong., 2d Sess., Report to Congress on the Accounting Profession and the Commission's Oversight Role, Subcommittee on Governmental Efficiency and the District of Columbia of the Senate Committee on Governmental Affairs, at 97 (Comm. Print July 1978). *See also* Blue Ribbon Report, *supra* note 9, at 22–23; Treadway Report, *supra* note 21, at 40–41; *In the Matter of McKesson & Robbins,* Accounting Series Release No. 19, Exchange Act Release No. 2707 (Dec. 5, 1940).

[64] Blue Ribbon Report, *supra* note 9, at 22.

[65] *See, e.g.,* TIAA–CREF Letter, *supra* note 42.

[66] The revised listing standards of the NASD and AMEX require that small business issuers have at least two members of their audit committee, a majority of whom must be independent. In responding to the new disclosure requirement, small business issuers, of course, can disclose that the listing standards of the NASD or AMEX do not require that all members of their audit committee be independent. *See supra* note 27.

[67] Item 7 of Schedule 14A requires companies to provide the disclosures required by Items 401 and 404(a) and (c) of Regulation S–K.

[68] *See* Blue Ribbon Report, *supra* note 9, at 35, recommending a safe harbor.

[69] *See* Instruction 9 to Item 402(a)(3) of Regulation S–K, 17 CFR 229.402(a)(3).

[70] The other antifraud provisions of the Exchange Act and Securities Act of 1933 (the ''Securities Act''), however, would continue to apply.

[71] *See, e.g.,* Letter dated November 29, 1999 from Katherine K. Combs, Deputy General Counsel and Corporate Secretary, PECO Energy Company; Letter dated November 30, 1999 from the American Society of Corporate Secretaries (the ''ASCS Letter'').

[72] 15 U.S.C. § 78o(d).

[73] A ''foreign private issuer'' must file reports on Form 6–K promptly after the information requried by the Form is made public in accordance with the laws of its home country or a foreign securities exchange. *See* 17 CFR 240.13a–16(b).

home countries. Accordingly, we do not believe it is appropriate to extend the new requirements to foreign private issuers at this time. The Commission, however, is continuing to consider how the periodic reporting requirements for domestic companies should apply to foreign private issuers.

B. Section 15(d) Reporting Companies

As noted in the Proposing Release, companies whose reporting obligations arise solely under Section 15(d) of the Exchange Act are not required to file proxy statements with the Commission. We solicited comment on whether we should require those companies to provide the new disclosures in their Form 10–Ks or some other filing. Because we believe that the disclosures are most relevant to voting decisions on the basis of disclosure in proxy statements, and because of the nature of the market for the securities of such companies, we are not adopting such a scheme. Accordingly, at this time we are not extending the proxy statement disclosure requirements to Section 15(d) companies.

V. Compliance Dates

Several commenters requested that we provide a transition period to allow companies time to consider the rules and to revise, if necessary, any of their procedures.[74] We agree, and have provided a transition period for compliance with the new requirements. Registrants must obtain reviews of interim financial information by their independent auditors starting with their Forms 10–Q or 10–QSB to be filed for fiscal quarters ending on or after March 15, 2000. Registrants must comply with the new proxy and information disclosure requirements (*e.g.*, the requirement to include a report of their audit committee in their proxy statements, provide disclosures regarding the independence of their audit committee members, and attach a copy of their audit committee's charter) for all proxy and information statements relating to votes of shareholders occurring after December 15, 2000. Companies who become subject to Item 302(a) as a result of today's amendments must comply with its requirements after December 15, 2000. Registrants voluntarily may comply with any of the new requirements prior to the compliance dates.

VI. Paperwork Reduction Act

Earlier this year, the staff submitted the proposed amendments to Regulations 14A and 14C to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. Regulations 14A and 14C contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. § 3501 *et seq.*). The titles for the collections of information are: (1) Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15) and Schedule 14A; and (2) Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7) and Schedule 14C. Also, in accordance with the Paperwork Reduction Act, we solicited comments on the accuracy of our burden estimates for Regulations 14A and 14C. We did not receive any comments that address specifically the estimated paperwork burdens associated with those collections of information. The comments we received primarily addressed the costs and benefits of the proposals in general terms, and liability concerns, rather than issues relating to the collection of information. Commenters' more generalized concerns about costs and benefits of the amendments are addressed more fully in the cost-benefit and other sections of this release.

We proposed and are adopting amendments that will require a company to include additional disclosures in Schedules 14A and 14C, including certain information about the company's audit committee. The audit committee will have to disclose whether it had certain discussions with management and the company's independent auditors. The substance of the discussions would not be required to be disclosed. Companies will also have to disclosure information regarding the independence of audit committee members. The amendments would also require companies that have adopted a written charter for their audit committee to include a copy of the charter as an appendix to Schedules 14A and 14C at least once every three years. The amendments do not require companies to prepare charters.

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 control number. Schedule 14A (OMB Control No. 3235–0059)[75] and Schedule 14C (OMB Control No. 3235–0057)[76] were adopted pursuant to Sections 14(a) and 14(c) of the Exchange Act. Schedule 14A prescribes information that a company must include in its proxy statement to ensure that shareholders are provided material information relating to voting decisions. Schedule 14C prescribes information that a company must include in its information statement to shareholders where votes are solicited by means other than proxies.

We solicited comments on whether we should require all companies to comply with Item 302(a) of Regulation S–K. As discussed in previous sections of the release, Item 302(a) of Regulation S–K currently requires larger, more widely-held companies to supplement their annual financial information with disclosures of selected quarterly financial data. We are amending Item 302(a) to extend the requirements to all companies (but not small business issuers filing on small business forms and foreign private issuers) that have securities registered under Section 12(b) or 12(g) of the Exchange Act. The Item 302(a) information will continue to appear as a table in the Form 10–K.

Form 10–K under the Exchange Act (OMB Control Number 3235–0063)[77] is used by registrants to file annual reports. The title for this collection of information is Form 10–K. Form 10–K provides a comprehensive overview of the registrant's business and financial condition. The Commission estimates that Form 10–K currently results in a total annual compliance burden of approximately 17,886,463 hours. The burden was calculated by multiplying the estimated number of entities filing Form 10–K (approximately 10,381) by the estimated average number of hours each entity spends completing the Form (approximately 1723 hours). The Commission based the number of entities that complete and file Form 10–K on the actual number of filers during the 1998 fiscal year. The staff estimated the average number of hours an entity spends completing Form 10–K by contacting a number of law firms and other persons regularly involved in completing the forms.

We estimate that the incremental burden of extending Item 302(a) to all companies with securities registered under Sections 12(b) or 12(g) of the Exchange Act (except small business issuers filing on small business forms) will increase the total by approximately 2000 hours. This burden was calculated by multiplying the estimated number of entities that do not currently provide Item 302(a) information by the number of additional hours it would take to provide the additional information. The staff estimates that approximately 8000 Form 10–K filers do not currently provide Item 302(a) information, and

[74] *See, e.g.*, ASCS Letter, *supra* note 71.

[75] 17 CFR 240.14a–101.

[76] 17 CFR 240.14c–101.

[77] 17 CFR 249.310.

that it would take a total of approximately .25 hours to include the new disclosure in a Form 10–K. The Commission based the number of Form 10–K filers not currently providing Item 302(a) information on the approximate number of companies in the Compustat database that currently are required to file Item 302(a) information based on the criteria set forth in Item 302(a) of Regulation S–K.

We believe that the amendments will promote investor confidence in the securities markets by informing investors about the important role that audit committees play in the financial reporting process and will enhance the reliability and credibility of financial statements of public companies.

Compliance with the disclosure requirements is mandatory. There will be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the revised rule is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements for Form 10–K should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, with reference to File No. S7–22–99. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–22–99, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

VII. Cost-Benefit Analysis

The amendments are expected to improve disclosure related to the functioning of the corporate audit committees and to enhance the reliability and credibility of financial statements of public companies. We believe that the amendments will promote investor confidence in the securities markets by informing investors about the important role that audit committees play in the financial reporting process. As the Blue Ribbon Committee summarized:

> Improving oversight of the financial reporting process necessarily involves the imposition of certain burdens and costs on public companies. Despite these costs, the Committee believes that a more transparent and reliable financial reporting process ultimately results in a more efficient allocation of and lower cost of capital. To the extent that instances of outright fraud, as well as other practices that result in lower quality financial reporting, are reduced with improved oversight, the benefits clearly justify these expenditures of resources.[78]

As noted above, the amendments are part of a larger, coordinated series of actions by the NYSE, NASD, AMEX, and the accounting profession that were recommended by the Blue Ribbon Committee to improve the financial reporting process. The Commission's rule amendments and new rules complement and strengthen the efforts of the NYSE, NASD, AMEX and the accounting profession. This cost-benefit analysis concentrates only on the effect of the Commission's rules. The benefits of the new requirements cannot be readily quantified.[79] However, these measures should mitigate inappropriate earnings management, enhance the reliability of financial information, improve disclosure to investors, and could improve securities pricing efficiency by encouraging the distribution of higher quality earnings numbers on a more timely basis.

Reviews of Quarterly Financial Statements

We are requiring interim reviews of quarterly financial statements filed on Form 10–Q or 10–QSB.[80] Under the amendments, a company's quarterly financial statements must be reviewed by independent auditors using ''professional standards and procedures for conducting such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission.'' Currently, that means that the review would follow the procedures established by SAS 71. The amendments apply only to the financial information contained in the company's Quarterly Reports on Form 10–Q or 10–QSB. Accordingly, the amendments do not require any review of quarterly financial information released to the public before the filing of the Form 10–Q or 10–QSB, such as the so-called quarterly ''earnings release.''

We believe that companies are under increasing pressure to meet financial analysts' expectations, and that pressure can be even more acute in the context of reports on quarterly earnings. We believe that the participation of auditors in the financial reporting process at interim dates will help to counterbalance that pressure and impose increased discipline on the process of preparing interim financial information.[81] Auditor involvement in the financial reporting process earlier in the year should facilitate timely identification and resolution of significant and sensitive issues and result in fewer year-end adjustments, which should reduce the cost of annual audits.[82] The increased focus and discipline imposed on the preparation of interim financial statements should enhance the efficiency of the capital markets by improving the reliability of quarterly financial statements, although these benefits are difficult to quantify.

We have prepared our best estimate of the incremental costs of preparing a SAS 71 review for those companies not currently having them performed. Our estimate of those incremental costs is based on data provided to the staff by the SEC Practice Section of the AICPA (''SECPS''), discussions with experienced practitioners, the experiences of current SEC staff members, and data provided by commenters.

Firms providing information to the SECPS indicated that the procedures they currently use are similar, if not the same, as those described in SAS 71. Most indicated that review reports are seldom issued. The firms also indicated

[78] Blue Ribbon Report, *supra* note 9, at 19.

[79] OMB, *Report to Congress on the Costs and Benefits of Federal Regulation* 21 (1998) (OMB has recognized that while it may be difficult to quantify the benefits of disclosure requirements, there is a strong consensus among economists that, in general, disclosure-based regulatory schemes can improve the functioning of markets and produce significant benefits for consumers).

[80] *See* Section III.A above.

[81] COSO Report, *supra* note 26, at 34 (''Close scrutiny of quarterly financial information and a move toward continuous auditing strategies may increase opportunities for earlier detection of financial statement improprieties'').

[82] *See, e.g.*, AIMR Letter, *supra* note 33.

that they are not aware of (and do not expect) clients switching auditing firms because of their new policies.

The firms providing information to the SECPS identified several unquantifiable benefits that they believe would result from the reviews, including better interim reporting, earlier identification and resolution of accounting issues, improvement in the quality of accounting estimates, and improved communications between clients and auditors. These benefits could also improve pricing efficiency of the issuer's securities. Several comment letters from accounting firms supported this view.[83] Medium and smaller sized accounting firms, however, indicated to the SECPS that SAS 71 reviews of small companies' interim financial statements may cause delays in filing Forms 10–Q or 10–QSB, be relatively more costly for small companies, be hampered by inadequate financial reporting processes, and would result in small companies shifting work from the company to the CPA firm. One small business commenter expressed concern that increased pressure to meet the filing deadlines would require hiring another employee.[84] Based on staff experience and discussions with practitioners, we believe many of the required review procedures can be performed simultaneously with the preparation of the quarterly financial statements, and accordingly, should not delay these filings. In addition, we believe that the same management personnel who work with the auditors at year end should be able to assist with the quarterly reviews.

The firms responding to the SECPS generally indicated that the costs of reviews of quarterly financial statements vary depending on several factors, including: (i) The sophistication of the client's accounting and reporting system; (ii) The quality of the client's accounting personnel; (iii) The identification of ''fraud risk factors;'' (iv) The client's industry; (v) The number and location of the client's subsidiaries; (vi) The seasonality of the client's business; (vii) The existence of contentious accounting issues; and (viii) Whether there will be a staffing ''crunch'' at the firm to handle the reviews each quarter.

The five largest U.S. accounting firms, the so-called ''Big 5,'' and some other firms, currently have in place policies that require their clients to have interim reviews as a condition to acceptance of an audit. Based on the Compustat database and information from the SECPS and from commenters, we estimate that approximately 8,934 companies for calendar year 1998 retained auditors that require SAS 71 reviews. Based on a total of approximately 12,972 Forms 10–K and 10–KSB filed in 1998, we therefore estimate that approximately 4,038 companies are not currently subject to SAS 71 reviews.

Based on the data provided to staff by the SECPS, our experience, and information from commenters, we estimate the incremental cost to conduct a SAS 71 review will be nominal for those companies currently audited by the Big 5 firms and for the remaining companies would range from approximately $1,000 to about $4,000[85] per quarter. Multiplying $7,500 (the midpoint of the average cost per firm of $3,000 to $12,000 per year) by 4038 produces an estimated $30 million a year cost for SAS 71 reviews.[86] Obviously, if more companies are currently subject to SAS 71 reviews, or if the cost of the reviews is offset by a reduction in annual fees, the cost estimate would be smaller.

Disclosure Related to the Functioning of the Audit Committee

The principal benefits of the proposals are improved disclosure relating to the functioning of corporate audit committees and enhanced reliability and credibility of financial statements. The benefits of improved disclosure regarding the audit committee's communications with management and the independent auditors are not readily quantifiable. We believe, however, that they would include increased market efficiency due to improved information and investor confidence in the reliability of companies' financial disclosures. As discussed above, most of the commenters supported the goals of improving disclosure about audit committees, although some suggested alternative disclosure requirements. Commenters' principal concern was that audit committees may be exposed to additional liability, with the result that they would find it more difficult to recruit qualified audit committee members; others disagreed with that view. As discussed above, we modified the Item 306 audit committee report requirement to respond to commenters' concerns about liability.

We believe the costs associated with these amendments would derive principally from the disclosure obligations—we are not placing any substantive requirements on audit committees or their members. At the proposing stage, we estimated that the additional disclosure contemplated by the amendments would, on average, require less than three-fourths of a page in a company's proxy statement, based on the staff's experience with proxy statements, and analogous cost estimates. A financial printing company informed the staff that this disclosure would not likely increase the printing cost because up to three-fourths of a page can normally be incorporated without increasing the page length by reformatting the document. The printer reported that adding one more page could increase costs by about $1,500 for an average sized company.

Only a few commenters mentioned printing costs, with one stating that the costs of printing the charter in the proxy statement ''could be significant,'' but did not quantify the amount.[87] We continue to believe that the printing costs of the disclosures and charter[88] would not be significant. The charter, for example, needs to be printed only once every three years, so the cost has been averaged over three years. We estimate the total average disclosure per year—the average annual burden of printing the charter and the other disclosures—would be one printed proxy statement page. Consequently, the annual aggregate cost would be approximately $15 million.[89]

This amount, however, does not include possible ''start up'' costs for some companies. First, some companies may have to set up procedures to monitor the activities of their audit committee in order to collect and record the information required by the amendments. In our view, such monitoring costs are most likely to result from disclosing the fact of the audit committee's discussions with management and the independent auditors and receiving from the independent auditors certain required disclosures and a letter from the

[83] *See, e.g.*, KPMG Letter, *supra* note 25 (''In our experience that policy [of conducting SAS 71 reviews] has resulted in the earlier identification of accounting and reporting issues and has therefore enhanced the quality of interim financial reporting'').

[84] Letter dated November 22, 1999 from Michael Dee.

[85] One non-Big 5 accounting firm indicated in its comment letter that the upper end of the range (*i.e.*, about $4,000 per quarter) comported with its experience for small to medium size companies. Letter dated October 14, 1999 from Edward W. O'Connell, Wiss & Company, LLP.

[86] At the proposing stage, we used 2,150 companies to reach an estimate of $16 million.

[87] *See* NYS Bar Letter, *supra* note 25.

[88] Preparation of the charter is required by the NYSE, NASD, and AMEX and not the Commission's rules.

[89] The $15 million figure derives from one page at $1,500 per page for approximately 10,145 companies.

independent auditors. We believe such monitoring costs will be insignificant.

Second, some companies may seek the help of outside experts, particularly outside legal counsel, in formulating responses to the new requirements.[90] In some circumstances, for instance, the audit committee may seek the advice of legal counsel before making the required disclosure about the audited financial statements. Commenters provided no cost data. We understand that many audit committees already use outside experts, but do not know what, if any, incremental cost there will be. As we modified our proposals to reflect better the oversight role of audit committees and address liability concerns, we anticipate that any costs attributable to the increased use of outside experts to respond to the new disclosure requirements will be negligible.

For purposes of the Paperwork Reduction Act, we estimated that our required disclosures would, on average, impose one additional burden hour, exclusive of printing costs, on each filer of Schedule 14A or 14C, or an aggregate annual total of 10,145 additional burden hours. This estimate reflects the time companies would spend preparing the additional disclosures in the proxy statement.[91] The total annual costs accordingly would be approximately $1 million.

These amendments are not intended to increase companies' or directors' exposure to liability under federal or state law. A number of commenters indicated that, in their assessment, the proposals would have the effect of increasing the companies' and/or directors' exposure to liability, with attendant costs, but provided no economic data. For the reasons discussed in previous sections of this release, we believe that the amendments will likely result in better and more reliable financial reporting, but should not increase liability exposure. In particular, we modified requirements to address this liability concern. In addition, the amendments include liability ''safe harbors'' similar to those that apply to compensation committee reports under current rules.[92]

[90] *See, e.g.,* Letter dated November 19, 1999 from Patricia Gallup, Chairman of the Board, PC Connection, Inc.

[91] The estimate does not include the amount of time the audit committee would spend conducting the discussions with the independent accountants and management to which new Item 306 of Regulations S–K and S–B and the amendments to Item 7 of Schedule 14A refer. The amendments would not require that the audit committee hold the discussions, but merely that it disclose whether the discussions have taken place.

[92] *See* Section III.E above.

Item 302(a) of Regulation S–K

The Commission is requiring more companies to provide the supplemental financial information described in Item 302 of Regulation S–K. That information consists of selected quarterly financial data, such as net sales and gross profit, for the prior two years. We recognize that requiring all public companies (except Form S–B filers, Section 15(d) reporting companies, and foreign private issuers) to provide supplemental financial information under Item 302(a) of Regulation S–K may have some incremental cost. Currently only certain large, widely-held companies that meet certain tests (involving, among other things, the number of security holders, stock price, and market capitalization) must file supplemental financial information. Taking into account that auditors will be performing SAS 71 reviews for these companies, the incremental cost of preparing and presenting the supplementary financial information is small.

Based on the staff's experience, we do not believe that it will take company employees much time to pull the data from their prior quarterly reports to prepare the supplementary financial information for the Form 10–K. While the information will take up part of an additional page in the Form 10–K, there are no printing costs attributable to disclosure of this information since it is not typically contained in the annual report that is printed and distributed to investors.

We believe the supplementary financial information is a useful resource for investors and justifies the cost of its collection and filing. By tying the regulatory threshold to an existing, widely used test (*e.g.,* the definition of small business issuer in Regulation S–B), the Commission is simplifying the regulatory scheme. Such simplification is an additional benefit of the amendments.

VIII. Consideration of Impact on the Economy, Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, also to consider whether the action will promote efficiency, competition, and capital formation. We believe that the proposals will promote investor confidence in the securities markets by improving the transparency of the role of corporate audit committees and enhancing the reliability and credibility of financial statements of public companies. More reliable financial statements should help to lower the costs of capital. Accordingly, the proposals should promote capital formation and market efficiency.

Section 23(a) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the impact on competition of any rule it adopts. We do not believe that the proposals would have any anti-competitive effects since the proposals should improve the transparency, reliability, and credibility of companies' financial statements. We requested comment on any anti-competitive effects of the proposals. For the reasons discussed above, we have decided to exclude foreign private issuers from these disclosure requirements. Any competitive effect that may occur by requiring domestic public companies to comply with these additional disclosure requirements, compared to foreign private issuers, is necessary and appropriate for the protection of investors.

IX. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis has been prepared in accordance with the Regulatory Flexibility Act (''RFA''). It relates to amendments to Rule 10–01 of Regulation S–X, Item 310 of Regulation S–B, Item 302(a) of Regulation S–K, Item 7 of Schedule 14A under the Exchange Act, and new Item 306 of Regulations S–B and S–K.

A. Need for the Rules and Rule Amendments

The new rules and amendments to current rules are designed to improve disclosure relating to the functioning of corporate audit committees and to enhance the reliability and credibility of financial statements of public companies. The required disclosure will help inform shareholders of the audit committee's role in overseeing the preparation of the financial statements and underscore the importance of the audit committee's participation in the financial reporting process.

The required reviews of interim financial information should facilitate early identification and resolution of material accounting and reporting issues because the auditors will be involved earlier in the year. More reliable interim financial information will be available to investors, and early involvement of the auditors should reduce the number of restatements or other year-end adjustments. We believe that the disclosures will reinforce the audit

committee's awareness of its responsibilities, and make visible for shareholders the audit committee's role in promoting reliable and transparent financial reporting.

B. Significant Issues Raised by Public Comment

Many commenters were concerned that the proposed rules would expose audit committee members to increased scrutiny and liability. As a result, those commenters suggested that we amend certain disclosure requirements and provide an additional safe harbor from private litigation. We modified the required audit committee report to address the liability concerns, and consequently, as discussed in previous sections of this release, we do not believe additional safe harbors are necessary or appropriate. We are adopting, as proposed, the same report requirements and safe harbors for companies of all sizes.

The Commission requested comment on whether the scope of the proposed rules should be narrowed to exclude companies under a certain size. Some commenters questioned the need for interim reviews for small entities,[93] particularly in light of the additional costs. However, we continue to believe that improving the interim reporting process is important for small companies. Investors rely on and react quickly to quarterly results of companies, large and small. Moreover, the COSO Report found that the incidence of financial fraud was greater at small companies.[94] The COSO Report specifically noted that the ''concentration of fraud among companies with under $50 million in revenues and with generally weak audit committees highlights the importance of rigorous audit committee practices, even for smaller organizations.'' [95] In light of the COSO Report, we believe it would be inconsistent with the purposes of the rule to exempt small business issuers from the proposed requirement for interim reviews.

We also solicited comment on whether we should require all companies to comply with Item 302(a) of Regulation S–K. Commenters generally agreed that we should extend the requirements to other companies, but questioned the need to include small companies. We are adopting the Item 302(a) requirement for all Section 12(b) and 12(g) registered companies (except small business issuers reporting on small business forms) to maintain the more simplified reporting format of the regulatory scheme for small business issuers.

C. Small Entities Subject to the Rule

For purposes of the RFA, Exchange Act Rule 0–10 defines ''small business'' as a company whose total assets on the last day of its most recent fiscal year were $5 million or less.[96] The rules will affect small businesses that are required to file proxy materials on Schedule 14A or 14C and Quarterly Reports on Form 10–Q or 10–QSB under the Exchange Act. We estimate that there are approximately 830 reporting companies (that are not investment companies) with assets of $5 million or less. The Commission bases its estimate on information from the Insight database from Compustat, a division of Standard and Poors.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

1. Reviews of Quarterly Financial Statements

The rules will require companies to engage their independent auditors to conduct interim reviews of their quarterly financial statements prior to the company filing its Forms 10–Q or 10–QSB. Based on information provided to the Commission by the SECPS,[97] it appears that most companies already engage their independent auditors to undertake some level of review of their quarterly financial statements.

Medium and smaller sized accounting firms indicated to the SECPS that SAS 71 reviews of small companies' interim financial statements may cause delays in filing Forms 10–Q or 10–QSB, be relatively more costly for all companies, be hampered by inadequate financial reporting processes, and would result in small companies shifting financial responsibilities from the company to the CPA firm.

However, based on the SECPS survey, we believe that the costs of compliance would be partially offset by a reduction in year-end audit fees and would lead to earlier identification of accounting and auditing issues and an improvement in the quality of the process used for preparing interim financial reports.

2. Disclosure Related to the Functioning of the Audit Committee

Issuers, both large and small, will be required to provide certain additional disclosure in their proxy statements regarding the company's audit committee, including attaching every three years a copy of the audit committee's charter, if they have one. Companies will be required to include reports of their audit committees in which the audit committee provides disclosure about whether certain discussions between the audit committee and management and the auditors took place. No disclosure of the substance of the discussions is required. The increased disclosure will require all entities, large and small, to spend additional time and incur additional costs in preparing disclosures. In particular, smaller companies may incur additional costs to set up procedures in order to respond to the new disclosure requirements. Smaller companies may also incur additional costs in seeking the help of outside experts, particularly outside legal counsel, in formulating responses to the new requirements.

3. Disclosure Related to Independence

We are requiring that companies whose securities are listed on the NYSE, AMEX, or traded on Nasdaq make certain disclosures about any member of the audit committee who is not independent (small business issuers are not subject to that requirement) and whether the audit committee members are independent. Companies, including small business issuers, whose securities are not listed on the NYSE or AMEX or quoted on Nasdaq are required to disclose whether their members are independent, but may choose which definition of independence to use and must disclose which definition was used.

E. Agency Action To Minimize Effect on Small Entities

As required by Section 603 of the RFA, the Commission has considered the following alternatives to minimize the economic impact of the rules on small entities: (a) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for small entities; (c) the use of performance rather than design standards; and (d) an exemption from coverage of the rules, or any part thereof, for small entities.

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[93] *See* ABA Letter, *supra* note 34.

[94] *See generally* COSO Report, *supra* note 26. In fact, the COSO Report specifically found that a ''regulatory focus on companies with market capitalization in excess of $200 million may fail to target companies with greater risk for financial statement fraud activities.'' *Id.* at 4.

[95] COSO Report, *supra* note 26, at 5.

[96] A ''small business issuer'' under Regulation S–B, however, is a company with less than $25 million in revenues and market capitalization.

[97] *See* Section VII above.

We continue to believe investors in smaller companies would want and benefit from the disclosures about the audit committee and the advantages of interim reviews just as much as investors in larger companies. We have made some adjustments to the rules to decrease their impact on small businesses. For example, we did not extend Item 302(a) to small business issuers filing on small business forms.

In addition, small businesses not subject to the NASD's, AMEX's or NYSE's listing standards can choose which definition of independence to use, as long as it is used consistently. Further, small business issuers are not required to state the reasons for including a non-independent audit committee member, since under the listing standards, they are not required to have all independent members on their audit committees.

Finally, to provide companies with the opportunity to evaluate their compliance with the revised listing standards of the NASD, AMEX, and NYSE and to prepare for the new disclosure requirements, we are providing transition periods for compliance with the new requirements, which should benefit all companies, large and small.

X. Statutory Bases and Text of Amendments

We are adopting amendments to Rules 10–01 of Regulation S–X and 14a–101 (Schedule 14A), Item 310 of Regulation S–B, and Item 302(a) of Regulation S–K, and adopting new Item 306 of Regulations S–K and S–B, under the authority set forth in Sections 2, 13, 14, and 23 of the Exchange Act.

List of Subjects

17 CFR Part 210

Accountant, Accounting, Reporting and recordkeeping requirements, Securities.

17 CFR Part 228

Reporting and recordkeeping requirements, Securities, Small businesses.

17 CFR Parts 229 and 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

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

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37(a), unless otherwise noted.

2. By amending § 210.10–01 by revising paragraph (d) to read as follows:

§ 210.10–01 Interim financial statements.

* * * * *

(d) *Interim review by independent public accountant.* Prior to filing, interim financial statements included in quarterly reports on Form 10–Q (17 CFR 249.308(a)) must be reviewed by an independent public accountant using professional standards and procedures for conducting such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission. If, in any filing, the company states that interim financial statements have been reviewed by an independent public accountant, a report of the accountant on the review must be filed with the interim financial statements.

* * * * *

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

3. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

4. Section 228.305 is added and reserved and § 228.306 is added to read as follows:

§ 228.305 [Reserved]

§ 228.306 (Item 306) Audit committee report.

(a) The audit committee must state whether:

(1) The audit committee has reviewed and discussed the audited financial statements with management;

(2) The audit committee has discussed with the independent auditors the matters required to be discussed by SAS 61, as may be modified or supplemented;

(3) The audit committee has received the written disclosures and the letter from the independent accountants required by Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*), as may be modified or supplemented, and has discussed with the independent accountant the independent accountant's independence; and

(4) Based on the review and discussions referred to in paragraphs (a)(1) through (a)(3) of this Item, the audit committee recommended to the Board of Directors that the audited financial statements be included in the company's Annual Report on Form 10–KSB (17 CFR 249.310b) for the last fiscal year for filing with the Commission.

(b) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by this Item.

(c) The information required by paragraphs (a) and (b) of this Item shall not be deemed to be ''soliciting material,'' or to be ''filed'' with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a–1 *et seq.* or 240.14c–1 *et seq.*), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the company specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.

(d) The information required by paragraphs (a) and (b) of this Item need not be provided in any filings other than a registrant proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

5. By amending § 228.310 by revising the introductory text of paragraph (b) to read as follows:

§ 228.310 (Item 310) Financial Statements.

* * * * *

(b) *Interim Financial Statements.* Interim financial statements may be unaudited; however, prior to filing,

interim financial statements included in quarterly reports on Form 10–QSB (17 CFR 249.308b) must be reviewed by an independent public accountant using professional standards and procedures for conducting such reviews, as established by generally accepted auditing standards, as may be modified or supplemented by the Commission. If, in any filing, the issuer states that interim financial statements have been reviewed by an independent public accountant, a report of the accountant on the review must be filed with the interim financial statements. Interim financial statements shall include a balance sheet as of the end of the issuer's most recent fiscal quarter and income statements and statements of cash flows for the interim period up to the date of such balance sheet and the comparable period of the preceding fiscal year.

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

6. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

7. By amending § 229.302 by revising paragraph (a)(5) to read as follows:

§ 229.302 (Item 302) Supplementary financial information.

(a) *Selected quarterly financial data.*

* * *

(5) This paragraph (a) applies to any registrant, except a foreign private issuer, that has securities registered pursuant to sections 12(b) (15 U.S.C. § 78*l*(b)) (other than mutual life insurance companies) or 12(g) of the Exchange Act (15 U.S.C. § 78*l*(g)).

* * * * *

8. By adding § 229.306 to read as follows:

§ 229.306 (Item 306) Audit committee report.

(a) The audit committee must state whether:

(1) The audit committee has reviewed and discussed the audited financial statements with management;

(2) The audit committee has discussed with the independent auditors the matters required to be discussed by SAS 61 (Codification of Statements on Auditing Standards, AU § 380), as may be modified or supplemented;

(3) The audit committee has received the written disclosures and the letter from the independent accountants required by Independence Standards Board Standard No. 1 (Independence Standards Board Standard No. 1, *Independence Discussions with Audit Committees*), as may be modified or supplemented, and has discussed with the independent accountant the independent accountant's independence; and

(4) Based on the review and discussions referred to in paragraphs (a)(1) through (a)(3) of this Item, the audit committee recommended to the Board of Directors that the audited financial statements be included in the company's Annual Report on Form 10–K (17 CFR 249.310) (or, for closed-end investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), the annual report to shareholders required by Section 30(e) of the Investment Company Act of 1940 (15 U.S.C. 80a–29(e)) and Rule 30d–1 (17 CFR 270.30d–1) thereunder) for the last fiscal year for filing with the Commission.

(b) The name of each member of the company's audit committee (or, in the absence of an audit committee, the board committee performing equivalent functions or the entire board of directors) must appear below the disclosure required by this Item.

(c) The information required by paragraphs (a) and (b) of this Item shall not be deemed to be ''soliciting material,'' or to be ''filed'' with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a–1 *et seq.* or 240.14c–1 *et seq.*), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the company specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act.

(d) The information required by paragraphs (a) and (b) of this Item need not be provided in any filings other than a company proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the company specifically incorporates it by reference.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

10. By amending § 240.14a–101 by adding paragraph (e)(3) to Item 7 to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

* * * * *

Item 7. *Directors and executive officers.*

* * *

(e) * * *

(3) If the registrant has an audit committee:

(i) Provide the information required by Item 306 of Regulation S–K (17 CFR 229.306).

(ii) State whether the registrant's Board of Directors has adopted a written charter for the audit committee.

(iii) Include a copy of the written charter, if any, as an appendix to the registrant's proxy statement, unless a copy has been included as an appendix to the registrant's proxy statement within the registrant's past three fiscal years.

(iv)(A) For registrants whose securities are listed on the New York Stock Exchange (''NYSE'') or American Stock Exchange (''AMEX'') or quoted on Nasdaq:

(*1*) Disclose whether the members of the audit committee are independent (as independence is defined in Sections 303.01(B)(2)(a) and (3) of the NYSE's listing standards, Section 121(A) of the AMEX's listing standards, or Rule 4200(a)(15) of the National Association of Securities Dealers' (''NASD'') listing standards, as applicable and as may be modified or supplemented); and

(*2*) If the registrant's Board of Directors determines in accordance with the requirements of Section 303.02(D) of the NYSE's listing standards, Section 121(B)(b)(ii) of the AMEX's listing standards, or Section 4310(c)(26)(B)(ii) or 4460(d)(2)(B) of the NASD's listing standards, as applicable and as may be modified or supplemented, to appoint one director to the audit committee who is not independent, disclose the nature of the relationship that makes that individual not independent and the reasons for the Board's determination. Small business issuers (17 CFR 228.10(a)(1)) need not provide the information required by this paragraph (e)(3)(iv)(A)(2).

(B) For registrants, including small business issuers, whose securities are not listed on the NYSE or AMEX or quoted on Nasdaq, disclose whether, if the registrant

has an audit committee, the members are independent. In determining whether a member is independent, registrants must use the definition of independence in Sections 303.01(B)(2)(a) and (3) of the NYSE's listing standards, Section 121(A) of the AMEX's listing standards, or Rule 4200(a)(15) of the NASD's listing standards, as such sections may be modified or supplemented, and state which of these definitions was used. Whichever definition is chosen must be applied consistently to all members of the audit committee.

(v) The information required by paragraph (e)(3) of this Item shall not be deemed to be ''soliciting material,'' or to be ''filed'' with the Commission or subject to Regulation 14A or 14C (17 CFR 240.14a–1 *et seq.* or 240.14c–1 *et seq.*), other than as provided in this Item, or to the liabilities of section 18 of the Exchange Act (15 U.S.C. 78r), except to the extent that the registrant specifically requests that the information be treated as soliciting material or specifically incorporates it by reference into a document filed under the Securities Act or the Exchange Act. Such information will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

(vi) The disclosure required by this paragraph (e)(3) need only be provided one time during any fiscal year.

(vii) Investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*), other than closed-end investment companies, need not provide the information required by this paragraph (e)(3).

* * * * *

Dated: December 22, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33849 Filed 12–29–99; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 375 and 376

[Docket No. RM00–4–000; Order No. 613]

Delegations of Authority

Issued December 21, 1999.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending regulations to revise delegations of authority and related provisions to reflect changes in the Commission's internal structure.

DATES: This final rule is effective January 31, 2000.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–0953.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994

—CIPS can be access using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hebert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending 18 CFR Parts 375 and 376 to revise the delegations to certain Commission officials and to make related changes in connection with changes in the Commission's internal structure. These changes came about as a result of the Chairman's FERC First initiative, which reorganized many of the Commission's internal operations with the objective of making them more responsive to the public's needs. As a result, the positions to which the Commission formerly delegated a number of authorities will no longer exist. This rulemaking reassigns those authorities to the new offices.

II. Background

The Commission's staff, at the Chairman's direction, has undertaken a re-engineering effort, called FERC First, to re-examine and, where appropriate, restructure its organization and processes. One result of this effort has been a decision to replace a number of the Commission's internal organizations with others that are better structured to meet the challenges of changing energy markets. Among the new offices that the Commission has established, or is establishing, are the Office of Markets, Tariffs and Rates (OMTR); the Office of Energy Projects (OEP); and the Office of Finance, Accounting and Organization (OFAO). Among the offices being eliminated are the Office of the Chief Accountant, the Office of Pipeline Regulation, the Office of Electric Power Regulation, the Office of Energy Policy, the Office of the Executive Director and the Office of Hydropower Licensing.

III. Discussion

The change in internal structure requires that many of the Commission's delegations of authority be revised to reflect the fact that the positions to which the existing delegations were made, in some cases, have been or are being eliminated. This rulemaking is intended solely to transfer existing delegations rather than to alter the existing scope of delegated authority within the Commission. Apart from the provisions being revised in this rulemaking, there may be other references in the Commission's regulations to official positions or offices that will no longer exist after the reorganization of the Commission's staff. These regulations will be revised in due course. The existing delegations are being revised as follows:

Part 375

Office of the Chief Accountant (existing § 375.303). The Office of the Chief Accountant has been moved into OFAO, with the Chief Accountant reporting to the Director of OFAO.

Consequently, most of the delegations contained in this section are being transferred to the Director. Authorities contained in subsections 375.303(d)(1) and (e) are being transferred to OMTR. Section 375.303(g) is being deleted because it is obsolete.

Office of Pipeline Regulation (existing § 375.307). These delegations are being divided between the Directors of OMTR and OEP. In particular, where a delegation concerns pipeline facilities or both facilities and services, it is being transferred to OEP. Where it concerns services only, it is being transferred to OMTR.

Office of Electric Power Regulation (existing § 375.308). These delegations are being transferred to OMTR.

Office of Economic Policy (existing § 375.310). This section is being deleted as obsolete.

Office of the Executive Director (existing § 375.313). These delegations are being transferred to OFAO.

Office of Hydropower Licensing (existing § 375.314). These delegations are being transferred to OEP.

Part 376

Part 376 governs the Commission's organization and its operations during emergency conditions. This rulemaking updates the list of officials authorized to conduct operations during emergency conditions and replaces references to the former position of Executive Director with the Director, OFAO.

General

The Commission is issuing this as a final rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. This rule concerns only matters of internal agency procedure and will not affect regulated entities or the general public. Therefore, the Commission finds notice and comment procedures to be unnecessary.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions and analyses of rules that will have a significant impact on a substantial number of small entities. 5 U.S.C. 601–612. The Commission is not required to make such analyses if a rule would not have such an effect. Because this rule concerns only matter of internal agency procedure, it will have no impact upon any entity other than the Commission.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment. Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶30,783 (1987). The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Among these are rules that are clarifying, corrective, or procedural, or that do not substantively change the effect of the regulations being amended. 18 CFR 380.4(a)(2)(ii). This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

VI. Information Collection Statement

This rulemaking contains no information collections.

VII. Congressional Review

The provisions of 5 U.S.C. 801, regarding Congressional review of rulemakings, do not apply to this rulemaking because it concerns agency procedure and practice and will not substantially affect the rights and obligations of non-agency parties. 5 U.S.C. 804(3)(C).

List of Subjects

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 376

Civil defense, Organization and functions (Government agencies).

By the Commission.

(S E A L)

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Parts 375 and 376, Chapter I, Title 18, of the *Code of Federal Regulations,* as follows:

PART 375—THE COMMISSION

1. The authority citation for Part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

2. Section 375.303 is revised to read as follows:

§ 375.303 Delegations to the Chief Accountant.

(a) The Commission authorizes the Chief Accountant or the Chief Accountant's designee to issue interpretations of the Uniform System of Accounts for public utilities, licensees, natural gas companies and oil pipeline companies.

(b) Pass upon any proposed accounting matters submitted by or on behalf of public utilities, licensees, natural gas companies, and oil pipeline companies, that require Commission approval under the Uniform System of Accounts, except that if the proposed accounting matters involve unusually large transactions or unique or controversial features, the Director must present the matters to the Commission for consideration.

(c) Pass upon applications to increase the size or combine property units of public utilities, licensees, natural gas companies and oil pipeline companies.

3. Section 375.307 is revised to read as follows:

§ 375.307 Delegations to the Director of the Office of Markets, Tariffs and Rates.

The Commission authorizes the Director or the Director's designee to:

(a) Sign all correspondence on behalf of the Commission with state regulatory commissions and agencies in connection with non-financial auditing matters.

(b) Pass upon any uncontested application for authorization to issue securities or to assume obligations and liabilities, filed by public utilities and licensees pursuant to part 34 of this chapter.

(c) Sign non-financial audit reports of jurisdictional companies.

(d) In connection with non-financial audits, pass upon and review requests by state and federal agencies to review staff audit working papers if the company agrees to the release of the audit working papers provided:

(1) The papers are examined at the Commission; and

(2) The requester

(i) Only makes general notes concerning the contents of the audit working papers,

(ii) Does not make copies of the audit working papers, and

(iii) Does not remove the audit working papers from the area designated by the Director.

(e) Take appropriate action on the following types of uncontested applications for authorizations and uncontested amendments to applications and authorizations and impose appropriate conditions:

(1) Applications by a pipeline for the deletion of delivery points but not facilities;

(2) Applications to abandon pipeline services, but not facilities, involving a specific customer or customers, if such customer or customers have agreed to the abandonment;

(3) Applications for temporary or permanent certificates (and for amendments thereto) for services, but not facilities, in connection with the transportation, exchange or storage of natural gas, provided that the cost of construction of the certificate applicant's related facility is less than the limits specified in column 2 of table I in § 157.208(d) of this chapter;

(4) Blanket certificate applications by interstate pipelines and local distribution companies served by interstate pipelines filed pursuant to §§ 284.221 and 284.224 of this chapter;

(5) Applications for temporary certificates involving transportation service or sales, but not facilities, pursuant to § 157.17 of this chapter;

(6) Dismiss any protest to prior notice filings involving existing service, made pursuant to § 157.205 of this chapter, that does not raise a substantive issue and fails to provide any specific detailed reason or rationale for the objection;

(7) Applications pertaining to approval of changes in customer names where there is no change in rate schedule, rate, or other incident of service;

(8) Applications for approval of customer rate schedule shifts;

(9) Applications filed under section 1(c) of the Natural Gas Act and part 152 of this chapter, for declaration of exemption from the provisions of the Natural Gas Act and certificates held by the applicant; and

(10) Applications and amendments requesting authorizations filed pursuant to section 7(c) of the Natural Gas Act for new or additional service to right-of-way grantors either directly or through a distributor, where partial consideration for the granting of the right-of-way was the receipt of gas service pursuant to section 7(c) of the Natural Gas Act.

(f) Act upon filings for all initial rate schedules, rate schedule changes and notices of changes in rates submitted by gas companies and impose conditions to the following extent, in uncontested cases:

(1) Accept a tariff or rate schedule filing, except a major pipeline rate increase under section 4(e) of the Natural Gas Act and under subpart D of part 154 of this chapter, if it complies with all applicable statutory requirements, and with all applicable Commission rules, regulations and orders for which a waiver has not been granted, or if a waiver has been granted by the Commission, if it complies with the terms of the waiver;

(2) Reject a tariff or rate schedule filing, if it patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted; and

(3) Advise the filing party of any actions taken under paragraph (b)(1) or (b)(2) of this section and designate rate schedules, rate schedule changes, and notices of changes in rates, and the effective date thereof.

(g) Take appropriate action on the following:

(1) Any notice of intervention or petition to intervene, filed in an uncontested application for pipeline service and not facilities, or an uncontested rate schedule proceeding;

(2) An uncontested request from one holding an authorization, granted pursuant to the Director's delegated authority, to vacate all or part of such authorization;

(3) Petitions to permit after an initial 60-day period one additional 60-day period of exemption pursuant to § 284.264(b) of this chapter where the application or extension arrives at the Commission later than 45 days after the commencement of the initial period of exemption and where only services are involved; and

(4) Applications for extensions of time to file required reports, data and information and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or order by the Commission.

(h) Undertake the following actions:

(1) Issue reports for public information purposes. Any report issued without Commission approval must:

(i) Be of a noncontroversial nature, and

(ii) Contain the statement, ''This report does not necessarily reflect the view of the Commission,'' in bold face type on the cover;

(2) Issue and sign deficiency letters regarding natural gas applications; and

(3) Accept for filing, data and reports (including Forms 1, 1F, 2, 2A, and 6) required by Commission orders, or presiding officers' initial decisions upon which the Commission has taken no further action, if such filings are in compliance with such orders or decisions and, when appropriate, notify the filing party of such acceptance.

(i) Take appropriate action on requests or petitions for waivers of:

(1) Any action incidental to the exercise of delegated authority, including waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of § 385.2001 of this chapter;

(2) Filing requirements for statements and reports under Parts 260, 261 and 357 of this chapter;

(3) Fees prescribed in §§ 381.207, 381.403, and 381.505 of this chapter in accordance with § 381.106(b) of this chapter;

(4) Annual charges prescribed in § 382.202 of this chapter in accordance with the standard set forth in § 382.105 of this chapter;

(5) Section 154.403 of this chapter, as necessary, in order to rule on out-of-cycle purchased gas adjustment filings;

(6) The requirements of subpart C of part 292 of this chapter governing cogeneration and small power production facilities made by any state regulatory authority or nonregulated electric utility pursuant to § 292.402 of this chapter;

(7) Annual charges prescribed in § 382.201 of this chapter in accordance with the standard set forth in § 382.105 of this chapter; and

(8) Deny or grant, in whole or in part, requests for waiver of the requirements for statements or reports under § 141.1 of this chapter (FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others) and § 141.2 of this chapter (FERC Form No. 1–F, Annual Report for Nonmajor Public Utilities and Licensees), and of the filing of FERC Form No. 1 on electronic media (§ 385.2011 of this chapter, Procedures for filing on electronic media, paragraphs (a)(6), (c), and (e)).

(j) Take the following actions relating to the regulation of oil pipelines under the Interstate Commerce Act:

(1) Accept any uncontested item which has been filed consistent with Commission regulations and policy;

(2) Reject any filing which patently fails to comply with applicable statutory requirements and with all applicable Commission rules, regulations and orders for which a waiver has not been granted;

(3) Prescribe for carriers the classes of property for which depreciation charges may be properly included under operating expenses, review the fully documented depreciation studies filed by the carriers, and authorize or revise the depreciation rates reflected in the depreciation study with respect to each of the designated classes of property; and

(4) Refer any matter to the Commission which the Director believes

should be acted upon by the Commission.

(k) Take the following actions with respect to rates, rate schedules, and rate filings:

(1) Accept for filing all uncontested initial rate schedules and uncontested rate schedule changes submitted by public utilities, including changes which would result in rate increases; waive the requirement of statutory notice for good cause shown; advise the filing party of such acceptances; and designate rate schedules and the effective dates thereof;

(2) Approve uncontested rates and rate schedules filed by the Secretary of Energy or his designee, for power developed at projects owned and operated by the federal government and for services provided by federal power marketing agencies;

(3) Reject a rate filing, unless accompanied by a request for waiver in conformity with § 385.2001 of this chapter, if it fails patently to comply with applicable statutory requirements or Commission rules, regulations and orders; and

(4) Assign to an Administrative Law Judge (ALJ), with the ALJ's concurrence, uncontested interim electric rate motions that would result in lower rates, pending Commission action on settlement agreements.

(l) Take appropriate action on uncontested applications for:

(1) The sale or lease or other disposition of facilities, consolidation of facilities, and acquisition of securities of public utilities under section 203 of the Federal Power Act;

(2) Interlocking positions under section 305(b) of the Federal Power Act;

(3) Certification of the qualifying status for small power production and cogeneration facilities under § 292.207 of this chapter; and

(4) The extension of time for public utilities to file required reports, data, and information and to do other acts required to be done within a specific time period by any rule, regulation or order of the Commission.

(m) Take appropriate action on:

(1) Notices of intervention or petitions to intervene in an uncontested rate schedule proceeding;

(2) Requests for authorization for a designated representative to post and file rate schedules of public utilities which are parties to the same rate schedule; and

(3) Filings related to uncontested nonexempt qualifying small power production facilities, including action on requests for waivers of the Commission's regulations under the Federal Power Act and related authorizations consistent with Massachusetts Refusetech, Inc., 31 FERC ¶ 61,048 (1985), and the orders cited therein without limitation as to whether qualifying status is by Commission certification or notice of qualifying status, provided that in the case of a notice of qualifying status, any waiver is granted on condition that the filing party has correctly noticed the facility as a qualifying facility.

(n) Undertake the following actions:

(1) Redesignate proceedings, rate schedules, and other authorizations and filings to reflect changes in the names of persons and municipalities subject to invoking Commission jurisdiction under the Federal Power Act, where no substantive changes in ownership, corporate structure or domicile, or jurisdictional operation are involved;

(2) Issue deficiency letters regarding electric rate schedule filings, refund reports, corporate applications for the sale, lease of disposition of property, consolidation of facilities, acquisition of securities of public utilities and applications to hold interlocking positions;

(3) With respect to amendments to agreements, contracts, and rate schedules (including approved rate settlements), and data and reports submitted by public utilities pursuant to Commission opinions, orders, decisions, or other actions or presiding officers' initial decisions:

(i) Accept for filing any amendment, contract, rate schedule, data and reports which are in compliance and, when appropriate, notify the filing party of such acceptance; or

(ii) Reject for filing any amendment, contract, rate schedule, data, and reports which are not in compliance or not required and, when appropriate, notify the filing party of such rejection; and

(4) Adopt final allocations of costs for federal multiple-purpose reservoir projects for which the Commission has statutory responsibility, and review and comment on cost allocations prepared by others.

(o) In connection with the regulation of oil pipelines under the Interstate Commerce Act, refer any matter to the Commission which the Director believes should be acted upon by the Commission.

4. Section 375.308 is removed and § 375.314 is redesignated as § 375.308 and its heading and introductory text are revised and paragraphs (v) through (z) are added to read as follows:

§ 375.308 Delegations to the Director of the Office of Energy Projects.

The Commission authorizes the Director or the Director's designee to:

* * * * *

(v) Take appropriate action on the following types of uncontested applications for authorizations and uncontested amendments to applications and authorizations and impose appropriate conditions:

(1) Applications or amendments requesting authorization for the construction or acquisition and operation of facilities that have a construction or acquisition cost less than the limits specified in column 2 of table I in § 157.208(d) of this chapter;

(2) Applications by a pipeline for the abandonment of pipeline facilities;

(3) Applications for temporary certificates for facilities pursuant to § 157.17 of this chapter;

(4) Petitions to amend certificates to conform to actual construction;

(5) Applications for temporary certificates for facilities pursuant to § 157.17 of this chapter;

(6) Dismiss any protest to prior notice filings made pursuant to § 157.205 of this chapter and involving pipeline facilities that does not raise a substantive issue and fails to provide any specific detailed reason or rationale for the objection;

(7) Applications for temporary or permanent certificates (and for amendments thereto) for the transportation, exchange or storage of natural gas, provided that the cost of construction of the applicant's related facility is less than the limits specified in column 2 of table 1 in § 157.208(d) of this chapter; and

(8) Applications for blanket certificates of public convenience and necessity pursuant to subpart F of part 157 of this chapter, including waiver of project cost limitations in §§ 157.208 and 157.215 of this chapter, and the convening of informal conferences during the 30-day reconciliation period pursuant to the procedures in § 157.205(f).

(w) Take appropriate action on the following:

(1) Any notice of intervention or petition to intervene, filed in an uncontested application for pipeline facilities;

(2) An uncontested request from one holding an authorization, granted pursuant to the Director's delegated authority, to vacate all or part of such authorization;

(3) Petitions to permit after an initial 60-day period one additional 60-day period of exemption pursuant to

§ 284.264(b) of this chapter where the application or extension arrives at the Commission later than 45 days after the commencement of the initial period of exemption when the emergency requires installation of facilities; and

(4) Applications for extensions of time to file required reports, data, and information and to perform other acts required at or within a specific time by any rule, regulation, license, permit, certificate, or order by the Commission.

(x) Undertake the following actions:

(1) Compute, for each calendar year, the project limits specified in table I of § 157.208 and table II of § 157.215(a) of this chapter, adjusted for inflation, and publish such limits as soon as possible thereafter in the **Federal Register**;

(2) Issue reports for public information purposes. Any report issued without Commission approval must:

(i) Be of a noncontroversial nature, and

(ii) Contain the statement, ''This report does not necessarily reflect the view of the Commission,'' in bold face type on the cover;

(3) Issue and sign deficiency letters regarding natural gas applications;

(4) Accept for filing, data and reports required by Commission orders, or presiding officers' initial decisions upon which the Commission has taken no further action, if such filings are in compliance with such orders or decisions and, when appropriate, notify the filing party of such acceptance;

(5) Reject requests which patently fail to comply with the provisions of 157.205(b) of this chapter; and

(6) Take appropriate action on requests or petitions for waivers of any action incidental to the exercise of delegated authority, including waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of § 385.2001 of this chapter.

(y) Take appropriate action on the following:

(1) Any action incidental to the exercise of delegated authority, including waiver of notice as provided in section 4(d) of the Natural Gas Act, provided the request conforms to the requirements of § 385.2001 of this chapter; and

(2) Requests or petitions for waivers of filing requirements for statements and reports under §§ 260.8 and 260.9 of this chapter.

(z) Approve, on a case-specific basis, and make such decisions as may be necessary in connection with the use of pre-filing collaborative procedures, for the development of an application or certificate or abandonment authorization under Section 7 of the Natural Gas Act, or the development of an application for facilities under Section 3 of the Natural Gas Act, and assist in the pre-filing collaborative and related processes.

§ 375.310 [Removed]

5. Section 375.310 is removed.

§ 375.311 [Redesignated as § 375.310]

6. Section 375.311 is redesignated as § 375.310.

§ 375.312 [Redesignated as § 375.311]

7. Section 375.312 is redesignated as § 375.311.

§ 375.313 [Redesignated as § 375.312]

8. Section 375.313 is redesignated as § 375.312 and is revised to read as follows:

§ 375.312 Delegations to the Director of the Office of Finance, Accounting and Operations.

The Commission authorizes the Director or the Director's designee to:

(a) Sign all correspondence with respect to financial accounting and reporting matters on behalf of the Commission.

(b) Pass upon actual legitimate original cost and depreciation thereon and the net investment in jurisdictional companies and revisions thereof, and sign audit reports resulting from the examination of the books and records of jurisdictional companies,

(1) If the company agrees with the audit report, or

(2) If, in the case of a financial audit, the company does not agree with the audit report, provided that notification of the opportunity for a hearing under Section 301(a) of the Federal Power Act or Section 8(a) of the Natural Gas Act accompanies the audit report.

(c) Pass upon and approve requests by state and federal agencies to review staff working papers from financial audits if the company agrees to the release of the audit working papers provided:

(1) The papers are examined at the Commission, and

(2) The requester—

(i) Only makes general notes concerning the contents of the audit working papers,

(ii) Does not make copies of the audit working papers, and

(iii) Does not remove the audit working papers from the area designated by the Director.

(d) With regard to billing errors noted as a result of the Commission staff's examination of automatic adjustment tariffs approved by the Commission, approve corrective measures, including recomputation of billing and refunds, to the extent the company agrees.

(e) Deny or grant, in whole or in part, requests for waiver of the requirements of parts 352 and 356 of this chapter, except if the matters involve unusually large transactions or unique or controversial features, the Director must present the matters to the Commission for consideration.

(f) Prescribe the updated fees for part 381 of this chapter in accordance with § 381.104 of this chapter.

(g) Prescribe the updated fees for part 381 of this chapter in accordance with § 388.109(b)(2) of this chapter.

(h) Deny or grant, in whole or in part, petitions for waiver of fees prescribed in § 381.302 of this chapter in accordance with § 381.106(b) of this chapter.

(i) Deny or grant, in whole or in part, petitions for exemption from fees prescribed in part 381 of this chapter in accordance with § 381.108 of this chapter.

(j) Determine the annual charges for administrative costs, for use of United States lands, and for use of government dams or other structures.

(k) Grant or deny waiver of penalty charges for late payment of annual charges.

(l) Give credit for overpayment of annual charges.

(m) Deny or grant, in whole or in part, petitions for exemption from annual charges under § 11.6 of this chapter for state and municipal licensees.

(n) Grant or deny petitions for waiver of annual charges for oil pipelines.

PART 376—ORGANIZATION, MISSION, AND FUNCTIONS: OPERATIONS DURING EMERGENCY CONDITIONS

9. The authority citation for Part 376 is revised to read as follows:

Authority: 5 U.S.C. 553; 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

10. In § 376.105, paragraph (b)(2) is revised to read as follows:

§ 376.105 Chairman.

* * * * *

(b) * * *

(2) The selection, appointment, and fixing of the compensation of such personnel as he deems necessary.

* * * * *

11. In § 376.204, paragraph (b)(2) is revised to read as follows:

§ 376.204 Delegation of Commission's authority during emergency conditions.

* * * * *

(b) * * *

(2) The list referred to in paragraph (b)(1) of this section is:

(i) Director of the Office of Finance, Accounting and Operations;

(ii) Director of the Office of Markets, Tariffs and Rates;

(iii) Director of the Office of Energy Projects;

(iv) General Counsel;

(v) Executive Assistant to the Chairman;

(vi) Deputy Directors, Office of Markets, Tariffs and Rates, in order of seniority;

(vii) Deputy Directors, Office of Energy Projects, in order of seniority;

(viii) Deputy General Counsel;

(ix) Associate General Counsels, Assistant General Counsels and Solicitor, in order of seniority;

(x) Assistant Directors and Division heads, Office of Markets, Tariffs and Rates; Assistant Directors and Division heads, Office of Energy Projects; and Assistant General Counsels; in order of seniority.

* * * * *

12. Section 376.206 is revised to read as follows:

§ 376.206 Delegation of functions of certain Commission staff members.

When, by reason of emergency conditions, the Secretary; Director of the Office of Finance, Accounting and Operations; Director of any Office or Division, or officer in charge of a regional office, is not available and capable of carrying out his functions, such functions are delegated to staff members designated by the Chairman to perform such functions. If no staff member so designated is available and capable of carrying out his functions, such functions are delegated to the next subordinate employee in the Office or Division of the highest grade and longest period of service in that grade.

13. Section 376.207 is revised to read as follows:

§ 376.207 Personnel and fiscal functions.

Subject to modifications or revocation by authority of the Director of the Office of Finance, Accounting and Operations, during the continuation of emergency conditions authority to effect temporary appointments of such additional officers and employees, to classify and allocate positions to their proper grades, to issue travel orders, and to effect emergency purchases of supplies, equipment and services shall be exercised by the respective Directors of Offices and officials in charge of regional offices, their deputies, or staff in line of succession, as may be required for the discharge of the lawful duties of such organization.

[FR Doc. 99–33591 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 35a, 301, 502, 503, 509, 513, 514, 516, 517, 520, 521, and 602

[TD 8856]

RIN 1545–AX44

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Parts 1 and 35a and of Certain Regulations Under Income Tax Treaties

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final rule; delay of effective date.

SUMMARY: This document contains changes delaying the effective date to final regulations (TD 8734), which were published in the **Federal Register** of October 14, 1997, relating to the withholding of income tax on certain U.S. source income payments to foreign persons. The Department of the Treasury and the IRS believe it is in the best interest of tax administration to delay the effective date of the final withholding regulations to ensure that both taxpayers and the government can complete changes necessary to implement the new withholding regime. As extended by this document, the final withholding regulations will apply to payments made after December 31, 2000.

DATES: *Effective Dates:* The amendments in this final rule are effective January 1, 2001. As of December 31, 1999, the effective date of the final regulations published at 62 FR 53387, October 14, 1997, and delayed by TD 8804 (63 FR 72183, December 31, 1998), is delayed from January 1, 2000, until January 1, 2001; however, the effective date of the addition of §§ 31.9999–0 and 35a.9999–0 and the removal of § 35a.9999–0T remains October 14, 1997.

FOR FURTHER INFORMATION CONTACT: Laurie Hatten-Boyd, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this amendment provide guidance under sections 1441, 1442, and 1443 of the Internal Revenue Code (Code) on certain U.S. source income paid to foreign persons, the related tax deposit and reporting requirements under section 1461 of the Code, and the related changes under sections 163(f), 165(j), 871, 881, 1462, 1463, 3401, 3406, 6041, 6041A, 6042, 6045, 6049, 6050A, 6050N, 6109, 6114, 6402, 6413, and 6724 of the Code.

Need for Changes

On April 29, 1999, in Notice 99–25 (1999–20 I.R.B. 1), the IRS and Treasury announced their decision to extend the effective date of the final regulations. When originally published in the **Federal Register** on October 14, 1997 (62 FR 53387), the final regulations were applicable to payments made after December 31, 1998 and, generally, granted withholding agents until after December 31, 1999, to obtain the new withholding certificates (Forms W–8BEN, W–8ECI, W-8EXP, and W–8IMY) and statements required under those regulations. On April 13, 1998, in Notice 98–16 (1998–15 I.R.B. 12), the IRS and Treasury announced the decision to extend the effective date of the final regulations to January 1, 2000 and to provide correlative extensions to the transition rules for obtaining new withholding certificates and statements. Those extensions were published on December 31, 1998 at 63 FR 72183 as TD 8804. This amendment serves to make the final regulations applicable to payments made after December 31, 2000 and to require mandatory use of the new withholding certificates and statements for payments made after that date.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Finally, it has been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations because the regulations do not impose a collection of information on small entities. Pursuant to 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations (61 FR 17614) was submitted to the Small Business Administration for comment on its impact on small business.

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.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, under the authority of 26 U.S.C. 7805, 26 CFR parts 1, 31, and 301 are amended by making the following correcting amendments:

PART 1—INCOME TAXES

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

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

Par. 2. In § 1.871–14, paragraph (h) is revised to read as follows:

§ 1.871–14 Rules relating to repeal of tax on interest of nonresident alien individuals and foreign corporations received from certain portfolio debt investments.

* * * * *

(h) *Effective date*—(1) *In general.* This section shall apply to payments of interest made after December 31, 2000.

(2) *Transition rule.* For purposes of this section, the validity of a Form W–8 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form W–8 that is valid on or after January 1, 1999 remains valid until its validity expires under the regualtions in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event will such a form remain valid after December 31, 2000. The rule in this paragraph (h)(2), however, does not apply to extend the validity period of a Form W–8 that expired solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (h)(2), a withholding agent or payor may choose to not take advantage of the transition rule in this paragraph (h)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, may choose to obtain withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 3. In § 1.1441–1, as revised at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (f) is revised to read as follows:

§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.

* * * * *

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 2000.

(2) *Transition rules*—(i) *Special rules for existing documentation.* For purposes of paragraphs (d)(3) and (e)(2)(i) of this section, the validity of a withholding certificate (namely, Form W–8, 8233, 1001, 4224, or 1078 , or a statement described in § 1.1441–5 in effect prior to January 1, 2001 (see § 1.1441–5 as contained in 26 CFR part 1, revised April 1, 1999)) that was valid on January 1, 1998 under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event will such withholding certificate remain valid after December 31, 2001. The rule in this paragraph (f)(2)(i), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (f)(2)(i), a withholding agent may choose to not take advantage of the transition rule in this paragraph (f)(2)(i) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in paragraph (e)(4)(ii) of this section, regardless of when the certificate is obtained.

(ii) *Lack of documentation for past years.* A taxpayer may elect to apply the provisions of paragraphs (b)(7)(i)(B), (ii), and (iii) of this section, dealing with liability for failure to obtain documentation timely, to all of its open tax years, including tax years that are currently under examination by the IRS. The election is made by simply taking action under those provisions in the same manner as the taxpayer would take action for payments made after December 31, 2000.

Par. 4. In § 1.1441–4, as amended at 62 FR 53424 (TD 8734) and at 63 FR 72183 (TD 8804), paragraph (g) is revised to read as follows:

§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.

* * * * *

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* The validity of a Form 4224 or 8233 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 4224 or 8233 that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) but in no event will such form remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a Form 4224 or 8223 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the

documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 5. In § 1.1441–5, as revised at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (g) is revised to read as follows:

§ 1.1441–5 Withholding on payments to partnerships, trusts, and estates.

* * * * *

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* The validity of a withholding certificate that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event will such a withholding certificate remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 6. In § 1.1441–6, as revised at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (g) is revised to read as follows:

§ 1.1441–6 Claim of reduced withholding under an income tax treaty.

* * * * *

(g) *Effective date*—(1) *General rule.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* For purposes of this section, the validity of a Form 1001 or 8233 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 1001 or 8233 is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event will such a form remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a Form 1001 or 8233 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate or in interpretation of the law under the regulations under § 1.894–1T(d). Notwithstanding the first three sentences of this paragraph (g)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 7. In § 1.1441–8 as redesignated and amended at 62 FR 53464 and amended at 63 FR 72138 (TD 8804), paragraph (f) is revised to read as follows:

§ 1.1441–8 Exemption from withholding for payments to foreign governments, international organizations, foreign central banks of issue, and the Bank for International Settlements.

* * * * *

(f) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* For purposes of this section, the validity of a Form 8709 that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form 8709 that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) but in no event shall such a form remain valid after December 31, 2000. The rule in this paragraph (f)(2), however, does not apply to extend the validity period of a Form 8709 that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (f)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (f)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 8. In § 1.1441–9, paragraph (d) is revised to read as follows:

§ 1.1441–9 Exemption from withholding on exempt income of a foreign tax-exempt organization, including foreign private foundations.

* * * * *

(d) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* For purposes of this section, the validity of a Form W–8, 1001, or 4224 or a statement that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a Form W–8, 1001, or 4224 or a statement that is valid on or after January 1, 1999 remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1,

1999) but in no event shall such form or statement remain valid after December 31, 2000. The rule in this paragraph (d)(2), however, does not apply to extend the validity period of a Form W–8, 1001, or 4224 or a statement that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (d)(2), a withholding agent may choose to not take advantage of the transition rule in this paragraph (d)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441-1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 9. In § 1.1443–1, as revised at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (c) is revised to read as follows:

§ 1.1443–1 Foreign tax-exempt organizations.

* * * * *

(c) *Effective date*—(1) *In general.* This section applies to payments made after December 31, 2000.

(2) *Transition rules.* For purposes of this section, the validity of an affidavit or opinion of counsel described in § 1.1443–1(b)(4)(i) in effect prior to January 1, 2001 (see § 1.1443–1(b)(4)(i) as contained in 26 CFR part 1, revised April 1, 1999) is extended until December 31, 2000. However, a withholding agent may choose to not take advantage of the transition rule in this paragraph (c)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR part 1, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

Par. 10. In § 1.6042–3, as amended at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (b)(5) is revised to read as follows:

§ 1.6042–3 Dividends subject to reporting.

* * * * *

(b) * * *

(5) *Effective date*—(i) *General rule.* The provisions of this paragraph (b) apply to payments made after December 31, 2000.

(ii) *Transition rules.* The validity of a withholding certificate (namely, Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such withholding certificate remain valid after December 31, 2000. The rule in this paragraph (b)(5)(ii), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (b)(5)(ii), a payor may choose not to take advantage of the transition rule in this paragraph (b)(5)(ii) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

* * * * *

Par. 11. In § 1.6045–1, as amended at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (g)(5) is revised to read as follows:

§ 1.6045–1 Returns of information of brokers and barter exchanges.

* * * * *

(g) * * *

(5) *Effective date*—(i) *General rule.* The provisions of this paragraph (g) apply to payments made after December 31, 2000.

(ii) *Transition rules.* The validity of a withholding certificate (namely, Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such a withholding certificate remain valid after December 31, 2000. The rule in this paragraph (g)(5)(ii), however, does not apply to extend the validity period of a form that expires in 1998 solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(5)(ii), a payor may choose not to take advantage of the transition rule in this paragraph (g)(5)(ii) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, to require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

* * * * *

Par. 12. In § 1.6049–5, as amended at 62 FR 53424 (TD 8734) and amended at 63 FR 72183 (TD 8804), paragraph (g) is revised to read as follows:

§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.

* * * * *

(g) *Effective date*—(1) *General rule.* The provisions of paragraphs (b)(6) through (15), (c), (d), and (e) of this

section apply to payments made after December 31, 2000.

(2) *Transition rules.* The validity of a withholding certificate (namely, Form W–8 or other form upon which the payor is permitted to rely to hold the payee as a foreign person) that was valid on January 1, 1998, under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and expired, or will expire, at any time during 1998, is extended until December 31, 1998. The validity of a withholding certificate that is valid on or after January 1, 1999, remains valid until its validity expires under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) but in no event shall such a withholding certificate remain valid after December 31, 2000. The rule in this paragraph (g)(2), however, does not apply to extend the validity period of a withholding certificate that expires solely by reason of changes in the circumstances of the person whose name is on the certificate. Notwithstanding the first three sentences of this paragraph (g)(2), a payor may choose not to take advantage of the transition rule in this paragraph (g)(2) with respect to one or more withholding certificates valid under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999) and, therefore, may require withholding certificates conforming to the requirements described in this section (new withholding certificates). For purposes of this section, a new withholding certificate is deemed to satisfy the documentation requirement under the regulations in effect prior to January 1, 2001 (see 26 CFR parts 1 and 35a, revised April 1, 1999). Further, a new withholding certificate remains valid for the period specified in § 1.1441–1(e)(4)(ii), regardless of when the certificate is obtained.

PARTS 1, 31, AND 301—[AMENDED]

Par. 13. In the list below, for each section indicated in the left column (which was added, revised, or amended at 62 FR 53387 (TD 8734) and further amended at 63 FR 72138 (TD 8804), remove the language in the middle column and add the language in the right column:

Section	Remove	Add
1.871–14(c)(3)(ii), *Example,* first and sixth sentences	October 12, 2000	October 12, 2001.
1.871–14(c)(3)(ii), *Example,* sixth sentence	December 31, 2000	December 31, 2001.
1.871–14(c)(3)(ii), *Example,* sixth sentence	June 15, 2004	June 15, 2005.
1.871–14(c)(3)(ii), *Example,* seventh sentence	June 15, 2004	June 15, 2005.
.		
1.1441–1(b)(4)(xix)	January 1, 2000	January 1, 2001.
1.1441–1(b)(4)(xix)	April 1, 1998	April 1, 1999.
1.1441–1(b)(7)(v), *Example 1,* first, fourth, and eighth sentences	June 15, 2000	June 15, 2001.
1.1441–1(b)(7)(v), *Example 1,* third and ninth sentences	September 30, 2002	September 30, 2003.
1.1441–1(b)(7)(v), *Example 1,* ninth sentence	March 15, 2001	March 15, 2002.
1.1441–1(b)(7)(v), *Example 2,* first, fourth, and seventh sentences	June 15, 2000	June 15, 2001.
1.1441–1(b)(7)(v), *Example 2,* third and seventh sentences	September 30, 2002	September 30, 2003.
1.1441–1(b)(7)(v), *Example 2,* seventh and ninth sentences	March 15, 2001	March 15, 2002.
1.1441–1(c)(6)(ii)(B)	January 1, 2000	January 1, 2001.
1.1441–1(c)(6)(ii)(B)	April 1, 1998	April 1, 1999.
1.1441–1(e)(4)(ii)(A)	September 30, 2000	September 30, 2001.
1.1441–1(e)(4)(ii)(A)	December 31, 2003	December 31, 2004.
1.1441–2(b)(3)(iv)	December 31, 1999	December 31, 2000.
1.1441–2(f)	December 31, 1999	December 31, 2000.
1.1441–3(h)	December 31, 1999	December 31, 2000.
1.1441–7(g)	December 31, 1999	December 31, 2000.
1.1461–1(i)	December 31, 1999	December 31, 2000.
1.1461–2(a)(4), *Example 1*(i), second sentence	December 2000	December 2001.
1.1461–2(a)(4), *Example 1*(i), third sentence	February 10, 2001	February 10, 2002.
1.1461–2(a)(4), *Example 1*(ii), first, second, and last sentences	2000	2001.
1.1461–2(a)(4), *Example 1*(ii), first sentence	March 15, 2001	March 15, 2002.
1.1461–2(a)(4), *Example 1*(ii), third sentence	2001	2002.
1.1461–2(a)(4), *Example 2,* second and last sentences	2001	2002.
1.1461–2(a)(4), *Example 2,* second sentence	June 2001	June 2002.
1.1461–2(a)(4), *Example 2,* third sentence	July 15, 2001	July 15, 2002.
1.1461–2(a)(4), *Example 2,* third sentence	2000	2001.
1.1461–2(a)(4), *Example 2,* last sentence	March 15, 2002	March 15, 2003.
1.1461–2(a)(4), *Example 3,* last sentence	February 15, 2001	February 15, 2002.
1.1461–2(a)(4), *Example 3,* last sentence	March 15, 2001	March 15, 2002.
1.1461–2(d)	December 31, 1999	December 31, 2000.
1.1462–1(c)	December 31, 1999	December 31, 2000.
1.1463–1(b)	December 31, 1999	December 31, 2000.
1.6041–4(d)	December 31, 1999	December 31, 2000.
1.6041A–1(d)(3)(v)	December 31, 1999	December 31, 2000.
1.6045–1(d)(6)(ii)(B)	December 31, 1999	December 31, 2000.
1.6049–4(d)(3)(ii)(B)	December 31, 1999	December 31, 2000.
1.6049–5(c)(4)(v)	January 1, 2000	January 1, 2001.
1.6050N–1(e), last sentence	December 31, 1999	December 31, 2000.
31.3401(a)(6)-1(e), paragraph heading	*January 1, 2000*	*January 1, 2001.*
31.3401(a)(6)-1(e), first sentence	January 1, 2000	January 1, 2001.
31.3401(a)(6)-1(f), paragraph heading	*December 31, 1999*	*December 31, 2000.*
31.3401(a)(6)-1(f), first sentence	December 31, 1999	December 31, 2000.
31.3406(g)-1(e), first sentence	December 31, 1999	December 31, 2000.
31.3406(h)-2(d), penultimate sentence	December 31, 1999	December 31, 2000.
31.9999–0	January 1, 2000	January 1, 2001.

Section	Remove	Add
301.6114–1(b)(4)(ii)(C), introductory text	December 31, 1999	December 31, 2000.
301.6114–1(b)(4)(ii)(D)	December 31, 1999	December 31, 2000.
301.6724–1(g)(2) Q–11	January 1, 2000	January 1, 2001.
301.6724–1(g)(2) Q–11	April 1, 1998	April 1, 1999.
301.6724–1(g)(2) A–11	January 1, 2000	January 1, 2001.
301.6724–1(g)(2) A–11	April 1, 1998	April 1, 1999.
301.6724–1(g)(3), first sentence	December 31, 1999	December 31, 2000.
301.6724–1(g)(3), last sentence	January 1, 2000	January 1, 2001.
301.6724–1(g)(3), last sentence	April 1, 1998	April 1, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 21, 1999.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 99–33515 Filed 12–29–99; 8:45 am]

BILLING CODE 4830–01–P

PANAMA CANAL COMMISSION

35 CFR Chapter I, Subchapters B and C

Repeal of the Panama Canal Commission's General Regulations and Shipping and Navigation Regulations

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: This action repeals the Commission's public regulations in the Code of Federal Regulations (CFR), Subchapters B (General Regulations) and C (Shipping and Navigation) and discontinues the U.S. Government's responsibility for health, sanitation, postal money orders, and shipping and navigation in the Panama Canal. This action does not terminate the Commission's liability for marine vessel claims which arise prior to Noon, December 31, 1999.

DATES: Effective 12:00 Noon, December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Jay Sieleman, Assistant General Counsel, Panama Canal Commission, Office of Transition Administration c/o U.S. Embassy, Panama APO AA 34002. The telephone number is 272–6625. The facsimile number is 272–6621.

SUPPLEMENTARY INFORMATION: In compliance with the Panama Canal Treaty of 1977 and Public Law 96–70, as amended, (22 U.S.C. 3601 *et seq.*) the United States Government will turn over the operation, maintenance, and management of the Panama Canal to the Government of Panama at Noon, December 31, 1999. The regulations published in 35 CFR subchapters B and C are directly related to the operation, maintenance and management of the Panama Canal or to functions performed by the Panama Canal Government prior to the Panama Canal Treaty of 1977. With the termination of the Commission's responsibility for these functions, the Commission is revoking the applicable regulations to avoid confusion on the part of customers seeking guidance on the use of the Panama Canal or its related areas.

Persons and organizations interested in obtaining information regarding the operation, maintenance and management of the Panama Canal after 12:00 Noon, December 31, 1999, should contact the Government of Panama agency established for these purposes. This agency is the Panama Canal Authority, Balboa, Ancon, Republic of Panama. The mailing address is: Panama Canal Authority, Office of General Counsel Marine Accident Claims, PCA GC-GCCL, P. O. Box 025413, Miami FL 33102–5413.

Persons or organizations with claims against the Panama Canal Commission for marine vessel accidents which arise prior to Noon, 31 December 1999, should contact David L. Terzian, Torts Branch, Civil Division, U.S. Department of Justice, 1425 New York Avenue, NW, Room 3046, Washington, DC 2005. The telephone number is (202) 616–4137.

This rule involves agency management functions and, therefore, is not subject to the procedures required by 5 U.S.C 553 and 801. It is also exempt from review under Executive Order 12866 but has been reviewed internally by the Commission to ensure consistency with the purposes thereof. This amendment has been found to be a minor rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121. It does not require analysis under the Regulatory Flexibility Act or the Unfunded Mandates Reform Act.

Authority: 22 U.S.C. 3602.

Accordingly, for the reasons set forth above, at noon, December 31, 1999, in accordance with the Panama Canal Treaty of 1977, 35 CFR chapter I is amended by removing subchapters B (parts 60 through 70) and C (parts 101 through 135).

Dated: December 23, 1999.

William J. Connolly,

Secretary, Panama Canal Commission.

[FR Doc. 99–33908 Filed 12–29–99; 8:45 am]

BILLING CODE 3640–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AJ98

Board of Veterans' Appeals: Rules of Practice—Revision of Decisions on Grounds of Clear and Unmistakable Error; Clarification

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Rules of Practice of the Board of Veterans' Appeals governing the revision of Board decisions on the grounds of clear and unmistakable error. By this amendment, we clarify that, in the case of a Board decision on more than one issue, the Board's decision on issues appealed to and decided by a court of competent jurisdiction is not subject to subsequent revision on the grounds of clear and unmistakable error, but the Board's decision on issues not appealed to or decided by a court of competent jurisdiction is subject to such revision.

DATES: *Effective Date:* February 12, 1999.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 565–5978.

SUPPLEMENTARY INFORMATION: On May 19, 1998, we published a notice of proposed rulemaking in the **Federal Register** (63 FR 27534). We proposed to implement section 1(b) of Pub. L. 105–111 (Nov. 21, 1997), which permits challenges to Board of Veterans' Appeals (Board) decisions on the

grounds of clear and unmistakable error (CUE). In particular, because ''it would be inappropriate for an inferior tribunal to review the actions of a superior,'' we proposed to codify at 38 CFR 20.1400(b) a provision stating: ''A Board decision on an issue decided by a court of competent jurisdiction on appeal is not subject to revision on the grounds of [CUE].'' 63 FR at 27536, 27539.

On January 13, 1999, we published the final rule, which became effective February 12, 1999 (64 FR 2134). Based on comments that § 20.1400(b) was unclear, we revised that provision with the intent that ''our rule preclude[] a CUE challenge to a Board decision on an issue that has been subsequently decided by a court of competent jurisdiction, whether on direct appeal of that Board decision or on appeal of a subsequent Board decision on the same issue.'' 64 FR at 2136. However, the language of § 20.1400(b) stated: ''All final Board decisions are subject to revision under this subpart except: (1) Those decisions which have been appealed to and decided by a court of competent jurisdiction; and (2) Decisions on issues which have subsequently been decided by a court of competent jurisdiction.'' *Id.* at 2139.

By inadvertently omitting the words ''on issues'' from § 20.1400(b)(1), we created an ambiguity in the case of a Board decision on more than one issue where fewer than all of the issues were appealed to and decided by a court. It was not clear whether § 20.1400(b)(1) insulated every issue in such a Board decision from CUE revision or whether it insulated only the issues appealed to and decided by the court. We intended, both in the proposed rule and in the final rule, that § 20.1400(b)(1) would insulate only the decision *on issues* appealed to and decided by a court. By reinserting the words ''on issues'' in § 20.1400(b)(1), we remove the ambiguity and clarify that, in the case of a Board decision on multiple issues, § 20.1400(b)(1) insulates from subsequent CUE revision only the Board's decision on issues appealed to and decided by a court, but not its decision on issues not appealed to the court. We are also removing the word ''Those'' to make paragraphs (1) and (2) of § 20.1400(b) parallel.

This document merely clarifies regulatory provisions. Therefore, in accordance with 5 U.S.C. 553, this final rule is exempt from prior notice-and-comment and delayed-effective-date provisions.

The Secretary hereby certifies that this final rule does not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule affects only individuals. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Claims, Veterans.

Approved: November 18, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR Part 20 is amended as set forth below:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

Subpart O—Revision of Decisions on Grounds of Clear and Unmistakable Error

1. The authority citation for part 20 is revised to read as follows:

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

§ 20.1400 [Amended]

2. Section 20.1400(b)(1) is amended by removing ''Those decisions'' and adding, in its place, ''Decisions on issues''.

[FR Doc. 99–33995 Filed 12–29–99; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 136

[FRL–6478–1]

RIN 2040–AC76

Guidelines Establishing Test Procedures for the Analysis of Pollutants; Available Cyanide in Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule amends the ''Guidelines Establishing Test Procedures for the Analysis of Pollutants'' under section 304(h) of the Clean Water Act by adding Method OIA–1677: Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry (hereafter Method OIA–1677). Method OIA–1677 employs flow injection analysis (FIA) to measure ''available cyanide.'' Method OIA–1677 is an additional test procedure for measuring the same cyanide species as are measured by currently approved methods for cyanide amenable to chlorination (CATC). In some matrices, CATC methods are subject to test interferences. EPA is approving Method OIA–1677 because it is more specific for available cyanide, is more rapid, measures cyanide at lower concentrations, offers improved safety, reduces laboratory waste, and is more precise and accurate than currently approved CATC methods.

EFFECTIVE DATE: This regulation is effective on January 31, 2000. For judicial review purposes, this final rule is promulgated as of 1 p.m. Eastern Standard Time on January 13, 2000 in accordance with 40 CFR 23.2.

The incorporation by reference of Method OIA–1677 listed in the rule is approved by the Director of the Federal Register January 31, 2000.

ADDRESSES: Copies of the public comments received, EPA responses, and all other supporting documents (including references included in this document) are available for review at the U.S. Environmental Protection Agency, Water Docket, 401 M Street SW., Washington, DC 20460. For access to docket materials, call 202–260–3027 on Monday through Friday, excluding Federal holidays, between 9:00 a.m. and 3:30 p.m. Eastern Time for an appointment.

Copies of Method OIA–1677 are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 605–6000 or (800) 553–6847; or from ALPKEM, Box 9010, College Station, TX 77842–9010. The NTIS publication number is PB99–132011.

An electronic version of Method OIA–1677 is also available via the Internet at http://www.epa.gov/OST/Methods.

FOR FURTHER INFORMATION CONTACT: For information regarding Method OIA–1677, contact Maria Gomez-Taylor, Ph.D., Engineering and Analysis Division (4303), USEPA Office of Science and Technology, 401 M Street, SW., Washington, DC 20460, or call (202) 260–1639.

SUPPLEMENTARY INFORMATION:

Potentially Regulated Entities

EPA Regions, as well as States, Territories and Tribes authorized to implement the National Pollutant Discharge Elimination System (NPDES) program, issue permits that comply with the technology-based and water quality-based requirements of the Clean Water Act. In doing so, the NPDES permitting authority, including authorized States, Territories, and Tribes, make a number of discretionary choices associated with permit writing, including the selection

of pollutants to be measured and, in many cases, limited in permits. If EPA has ''approved'' (i.e., promulgated through rulemaking) standardized testing procedures for a given pollutant, the NPDES permit must specify one of the approved testing procedures or an approved alternate test procedure. Permitting authorities may, at their discretion, require the use of any method approved at 40 CFR part 136 in the permits they issue. Therefore, dischargers with NPDES permits could be affected by the standardization of testing procedures in this rulemaking because NPDES permits may incorporate the testing procedures in today's rulemaking. In addition, when a State, Territory, or authorized Tribe provides certification of Federal licenses under Clean Water Act section 401, States, Territories and Tribes are directed to use the standardized testing procedures. Categories and entities that may ultimately be affected include:

Category	Examples of potentially regulated entities
Regional, State and Territorial Governments and Indian Tribes.	States, Territories, and Tribes authorized to administer the NPDES permitting program; States, Territories, and Tribes providing certification under Clean Water Act section 401; Governmental NPDES permittees.
Industry	Industrial NPDES permittees.
Municipalities	Publicly-owned treatment works with NPDES permits.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline of Preamble

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A. Executive Order 12866
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C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
D. Paperwork Reduction Act
E. Submission to Congress and the General Accounting Office
F. National Technology Transfer and Advancement Act
G. Executive Order 13045
H. Executive Order 13132
I. Executive Order 13084

I. Authority

EPA promulgates today's regulation pursuant to the authority of sections 301, 304(h), 307, and 501(a) of the Clean Water Act (CWA) or the ''Act,'' 33 U.S.C. 1314(h), 1317, and 1361(a). Section 301 of the Act prohibits the discharge of any pollutant into navigable waters unless the discharge complies with a National Pollutant Discharge Elimination System (NPDES) permit, issued under section 402 of the Act. Section 304(h) of the Act requires the Administrator of the EPA to ''promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit applications pursuant to section 402 of this Act.'' Section 501(a) of the Act authorizes the Administrator to ''prescribe such regulations as are necessary to carry out his (her) function under this Act.'' EPA publishes CWA analytical methods regulations at 40 CFR part 136. The Administrator also has made these test procedures applicable to monitoring and reporting of NPDES permits (40 CFR part 122, sections 122.21, 122.41, 122.44, and 123.25), and implementation of the pretreatment standards issued under section 307 of the Act (40 CFR part 403, sections 403.10 and 402.12).

II. Summary of the Final Rule

A. Introduction

Today's action makes available at 40 CFR part 136 an additional test procedure for measurement of available cyanide. Currently approved methods for measurement of available cyanide are based on sample chlorination. Method OIA–1677 uses a flow injection/ligand exchange technique to measure available cyanide. Although Method OIA–1677 and chlorination methods both measure available cyanide, it is possible that the results produced by the two techniques will vary slightly, as detailed in the proposed rule (63 FR 36809, July 7, 1998). EPA offers Method OIA–1677 as another testing procedure for several purposes, including permit applications and compliance monitoring under the NPDES program under CWA section 402; ambient water quality monitoring; CWA section 401 certifications; development of new effluent limitations guidelines, pretreatment standards, and new source performance standards; and for general laboratory use.

This rulemaking does not repeal any of the currently approved methods that test for available cyanide. For an NPDES permit, the permitting authority can decide which method is appropriate for the specific NPDES permit based on the circumstances of the particular effluent measured. If the permitting authority does not specify the method to be used for the determination of available cyanide, a discharger would be able to use Method OIA–1677 or any of the presently approved cyanide amenable to chlorination (CATC) methods.

B. Summary of Method OIA–1677

Method OIA–1677 is divided into two parts: sample pretreatment and cyanide quantification via amperometric detection. In the sample pretreatment step, ligand-exchange reagents are added to a 100-mL sample. The ligand-exchange reagents displace cyanide ions (CN^-) from weak and intermediate strength metallo-cyanide complexes.

In the flow-injection analysis system, a 200-µL aliquot of the pretreated sample is injected into the flow injection manifold. The addition of hydrochloric acid converts cyanide ion to hydrogen cyanide (HCN). The hydrogen cyanide diffuses through a membrane into an alkaline receiving solution where it is converted back to cyanide ion (CN^-). The amount of cyanide ion in the alkaline receiving solution is measured amperometrically with a silver working electrode, silver/silver chloride reference electrode, and platinum counter electrode at an applied potential of zero volt. The current generated in the cell is proportional to the concentration of cyanide in the original sample, as determined by calibration.

C. Comparison of Method OIA–1677 to Current Methods

Methods currently approved for determination of available cyanide all test for CATC. Although they represent the best methods available to date, these methods are prone to matrix interference problems. EPA considers Method OIA–1677 to be a significant addition to the suite of analytical testing procedures for available cyanide because it (1) has greater specificity for cyanide in matrices where interferences have been encountered using currently approved methods; (2) has improved precision and accuracy compared to currently approved CATC cyanide methods; (3) measures available cyanide at lower concentrations; (4) offers improved analyst safety; (5) shortens sample analysis time; and (6) reduces laboratory waste.

Method OIA–1677 is not subject to known interferences from organic species. The flow-injection technique of Method OIA–1677 excludes known interferences, except sulfide. Sulfide is eliminated by treating the sample with lead carbonate and removing the insoluble lead sulfide by filtration prior to introduction of the sample to the amperometric cell used for cyanide detection.

Method OIA–1677 was tested against and compared to two existing cyanide methods: EPA Method 335.1, an EPA-approved CATC method, and Standard Method (SM) 4500 CN·I, a weak-acid dissociable (WAD) cyanide method. Comparative recovery and precision data were generated from simple metallo-cyanide species in reagent water. Recovery and precision of each method was comparable for the easily dissociable cyanide species. Results of these tests were included in the docket at proposal (63 FR 36809, July 7, 1998). Method OIA–1677 showed superior precision and recoveries of mercury cyanide complexes.

While EPA Method 335.1 does not specify a method detection limit, colorimetric detection is ''sensitive'' to approximately 5 µg/L. The method detection limit (MDL), as determined in a multi-laboratory study using the procedures described at 40 CFR part 136, appendix B, is 0.5 µg/L for Method OIA–1677.

Method OIA–1677 offers improved analyst safety for two reasons. The first reason is the reduced generation of hydrogen cyanide gas, a highly toxic compound. Although the proposed flow-injection analysis (FIA) method and currently approved CATC methods all generate HCN, the currently approved methods generate a larger quantity of gas during distillation in an open distillation system. As such, extra care is necessary to prevent accidental release of HCN into the laboratory atmosphere. Method OIA–1677 possesses an advantage because it tests a much smaller sample and, therefore, generates significantly less HCN than currently approved methods. In addition, the gas is contained in a closed system with little possibility for release. The second safety improvement is the reduced use of hazardous substances. Currently approved CATC methods require use of hazardous substances in the distillation and color developing processes. These hazardous substances include hydrochloric acid, pyridine, barbituric acid, chloramine-T, and pyrazolone. Method OIA–1677 requires only hydrochloric acid and at a much lower concentration than used in CATC procedures.

Method OIA–1677 offers a reduced analysis time, which should increase sample throughput in the laboratory. Method OIA–1677 uses automated mixing of the sample with hydrochloric acid and exposure to the gas diffusion membrane to determine the sample concentration. This process takes approximately two minutes per sample. As a comparison, EPA Method 335.1 requires a one-hour distillation procedure plus the time necessary to add and develop the sample color to determine the presence of cyanide.

Less laboratory waste is generated in Method 1667 because it requires a much smaller sample size for testing. EPA Method 335.1 requires handling a sample size of 500 mL for distillation. Method OIA–1677 requires the addition of the ligand exchange reagents to 100 mL of sample, from which 40 to 250 µL are used for analysis. This reduces the amount of both hazardous sample and toxic reagents that must be handled and subsequently disposed.

D. Quality Control

The quality control (QC) in Method OIA–1677 is more extensive than the QC in currently approved methods for CATC. Method OIA–1677 contains all of the standardized QC tests proposed in EPA's streamlining initiative (62 FR 14976, March 28, 1997) and used in the 40 CFR part 136, appendix A methods. An initial demonstration of laboratory capability is required and consists of (1) an MDL study to demonstrate that the laboratory is able to achieve the MDL and minimum level of quantification (ML) specified in Method OIA–1677; and (2) an initial precision and recovery (IPR) test, consisting of the analysis of four reagent water samples spiked with the reference standard, to demonstrate the laboratory's ability to generate acceptable precision and recovery. An important component of these and other QC tests required in Method OIA–1677 is the use of mercuric cyanide ($Hg(CN)_2$) as the reference standard for spiking. Mercuric cyanide was chosen because it is fully recovered in Method OIA–1677 and weak-acid dissociable (WAD) methods, whereas mercuric cyanide is only partially recovered in the CATC method. Therefore, mercuric cyanide demonstrates the ability of the ligand-exchange reagents to liberate cyanide from moderately strong metal-cyano complexes. Method OIA–1677 requires the use of standards of known composition and purity, which facilitates more accurate determination of recovery and precision and minimizes variability that may be introduced from spiking substances of unknown or indeterminate purity.

Ongoing QC consists of the following tests that would need to accompany each analytical batch, i.e., a set of 10 samples or less pretreated at the same time:

- Verification of calibration of the flow injection analysis/amperometric detection system, to verify that instrument response has not deviated significantly from that obtained during calibration.
- Analysis of a matrix spike (MS) and matrix spike duplicate (MSD) to demonstrate method accuracy and precision and to monitor matrix interferences. $Hg(CN)_2$ is the reference standard used for spiking.
- Analysis of a laboratory blank to demonstrate freedom from contamination.
- Analysis of a laboratory control sample to demonstrate that the method remains under control.

Method OIA–1677 contains QC acceptance criteria for all QC tests. Compliance with these criteria allows a data user to evaluate the quality of the results. This increases the reliability of results and provides a means for laboratories and data users to monitor analytical performance, thereby providing a basis for sound, defensible data.

E. Performance-Based Measurement System

On March 28, 1997, EPA proposed a rule (62 FR 14976) to streamline approval procedures and use of analytic methods in water programs through a performance-based approach to environmental measurements. On October 7, 1997, EPA published a Notice of the Agency's intent to implement a Performance Based Measurement System (PBMS) in all

media programs to the extent feasible (62 FR 52098). EPA's water program offices are developing plans to implement PBMS. Although EPA has not yet promulgated a final rule to implement PBMS in water programs, Method OIA–1677 incorporates the QA and QC acceptance criteria to be used as a basis for assessment of method performance. When PBMS is in place, Method OIA–1677 could serve as a reference method for demonstrating equivalency for subsequent modifications to the method.

The analyst has flexibility to modify the Method provided all performance criteria are met. Demonstrating equivalency involves two sets of tests, one set with reference standards and the other with the sample matrix. In addition, if the detection limit would be affected by the modification, performance of an MDL study would be required to demonstrate that the modified procedure could achieve an MDL less than or equal to the MDL in Method OIA–1677 or, for those instances in which the regulatory compliance limit is greater than the ML in the method, one-third the regulatory compliance limit. (For a discussion of these levels, see the streamlining proposal (62 FR 14976, March 28, 1997).)

III. Improvements and Changes to Method OIA–1677 Since Proposal

EPA has revised Method OIA–1677 based on comments received on the proposal (63 FR 36809, July 7, 1998). Minor changes were made to correct typographical errors and for clarification:

- Section 4.5 was reworded to clarify how to mitigate sulfide ion interference.
- Potassium nickel (II) cyanide, a quality control reagent was added as section 7.5.
- Mercury (II) cyanide stock solution (section 7.12.1) mixing directions were rewritten to better explain the steps.
- Section 8.2.1 was revised to require that samples that contain particulate matter be filtered prior to sulfide removal and that the particulate matter be recombined with the treated filtrate prior to shipment to the laboratory. This procedure is necessary to assure that cyanide associated with particulate matter will be included in the measurement.
- Laboratory control sample (LCS) of the mercury (II) cyanide stock solution was described more concisely.
- A note was added to section 11 to explain ligand-exchange reagents and their use.
- Reference materials were updated in section 15.
- In Table 2, units were corrected from mg/L to μg/mL CN^-.
- A definition for ''discharge'' was added under section 18.2.
- The sections on Pollution Prevention and Waste Management were separated and expanded.
- Section 12.2 was reworded to clarify the reporting of analytical results.

IV. Public Participation and Response to Comments

EPA proposed Method OIA–1677 for use on July 7, 1998 (63 FR 36809). The public comment period closed on September 8, 1998. Significant comments are summarized below, along with EPA's responses. To the extent practicable, the comments have been categorized by subject. Detailed comments and their accompanying responses are included in the Docket for today's final rule.

EPA thanks commenters for constructive suggestions. EPA believes that the version of Method OIA–1677 promulgated today will provide reliable data for compliance monitoring.

A. Definition of Cyanide

Comment: The endorsement by EPA of yet another operational method, in this case what its developers term ''available cyanide,'' does not resolve the confusion that exists regarding the appropriateness of the various cyanide measurements for discharge permits and water quality assessments.

Response: EPA explained use of the term ''available cyanide'' in the preamble to the proposal of Method OIA–1677. The term ''available cyanide'' reflects that it is the cyanide species available for dissociation that is measured by Method OIA–1677. The same cyanide species are measured by the CATC and WAD methods. In today's document, EPA further clarifies that ''available'' cyanide includes ''cyanide amenable to chlorination'' and ''weak-acid dissociable'' cyanides. EPA continues to use the term ''total cyanide'' for cyanides determined after total distillation. The reason that a change to ''available'' cyanide was necessary is that the chlorination reaction used in methods for ''cyanide amenable to chlorination'' is not used in Method OIA–1677. The term ''weak-acid dissociable'' (WAD) cyanide was considered but not used in anticipation that future methods could use technologies other than weak-acid dissociation.

B. Method Detection Limit

Comment: If EPA wishes to expand the use of the method detection limit (MDL) approach for the new purpose of deriving a detection level for Method OIA–1677, the Administrative Procedure Act (APA) demands that it provide the public an opportunity to review and comment on the justification for that decision.

Response: EPA has used the MDL procedure, as described at 40 CFR part 136, appendix B, for the purpose of deriving detection limits in analytical methods for the past 20 years. Use of the MDL procedure for this purpose is therefore not new. By proposing Method OIA–1677 and including the MDL therein, EPA provided the public the opportunity for review and comment on the MDL in Method OIA–1677 and the data that support this MDL estimate.

EPA has used the MDL successfully for estimating the lowest level at which a substance can be detected since the peer-reviewed article on the MDL was published in 1980 (Environmental Science and Technology 15 1426–1435). The MDL procedure is subjected to public comment with every MDL that EPA publishes in nearly every method proposed in the **Federal Register** for use in EPA's various programs. The MDL procedure is referenced in those methods. The MDL procedure has widespread acceptance and use throughout the analytical community. No other detection or quantitation limit procedure or concept has achieved this level of acceptance and use.

Comment: Effluent limitations should never be imposed in an enforceable manner below concentrations at which accurate and consistent measurement is possible. EPA must adequately justify the manner in which it proposes to derive detection and quantification levels. EPA has failed to justify its proposal and to allow for public comment.

Response: EPA proposed to approve Method OIA–1677 as an additional test procedure for use in its water programs. This new analytical method is more sensitive than currently approved methods for the determination of available cyanide and, therefore, EPA believes that this method is suitable for accurate and consistent measurements. The performance of this method was demonstrated through an inter-laboratory validation study. The manner in which EPA derives detection and quantitation levels is through use of the MDL procedure published at 40 CFR part 136, appendix B. EPA has used the minimum level of quantitation (ML) in previous rulemakings. The ML is consistent with the limit of quantitation (LOQ) developed by the American Chemical Society. EPA allows comment on the derivation of detection and

quantification levels through the public comment process every time it proposes a new method. EPA is currently evaluating different approaches to detection and quantification, and may propose one or more alternate approaches in a future rulemaking.

C. Regulatory Compliance Implications of Method OIA–1677

Comment: EPA should clarify that Method OIA–1677 does not indicate that the species measured represent an environmental risk, and that the method should not be used by regulators for measuring the risk associated with particular cyanide species.

Response: Today's action approves Method OIA–1677 for use in CWA programs because EPA believes that Method OIA–1677 can be used for reliable determination of available cyanide. Analytical methods measure the presence and concentration of pollutants, not risk. In this case, Method OIA–1677 measures dissociable cyanide species.

Comment: A better measurement of toxicological significance is needed. A regulatory view based on the presence or absence of ''available cyanide'' would not be reflective of environmental conditions that may affect biological organisms. Cyanide species-specific methods, such as ion chromatography and the ASTM diffusible cyanide method, provide more scientifically defensible data. EPA and/or instrument manufacturers should pursue development of such techniques as EPA approved methods. For acute toxicity determination, the ''free cyanide'' method by microdiffusion may well be the best approach since it measures HCN and CN species.

Response: Measurements of toxicological significance and improved tests for toxicological significance are beyond the scope of Method OIA–1677. Method OIA–1677 was developed as an alternative to currently approved methods that measure dissociable cyanide species.

Regarding cyanide-specific methods such as ion chromatography and diffusible cyanide, EPA believes that these methods may have utility in toxicological testing. However, for testing of wastewaters, methods such as Method OIA–1677 and the total cyanide methods have the advantage that they capture multiple cyanides in a single measurement. These methods are generally less expensive to practice than those methods that resolve the various cyanide forms and species. However, if an instrument manufacturer, discharger, or other interested entity desires to pursue approval of one or more of the cyanide-specific methods, the entity may submit the method under EPA's alternate test procedure program described at 40 CFR part 136.

Comment: The proposed rule section on regulatory effects is erroneous. Method OIA–1677 will likely produce a result higher than the result produced by a CATC method if a cyanide of nickel, mercury, or silver is present at a high enough concentration. In this instance a permit limit for cyanide would probably be violated.

EPA must provide specific regulatory language regarding comparison of inconsistent results which impact compliance. EPA recognizes that the new method and the CATC method can produce different results. For example, if a discharger uses the CATC method which shows compliance, while a regulator uses the new method which indicates a violation, EPA suggests that the discharger refer to the preamble language of the proposed rule to convince the regulator that no violation has occurred. As EPA is aware, preamble language is not binding authority as is the actual regulatory language.

Response: In the proposed rule, EPA stated that interferences in the CATC methods can produce an inflated result for cyanide and that Method OIA–1677 is nearly immune to the interferences that inflate results from CATC methods. Therefore, the result of an analysis using Method OIA–1677 will nearly always be lower, and therefore closer to the true value for cyanide than a result from an analysis using a CATC method. EPA detailed the only exception to this situation as an analysis in which interferences are not present but certain cyanides of nickel, mercury, or silver are present at concentrations greater than 2 mg/L. At these concentrations, Method OIA–1677 recovers these cyanides at near 100 percent whereas the CATC methods recover them at 55–85 percent, resulting in concentrations that could be 15–45% greater with Method OIA–1677. The scenario described at proposal is very unlikely because the difference in recoveries are not that significant at permit quantities.

Therefore, in order for a violation to occur, a cyanide of nickel, mercury, or silver would need to be present at greater than 2 mg/L, there would need to be no interferences present, and the permit limit would need to be 2 mg/L or greater. EPA believes that this situation is highly unlikely and believes that, if it ever should occur, it can be handled on a case-by-case basis. Regarding differential use of methods by the permittee and the regulatory authority, EPA notes that permits often specify a particular test method to measure compliance. Compliance with a permit constitutes compliance with the CWA. Dischargers will be held accountable for results from the methods specified in their permits.

D. Proprietary Reagents

Comment: The use of a proprietary reagent as a chelating agent in a significant step in the procedure is an unfortunate precedent in what is supposed to be a scientific process.

Response: While Method OIA–1677 employs proprietary reagents, the method clearly states that changes to the method (including use of alternative reagents) can be made provided that the analyst demonstrates that the performance achieved is equivalent or superior to the performance of the unmodified method. The process for demonstrating acceptable performance is specified in section 9 of the Method.

Comment: As presented at the 19th U.S. EPA Conference on Analysis of Pollutants in the Environment (J.R. Sebroski, Bayer Corporation), the proprietary ligand exchange reagents used in the proposed method can suffer from false positive results if the sample is not injected into the flow injection system immediately. For example, after 12 hours residence time in reagent water, the combination of Ligand Exchange Reagent A and B showed an average of 7.57 µg/L cyanide.

Response: The ligand exchange reagents should be tested in NaOH solution, similar to the testing of cyanide samples (pH 12). The method developer has shown that signals due to the reagents are less than the minimum level (ML) of Method OIA–1677 provided the samples are analyzed within 2 hours of reagent addition. Method OIA–1677 has been modified to include statements that specify that the reagents have an approximate lifetime of 6 months after opening, that the reagents should be stored in a refrigerator at 0–4 °C, and that samples should be analyzed within 2 hours of adding the ligand-exchange reagents. This is sufficient time for sample preparation even if an auto-sampling system is utilized. Supporting data are included in the docket for the final rule.

Comment: In order to evaluate the efficiency of a front-end method change or the use of ''equivalent'' ligand exchange reagents, mercury (II) cyanide alone would not be sufficient to demonstrate method equivalency, since this only verifies ligand exchange reagent B and not ligand exchange reagent A which specifically displaces the cyanide species containing nickel. In order to alleviate the problem, several

ligand exchange reagents from the literature were evaluated for their effectiveness to displace nickel and mercury cyanide species with Method OIA–1677 because the composition of the proprietary reagents is unknown. Our research revealed that tetraethylenepentamine (TEP) and dithizone (diphenylthiocarbazone) were effective at displacing the cyanide species containing nickel and mercury, respectively, up to 400 µg/L as CN^-. The TEP and dithizone combination of ligand exchange reagents did not suffer from any interferences or false positive results, and the reagents have a shelf-life of approximately 6 months.

Response: EPA agrees and has revised Method OIA–1677 to state that a modification to the method must be demonstrated on the cyanide species to which the modification will be applied.

E. Cyanide Species Measured

Comment: While Method OIA–1677 demonstrates some performance characteristics superior to currently available methods (notably the speed of the procedure), cyanide chemistry is too complex to generalize that the proposed method measures the ''same cyanide species'' as the CATC method or that the species measured under either test reflect actual environmental risk.

Response: Based on the information presented in section II C of the preamble at proposal (63 FR 36810) and data presented in the literature (Environmental Science and Technology, 1995, Vol. 29, 426–430) and at technical conferences (Goldberg, *et al.*; Goldberg and Clayton), and with the exceptions noted in the preamble at proposal and detailed in a response to Comment IV C above, Method OIA–1677 and the CATC and WAD methods measure the same cyanide species.

Comment: A fundamental difficulty with the determination of various forms of cyanide is that the analytical methods in use are not defined in terms of specific cyanide species being measured, but rather in terms of whatever the analytical method reports.

Response: EPA agrees. Method OIA–1677 is actually the first method available that can be defined in terms of the cyanide species being measured because it recovers cyanide completely throughout the analytical range of the Method (2 µg/L to 5000 µg/L) from the following cyano-species: HCN, CN^-, $[Zn(CN)_4]^{2-}$, $[Cd(CN)_4]^{2-}$, $[Cu(CN)_4]^{3-}$, $[Ag(CN)_2]^-$, $[Ni(CN)_4]^{2-}$, $[Hg(CN)_4]^{2-}$ and $Hg(CN)_2$. In addition, the recoveries are concentration independent, which is not the case with either the CATC or WAD procedures.

Comment: We believe that the characterization of WAD and CATC analytical methods as deficient is inappropriate because the methods themselves provide operational definitions of cyanide species that comprise weak-acid dissociable cyanide. As such, the fact that the EPA Method OIA–1677 recovers additional metal cyanide complexes does not qualify it as better or more appropriate.

Response: The WAD and CATC methods are not deficient because they provide an operational definition of cyanide species that comprise weak-acid dissociable cyanide. Rather, the CATC and WAD methods are merely more susceptible to known interferences. The discussion in the preamble of the proposed rule illustrated the problems with the methods that utilize distillation to separate the analyte from potential interferences. Also, Method OIA–1677 does not recover cyanide from additional metal complexes when compared to the WAD and CATC procedures. Rather, it recovers the same metal cyano complexes completely (100%) throughout the analytical range of the method whereas the WAD and CATC procedures recover these species only partially at high concentrations.

F. Sample Pretreatment Issues

Comment: The method currently does not supply any information on the amount of lead carbonate to be used to eliminate sulfide interference.

Response: The amount of lead carbonate needed depends on the amount of the sulfide interference in each sample. Because the concentration of the sulfide interference is not known in advance, the amount of lead carbonate needed must be determined by the analyst or sampler.

Comment: Please clarify what preservation must be performed in the field and what preservation can take place back in the laboratory. For example, must the lead acetate paper test, lead carbonate treatment, and filtration for sulfide be performed in the field?

Response: All preservation must be performed at the time of sampling due to rapid degradation of cyanide in unpreserved samples. If the sample can be transported to a laboratory or other facility within 15 minutes of sampling, preservation may be performed in the laboratory or other facility. See footnote 4 to Table II in 40 CFR 136.3 (e) for information on preservation.

Comment: The procedure for sulfide containing samples is confusing. Is there a concentration below which suspected sulfide ion is not a problem? The method indicates that two samples ''should'' be collected and that both samples ''must'' be analyzed. Is collecting two samples optional or required? When two samples are collected and analyzed, which result should be reported? Or, should both results be reported? If the samples are tested within 24 hours, is one sample sufficient?

Response: EPA does not know the concentration below which sulfide is not a problem. Collection of two samples is required if sulfide ion is not detected by the lead acetate paper test (See section 8.2.1 of the method). If sulfide ion is detected and removed with lead carbonate, the collection and analysis of a second sample is not required. The result that must be reported is the lower of the two results because the presence of sulfide ion will inflate a result. One sample is sufficient if tested within 24 hours, per footnote 6 of Table II at 40 CFR 136.3(e).

Comment: Paragraph II F is totally misleading when it states that ''Method OIA–1677 takes approximately two minutes to perform,'' as this time does not include pretreatment (*e.g.*, filtering to eliminate interference from sulfide).

Response: Pretreatment to remove sulfide interferences is performed at the time of sampling (usually in the field) and the time to perform this pretreatment is not included in analysis time for Method OIA–1677. Analysis of the sample using Method OIA–1677 is performed in the laboratory.

G. Interferences

Comment: The preamble at proposal of Method OIA–1677 states that the Method is not subject to interferences from organic species. While we suspect that the interference that we have encountered may be due to a release of a sulfur-containing or other inorganic gas through the membrane from the acidic flow stream, we cannot be sure that it is not caused by a volatile organic compound.

Response: EPA does not know if the interference that the commenter is experiencing is a volatile organic compound or a sulfur-containing or other inorganic gas. To date, EPA has not had any reports of interference from organic species. However, one of the developers of Method OIA–1677 speculates that if the electrochemistry at the silver working electrode and the volatility of certain organic species are examined, some interferences from organic species could be encountered. For examples, acetonitrile (CH_3CN) could possibly pass through the membrane and would almost certainly aid the oxidation of silver at the

working potential, producing an analytical signal; low molecular weight aliphatic mercaptans might also pass through the membrane and be active at the working electrode. As a result of these possibilities, EPA believes that it is appropriate to modify its previous statement to state that interference from organic compounds may be possible but that EPA does not have evidence of such organic interferences to date.

Comment: Use of Method OIA–1677 in the precious metal ore process offers significant improvements over CATC methods with respect to interferences from thiocyanate, sulfide, carbonates, formaldehyde, and metals. While CATC might result in lower cyanide concentrations due to lower metal recoveries, the advantages of Method OIA–1677 with respect to the above interferences should be clarified in the preamble. Mines should be given every opportunity to use the method that provides the best defensible analytical results for those cyanide complexes present in precious metal ore process solutions.

Response: EPA recognizes the significant advantages of Method OIA–1677 over existing methods with respect to interferences. Section IIB–D of the preamble at proposal discussed the interference problems with current methods and the advantage of Method OIA–1677 (63 FR 36811–36812). In section IIE of that preamble, EPA stated that use of Method OIA–1677 will likely produce a lower result than the CATC methods because it is nearly interference free. EPA's approval of Method OIA–1677 includes its use for the precious metal ore processing industry and for other industries.

H. Alternative Methods

Comment: Any effort funded by EPA and its contractors should result in the technology and methodology that is freely available and fully described via publications of voluntary consensus standards bodies or via scientific literature. Method OIA–1677 is neither of these things. The ASTM method is, by the Rule's own admission, required to take precedence over any method developed by a single vendor by the requirement of the National Technology Transfer and Advancement Act (NTTAA) of 1995.

Response: EPA did not fund the development of Method OIA–1677. Other than identifying test samples and offering assistance to the method developer on the requirements for validation described in EPA's streamlining proposal (62 FR 13976, March 28, 1997), EPA did not participate in the development of Method OIA–1677. Details of the technology in Method OIA–1677 were published in the scientific literature (Environmental Science and Technology, 1995, 29, 426–430). The NTTAA requires EPA to consider methods from voluntary consensus standard bodies, and to provide a justification if an available method is not selected.

To date, ASTM has not approved a flow-injection, ligand-exchange method for available cyanide. If ASTM or any other voluntary consensus standard body (VCSB) approves such a method and the quality control and other features of the method meet EPA's requirements, EPA may propose the VCSB method in a future rulemaking.

I. Data Quality

Comment: In 6 of 9 samples in Table 3 on page 36823, the added CN concentrations are 30 times higher than the background concentrations of cyanide in the sample. This ratio seems excessive for calculating spike recoveries.

Response: Because all samples tested, except the mining tailings pond effluent, had low or undetectable concentrations of cyanide, EPA recommended to the method developer that the range of concentrations tested in the round-robin should encompass the dynamic range of the method (2 to 5000 µg/L) so that the efficacy of the ligand-exchange reagents in high concentration samples could be evaluated and so that spike recoveries could be determined reliably. Therefore, some samples were spiked at concentrations considerably above the background concentration of cyanide.

Comment: Method OIA–1677 will not improve data quality.

Response: Method OIA–1677 is less susceptible to interferences than other methods for available cyanide, including CATC and WAD methods. Therefore, Method OIA–1677 will not subject dischargers to violations for those instances in which an interference with a CATC or WAD method would inflate a cyanide concentration above a permit limit. EPA believes that any method that is less susceptible to interferences and thereby comes closer to determining the true value of a pollutant will improve the quality of analytical data.

J. Laboratory Safety

Comment: EPA promotes the use of mercury cyanide for spiking without any discourse on laboratory safety or disposal problems. Current methods use potassium cyanide for spiking whereby cyanide is the only hazardous substance. However, with mercuric cyanide, there is not only cyanide to consider, but now also mercury. Does it make sense to replace a ''singly'' hazardous compound with a ''doubly'' hazardous compound?

Response: Mercuric cyanide was chosen because the CATC and WAD methods do not completely recover cyanide from these species, whereas Method OIA–1677 does, and because mercuric cyanide exercises the ligand-exchange reagents used in Method OIA–1677. All methods for determination of cyanide generate cyanide waste and the metal in these wastes is not identified in cyanide determination. Therefore the wastes from all methods must be treated as hazardous unless it is shown that cyanide is not present above disposable levels. Section 14.0 of Method OIA–1677 requires proper handling and disposal of these wastes.

K. Miscellaneous

Comment: To date, there have not been contract laboratories set up to run proposed Method OIA–1677 and there are no commercial laboratories in the U.S. set up to run the new test method.

Response: There are numerous laboratories in the U.S. that have the instrumentation and can run Method OIA–1677 as written. Nine of these laboratories participated in the round-robin study. Generally, laboratory capacity expands after a method is approved for use in EPA's programs. EPA is not requiring use of Method OIA–1677 in any rules or withdrawing approval for use of any of the methods presently approved. EPA is simply approving another method for use at 40 CFR part 136.

Comment: The text clearly states that samples with cyanide concentrations higher than 2 mg/L will be reported with a high bias whenever Method OIA–1677 is used. For samples with cyanide concentrations less than 0.2 mg/L, the CATC and Method OIA–1677 methods report approximately the same values. Because most environmental samples have cyanide concentrations less than 0.2 mg/L, *e.g.*, the Safe Drinking Water Act (SDWA) maximum contaminant level (MCL), what is the advantage of Method OIA–1677?

Response: The bias that occurs with high concentrations of certain cyanides was addressed above in section IV C. Regarding the advantage of Method OIA–1677 over other approved methods for cyanides, EPA has documented through the round-robin validation study that Method OIA–1677 offers significant advantages over existing distillation-based methods, including speed, freedom from interferences that

may occur in highly complex wastewater matrices, and complete recovery of metal cyano complexes.

Comment: What is the validity of the section III C item 5 of the preamble: ''EPA considers Method OIA–1677 to be a significant addition to the suite of analytical testing procedures for available cyanide because it * * * (5) shortens sample analysis time'' because of the 120 second analysis time of Method OIA–1677 versus the 90 second analysis time of another cyanide analysis method (Alpken's Colorimetric RFA)?

Response: Method OIA–1677 has the shortest analysis time of any method approved for determination of available cyanide. Alpken's Colorimetric RFA method, cited in the comment, is not approved for use at 40 CFR part 136.

V. References

1. Solujic, Lj.; Milosavljevic, E.B.; Hendrix, J.L.; Straka, M.R.; Gallagher, N.P.; ''Cyanide Determination Methods: Distillation vs. Flow Injection Analysis,'' Randol Gold Forum '96, Squaw Creek, CA, April, 1996, 167–173.

2. Beck, M.T.; ''Critical Survey of Stability Constants of Cyano Complexes,'' Pure & Appl. Chem. 1987, 59, 1703–1720.

3. Milosavljevic, E.B.; Solujic, Lj.; Hendrix, J.L.; ''Rapid Distillationless 'Free Cyanide' Determination by a Flow Injection Ligand Exchange Method,'' Environ. Sci. & Technol. 1995, 29, 426–430.

4. J.C. Wilmot, *et al.*; ''Formation of Thiocyanate During Removal of Sulfide as Lead Sulfide Prior to Cyanide Determination,'' Analyst, 1996, 121, 799–801.

5. Goldberg, M.M.; Clayton, C.A.; Potter, B.B.; ''The Effect of Multiple Interferences on the Determination of Total Cyanide in Simulated Electroplating Waste by EPA Method 335.4,'' Proceedings of The Seventeenth Annual EPA Conference On Analysis Of Pollutants in the Environment, Norfolk, VA, 1994, pp. 395–427.

6. Goldberg, M.M. and Clayton, C.A.; ''Effects of Metals, Ligands, and Oxidants on Cyanide Analysis: Gold Mining Waste Case Study,'' Proceedings of The Eighteenth Annual EPA Conference On Analysis Of Pollutants in the Environment, Norfolk, VA, 1995, pp. 87–126.

VI. Regulatory Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 October 4, 1993), the Agency must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Unfunded Mandates Reform Act

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. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or Tribal governments or the private sector. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule would impose no enforceable duty on any State, local or Tribal governments or the private sector, nor would it significantly or uniquely affect them. This rule makes available an additional analytical test procedure which would merely augment the testing options and standardize the procedures when testing is otherwise required by a regulatory agency. Therefore, today's rule is not subject to the requirements of sections 202, 203 and 205 of UMRA.

C. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, we defined: (1) Small businesses according to SBA size standards; (2) small governmental jurisdictions as governments of a city, county, town, school district or special district with a population less than 50,000; and (3) small organizations as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. This final rule approves an additional testing procedure for the measurement of available cyanide in wastewater. However, this regulation does not require its use. Rather, the final rule merely provides another option because any of the testing procedures currently approved at 40 CFR part 136 can be used if monitoring is otherwise required for this pollutant under the CWA.

D. Paperwork Reduction Act

This rule contains no information collection requirements. Therefore, no information collection request has been submitted to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*.

E. Submission to Congress and the General Accounting Office

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**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on January 31, 2000.

F. National Technology Transfer and Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule involves technical standards. Therefore, the Agency conducted a search to identify potentially applicable voluntary consensus standards. However, we identified no such standards for measuring ''available cyanide,'' and none were brought to our attention in comments. Therefore, EPA has decided to use Method OIA–1677.

The American Society of Testing and Materials (ASTM) is in the balloting process for approval of a voluntary consensus standard method for ''available cyanide.'' The ASTM method may differ slightly from Method OIA–1677. If ASTM or another voluntary consensus standard body approves such a method and EPA determines that the method is suitable for compliance monitoring and other purposes, EPA would promulgate the method in a subsequent rulemaking.

G. Executive Order 13045

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 Executive Order 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 Executive Order 13045 because it is not economically significant as defined under Executive Order 12866.

H. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule 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, as specified in Executive Order 13132. Today's rule merely approves an additional testing procedure for the measurement of available cyanide in wastewater. Today's action does not, however, require use of the alternative method. The rule provides laboratory analysts with another option to the list of currently approved testing procedures 40 CFR part 136, which can be used if monitoring is otherwise required for this pollutant under the CWA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

I. Executive Order 13084

Under Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments,'' EPA may not issue a regulation that is not required by statute, that significantly 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, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to 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. Further, this rule does not impose substantial direct compliance costs on Tribal governments. This rule makes available an additional testing procedure which would be used when testing is otherwise required by a regulatory agency to demonstrate compliance with permit limits for cyanide. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 136

Environmental protection, Analytical methods, Incorporation by reference, Monitoring, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: December 20, 1999.

Carol M. Browner,

Administrator.

In consideration of the preceding, EPA amends 40 CFR part 136 as follows:

PART 136—GUIDELINES ESTABLISHING TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS

1. The authority citation of 40 CFR part 136 continues to read as follows:

Authority: Secs. 301, 304(h), 307, and 501(a) Pub. L. 95–217, 91 Stat. 1566, *et seq.* (33 U.S.C. 1251, *et seq.*) (The Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977).

2. Section 136.3 is amended in paragraph (a), Table IB.—List of Approved Inorganic Test Procedures, by revising entry 24 and adding a new footnote 44 and by adding a new paragraph (b)(43) to read as follows:

§ 136.3 Identification of test procedures.

(a) * * *

TABLE IB.—LIST OF APPROVED INORGANIC TEST PROCEDURES

Parameter, units and method	Reference (method number or page)				
	EPA [1 35]	STD methods 18th ed.	ASTM	USGS [2]	Other
* * *	*	*	*	*	
24. Available Cyanide, mg/L					
Cyanide amenable to chlorination (CATC), Manual distillation with $MgCl_2$ followed by titrimetry or spectrophotometry.	335.1	4500–CN G	D2036–91(B).		
Flow injection and ligand exchange, followed by amperometry.					[44] OIA–1677
* * *	*	*	*	*	

[1] ''Methods for Chemical Analysis of Water and Wastes,'' Environmental Protection Agency, Environmental Monitoring Systems Laboratory-Cincinnati (EMSL–CI), EPA–600/4–79–020, Revised March 1983 and 1979 where applicable.

[2] Fishman, M.J., *et al.*, ''Methods for Analysis of Inorganic Substances in Water and Fluvial Sediments,'' U.S. Department of the Interior, Techniques of Water—Resource Investigations of the U.S. Geological Survey, Denver, CO, Revised 1989, unless otherwise stated.

* * * * * * *

[35] Precision and recovery statements for the atomic absorption direct aspiration and graphite furnace methods, and for the spectrophotometric SDDC method for arsenic are provided in Appendix D of this part titled, ''Precision and Recovery Statements for Methods for Measuring Metals.''

* * * * * * *

[44] Available Cyanide, Method OIA–1677 (Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry), ALPKEM, A Division of OI Analytical, P.O. Box 9010, College Station, TX 77842–9010.

(b) * * *

(43) Method OIA–1677, Available Cyanide by Flow Injection, Ligand Exchange, and Amperometry. August 1999. ALPKEM, OI Analytical, Box 648, Wilsonville, Oregon 97070 (EPA–821–R–99–013). Available from: National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Publication No. PB99–132011. Cost: $22.50. Table IB, Note 44.

[FR Doc. 99–33627 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6516–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA), Region 8, announces the deletion of the Monticello Radioactive Contaminated Properties Site (Site), located in Monticello, Utah, from the National Priorities List (NPL). The NPL is the National Oil and Hazardous Substances Pollution and Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). EPA, with the preliminary concurrence of the State of Utah Department of Environmental Quality (UDEQ), has determined that responsible parties have implemented all appropriate response actions required and that no further response at the Site is appropriate.

DATES: This direct final rule will be effective February 28, 2000, unless EPA receives significant adverse or critical comments by January 31, 2000. If significant adverse or critical comments are received, EPA will publish a timely withdrawal of the direct final rule in the

Federal Register informing the public that the Rule will not take effect.

ADDRESSES: Comments may be mailed to: Mr. Jerry Cross (8EPR–F), Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone (303) 312–6664.

Information repositories: Comprehensive information on the Site is available for viewing and copying at the Site information repositories at the following locations: U.S. Department of Energy Grand Junction Office Public Reading Room, 2597 B¾ Road, Grand Junction, Colorado 81503, (970) 248–6344; Monticello City Offices, 17 North First East Street, Monticello, Utah 84535, (435) 587–2271.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Cross (8EPR–F), Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6664; Mr. Joel Berwick, Project Manager, U.S. Department of Energy, 2597 B¾ Road, Grand Junction, Colorado, 81503, (970) 248–6020; Mr. David Bird, Project Manager, State of Utah Department of Environmental Quality, 168 North 1950 West, Salt Lake City, Utah, 84116, (801) 536–4219.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis For Site Deletion
V. Action

I. Introduction

The United States environmental Protection Agency (EPA), Region 8, announces the deletion of the releases from the Monticello Radioactive Contaminated Properties Site (Site), located in Monticello, Utah, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As stated in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for further remedial actions financed by the Hazardous Substances Superfund (Fund), should future conditions at a site warrant such action.

EPA will accept comments concerning this action for 30 days after publication of this document in the **Federal Register**. If no significant adverse or critical comments are received, the Site will be deleted from the NPL effective February 28, 2000. However, if significant adverse or critical comments are received within the 30 day comment period, EPA will publish a notice of withdrawal of this direct final rule within 60 days of publication of this direct final rule. All public comments received will be addressed in a subsequent final rule, if appropriate, based on the Proposal to Delete located in the proposed rules section of this **Federal Register**. If, after consideration of the public comments, EPA proceeds with a subsequent final rulemaking, a second public comment period will not be instituted. Any parties interested in commenting should do so at this time.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures EPA is using for this action. Section IV discusses the Site and how the Site meets the deletion criteria. Section V states EPA's action to delete the Site from the NPL.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA must consider, in consultation with the state in which the release was located, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a release is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site that has been deleted from the NPL, the site will be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to the deletion of the Site:

(1) All appropriate response under CERCLA has been implemented and no further action by EPA is appropriate;

(2) EPA provided the State of Utah at least 30 working days for review of this Direct Final Rule prior to its publication in the **Federal Register**.

(3) Concurrent with publication of this direct final rule, a notice of availability of this action is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local officials and other interested parties. The notice of availability announces the 30-day public comment period concerning the deletion.

(4) EPA has placed copies of information supporting the deletion in the information repositories which are available for public inspection and copying.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist EPA management.

EPA Region 8 will accept and evaluate public comments on this direct final rule before making a final decision. If necessary, EPA will prepare a responsiveness summary to address any significant public comments received. If no significant adverse or critical comments are received during the comment period, the Site will be deleted from the NPL effective February 28, 2000.

IV. Basis For Site Deletion

The following information provides the EPA's rationale for deleting this Site from the NPL:

A. Site Background and History

The Site, which is also commonly referred to as the Monticello Vicinity Properties Site, is located in the City of Monticello, San Juan County, Utah, approximately 65 miles south of Moab, Utah. The Site consists of private and commercial properties covering approximately nine square miles in and around the City of Monticello. Four hundred and twenty-four (424) properties, divided into Operable Units (OUs) A through H, are included in the Site. The properties are used for residential, commercial, and agricultural purposes. Montezuma Creek, a largely seasonal stream, traverses several properties on the south end of the Site before it flows east

through the former Monticello Millsite and eventually terminates in the San Juan River.

The source of the contamination that has been remediated at the Site was the original Monticello Millsite. The Millsite was constructed with government funding by the Vanadium Corporation of America (VCA) in 1941 to provide vanadium, a steel hardener, for the Manhattan Engineer District during World War II. The VCA operated the Millsite until early 1944 and again from 1945 through 1946, producing vanadium, as well as a waste uranium-vanadium sludge. Vanadium is found in the same ore with uranium and radium and, as a result, the processed wastes contain significant uranic radioactivity. In 1948, the U.S. Atomic Energy Commission (AEC) purchased the Site. Uranium and vanadium milling operations began again in 1949 under the auspices of the AEC. Vanadium milling operations ceased in 1955. Uranium milling continued until 1960 when the Millsite was permanently closed.

Four tailings piles, the result of the ore milling process, were left at the Millsite following the cessation of milling operations. Contaminated dust from the Millsite tailings piles was wind deposited throughout the City of Monticello and surrounding areas, and tailings from the Millsite were used as construction material and backfill on properties in and around the City. The main contaminants of concern include radium-226 and associated radon gas. The contaminants posed potential threats to human health and the environment resulting from exposure to radiation emanating from soils contaminated with uranium mill tailings and from radon gas inhalation.

B. Remedial Investigation and Feasibility Study Activities

The United States Department of Energy (DOE) initiated cleanup activities at the Site in 1984 pursuant to the DOE Surplus Facilities Management Program. In conjunction with this effort, and prior to the Site being added to the NPL, DOE commenced property investigations and completed remedial actions on some of the properties at the Site. EPA proposed the Site for placement on the NPL on October 15, 1984, and thereafter added it to the NPL on June 10, 1986. After the Site was added to the NPL, DOE, pursuant to section 120 of CERCLA, 42 U.S.C. 9620, entered into a Federal Facilities Agreement (FFA) with EPA and UDEQ. The FFA became effective on or about February 1989. Among other things, the FFA required that DOE perform a Remedial Investigation /Feasibility Study (RI/FS) or functional equivalent at the Site. After reviewing information submitted by DOE documenting the efforts it had already performed at the Site, EPA and UDEQ concluded that DOE had in fact performed the functional equivalent of an RI/FS at the Site. The Monticello Vicinity Properties Equivalency of Documentation was approved on May 24, 1984.

DOE is the Responsible Party and the lead agency for remediation at the Site, and provides principal staff and resources to plan and implement response actions. Responsibility for oversight of activities performed by DOE under the FFA were shared by EPA and UDEQ. EPA is the lead regulatory agency with ultimate responsibility and authority, but shares its decision making with UDEQ.

C. Record of Decision

A Record of Decision (ROD) for the Site was issued by EPA on November 29, 1989. The ROD identified the following routes of exposure to humans:

- Inhalation of radon-222 and daughter products that result from the continuous decay of radium-226. The greatest hazard to human health results from the inhalation of radon-222 daughters which emit alpha radiation that affects the lungs.
- External whole-body gamma exposure directly from radionuclides in the mill tailings.
- Inhalation and ingestion of windblown mill-tailings dust.
- Ingestion of groundwater and surface water contaminated with radioactive elements, primarily radium-226.
- Ingestion of food potentially contaminated through uptake and concentration of radioactive elements through plants and animals.

Details of the health risks are found in the Monticello Vicinity Properties Equivalency of Documentation, specifically within the *Environmental Evaluation on Proposed Cleanup Activities at Vicinity Properties Near the Inactive Uranium Millsite, Monticello, Utah, Appendix B,* August 1985. The evaluation determined the potential ingestion pathways of food, groundwater, and surface water to be insignificant exposure routes. The ROD identified exposure in the lungs to radon and radon daughters, and exposure to external gamma radiation as presenting imminent and substantial endangerment to public health and the environment.

The selected remedy for cleanup of the Site was the removal of residual radioactive contaminants, restoration with clean materials, and the modification of existing structures to isolate radon sources from inhabitants. Cleanup activities required excavation and, in some cases, demolition of sidewalks, sheds, patios, and other improvements. All affected structures and other improvements were reconstructed or the owner was compensated based on the current value of the structure or other improvement.

D. Characterization of Risk

Property Completion Reports (PCR) were prepared for each remediated property in the Site. Each PCR included the legal description of the property, the name and address of the owner, remediation activities performed, and a summary of the assessment results and verification surveys. As documented in the PCRs, all properties at the Site were either (1) remediated to the standards set forth in 40 CFR part 192, subpart B and DOE guidelines for Residual Radioactive Material at Formerly Utilized Sites Remedial Action Program (FUSRAP Guidance); or (2) remediated, based on a site specific risk assessment, to the Supplemental Standards provided for in 40 CFR 192.22. If Supplemental Standards were applied to a property, appropriate institutional controls in the form of land use restrictions were also instituted. Compliance with the clean-up standards are documented in each of the individual PCRs. EPA and UDEQ have approved all 424 PCRs for the Site covering Operable Units A through H. Supplemental Standards were applied to one privately-owned parcel, four parcels associated with the Highway 191 embankment owned by the Utah Department of Transportation, to City Streets/Utilities, and the Highway 191 and Highway 666 rights-of-way. Compliance with the institutional controls required for these properties will be monitored under the DOE Long-Term Surveillance and Maintenance Plan (LTSM) and the 5-year reviews required under CERCLA and the FFA. The remedial actions taken at the Site have reduced the environmental risk for approximately 2,200 people within an eight-mile radius of the City of Monticello, Utah.

E. Remedial Action Activities

EPA standards for Remedial Action at Inactive Uranium Processing Sites (40 CFR part 192) and DOE FUSRAP Guidance are Applicable or Relevant and Appropriate Requirements (ARARs) for the selected remedy. Remedial activities conducted at the Site include:

- Excavation and disposal of all contaminated soil and construction materials exceeding the standards in 40

CFR part 192, subpart B (except where Supplemental Standards were applied). Contaminated material from the properties was disposed of in a repository constructed approximately one mile south of the former Monticello Millsite, a separate NPL Site. The repository contains a double HDPE liner with a leak detection system, meeting the functional equivalency of a Resource Conservation and Recovery Act, Subtitle C facility. The repository cover will be 8.5 feet thick, including a radon barrier.

- After removal of contaminated material and before backfilling, verification surveys were performed in order to demonstrate compliance with the 40 CFR part 192, subpart B Standards. For the Supplemental Standards properties, contamination was removed to risk-based clean-up levels corresponding with future land use scenarios.
- Placement of backfill and reconstruction to a physical condition comparable to that which existed before remedial action activities, and
- Post-construction monitoring of radon levels, where applicable, to verify conformance to 40 CFR part 192 standards.

Supplemental Standards were selected for contaminated materials located on one privately-owned parcel, four parcels associated with the Highway 191 embankment owned by the Utah Department of Transportation, on City Streets/Utilities, and the Highway 191 and Highway 666 rights-of-way. Supplemental Standards were applied because:

- The remedial action would have caused excessive environmental harm when compared to health benefits, and/or
- Because the cost of remedial action at the Site would have been unreasonably high relative to long-term benefits for contamination that does not pose a clear present or future hazard.

On July 1, 1999, EPA approved, with UDEQ concurrence, DOE's applications for Supplemental Standards per 40 CFR part 192.

F. Pre-Final Inspection Activities

DOE's independent verification contractor (IVC) for Site remediation activities was Oak Ridge National Laboratory (ORNL) in Grand Junction, Colorado. ORNL provided 100 percent Type A verification (document review) of the U.S. Department of Energy Grand Junction Office (DOE–GJO) Remedial Action Contractor (RAC) remediation activities, and 10 percent Type B verifications, which included verification of field surveys and measurements, physical sampling, and laboratory analyses. EPA and UDEQ also conducted independent verification surveys on at least 10 percent of the properties.

Compliance with the clean-up standards are documented in each of the individual PCRs generated for the 424 Site properties. EPA and UDEQ have approved all of the PCRs for the Site. Remedial Action Reports (RARs) have been prepared for OUs A through H. All RARs have been accepted by EPA and UDEQ.

G. Long-Term Surveillance and Maintenance

OU H contains five properties which were approved for Supplemental Standards. One is a privately-owned parcel with pinon/juniper woodlands and four are associated with the Highway 191 embankment owned by the Utah Department of Transportation. Additionally, Supplemental Standards were applied to streets and utilities in the City of Monticello rights-of-way and Highways 191 and 666 rights-of-way. The City streets and utilities and the highway rights-of-way have not been included in OU's A through H, but are located within the City of Monticello and therefore, are considered part of the Site. The remediation of OU H was completed on December 10, 1998. The remediation consisted of removal of contaminated material to risk-based clean-up levels corresponding with intended future land-use scenarios. Since remediation of the OU H properties was based on Supplemental Standards that are not as protective as the 40 CFR part 192, subpart B standards that were applied to the rest of the Site properties, all OU H properties will be subject to DOE's LTSM and 5-Year Reviews required by section 121(c) of CERCLA, 42 U.S.C. 9621(c), and the FFA. The next CERCLA 5-Year Review report for these Supplemental Standards properties will be completed during February 2002, which is 5 years after the initial CERCLA 5-Year Review completed on February 13, 1997.

H. Close Out Report

The Close Out Report (COR) for the Site, completed September 2, 1999, detailed that all Site response actions were accomplished in accordance with CERCLA and consistent with the NCP. Following review of all PCRs, RARs and the COR, EPA and UDEQ agree that conditions at the Site do not pose any unacceptable risks to human health or the environment.

Based on the completion of the activities listed above, EPA and UDEQ conclude that the responsible party, DOE, has implemented all appropriate response actions required and that the Site should be deleted from the NPL.

I. Community Involvement

Public participation activities required by section 113(k) of CERCLA, 42 U.S.C. 9613(k), and section 117 of CERCLA, 42 U.S.C. 9617, have been satisfied. Documents which EPA relied on for Site deletion from the NPL are available to the public in the information repositories.

V. Action

EPA, with the concurrence of the State of Utah, has determined that the Site poses no significant threat to human health or the environment, that all appropriate responses under CERCLA at the Site have been completed, and that no further response actions, other than five-year reviews and maintaining institutional controls, are necessary. Therefore, EPA is deleting this Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking this action without prior proposal. This Direct Final Rule will become effective February 28, 2000, unless EPA receives significant adverse or critical comments by January 31, 2000. If significant adverse or critical comments are received, EPA will publish a timely withdrawal of this action in the **Federal Register** informing the public that the Rule will not take effect.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Natural resources, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: December 15, 1999.

William P. Yellowtail,

Regional Administrator, Region 8.

For the reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to Part 300 is amended under Utah (''UT'') by removing the site name ''Monticello

Radioactive Contaminated Prop.'' and the city/county ''Monticello.''

[FR Doc. 99–33523 Filed 12–29–99; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[CC Docket No. 96–45; FCC 99–396]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document concerning the Federal-State Joint Board on Universal Service makes a procedural change to the new high-cost universal service support mechanism for non-rural carriers adopted in the High-Cost Methodology Order on October 21, 1999. The change concerns the targeting of high-cost support amounts to individual wire centers, which was set to occur beginning in the first quarter of 2000.

DATES: Effective December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Jack Zinman, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Nineteenth Order on Reconsideration in CC Docket No. 96–45 released on December 17, 1999. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW, Washington, DC 20554.

I. Introduction

1. In this Order, the Commission on its own motion makes a procedural change to the new high-cost universal service support mechanism for non-rural carriers adopted in the *High-Cost Methodology Order,* 64 FR 67416 (December 1, 1999), on October 21, 1999, and scheduled to become effective on January 1, 2000. The change concerns the *targeting* of high-cost support amounts to individual wire centers, which was set to occur beginning in the first quarter of 2000. Because non-rural carriers will be filing wire center line count data for the first time on December 30, 1999, the Commission will not have a sufficient opportunity to review and verify that data to enable targeting during the first and second quarters of 2000. We therefore find that support payments targeted to the wire center level shall be issued beginning with payments provided in the third quarter of 2000. This change affects only the *targeting* of support during the first and second quarters of 2000, and does not alter the January 1, 2000 effective date of the new mechanism or the aggregate *amount* of support provided to each non-rural carrier under the new mechanism.

II. Discussion

2. We conclude that support payments should be calculated using the targeting approaches previously adopted. We conclude, however, that the provision of forward-looking support should be deferred until the third quarter of 2000. Until targeted support is provided in the third quarter of 2000, interim hold-harmless support shall be provided at the study-area level. Because non-rural carriers will be formally submitting wire center line count data for the first time on December 30, 1999, we do not believe that there will be sufficient time to analyze and verify the data before carriers are scheduled to receive targeted interim hold-harmless support in the first quarter of 2000 and targeted forward-looking support in the second quarter of 2000. Our decision to postpone the targeting of support will allow us to work with carriers and USAC to address any anomalies in carriers' first-time filings and to ensure that the wire center line count data are valid and sufficiently accurate for targeting purposes. We emphasize, however, that this decision does not change the January 1, 2000 effective date of the new mechanism or the aggregate amount of high-cost support provided to non-rural carriers under the new mechanism.

3. We therefore reconsider and amend on our own motion §§ 54.313(c) and 54.311(b) of our rules, as set forth. Specifically, we delete § 54.313(c)(1)(i) of our rules, thereby eliminating the January 1, 2000 state certification option, which would have permitted any carrier in a state that filed a certification by that date to receive targeted forward-looking support for the first and second quarters of 2000 in the second quarter of 2000. The elimination of this filing option, however, does *not* eliminate a carrier's ability to obtain forward-looking support for the first and second quarters of 2000. Under the rules adopted in the *High-Cost Methodology Order,* if a state files the requisite certification by April 1, 2000, carriers subject to that certification shall receive forward-looking support for the first and third quarters of 2000 in the third quarter of 2000, and forward-looking support for the second and fourth quarters of 2000 in the fourth quarter of 2000. We also amend § 54.311(b) of our rules, so that for the first and second quarters of 2000, non-rural carriers eligible for interim-hold harmless support shall receive such support at the study-area level, rather than the wire center level. Targeting of interim hold-harmless support shall occur at the wire center level beginning in the third quarter of 2000.

4. We also correct an oversight in the rules that we adopted in the *High-Cost Methodology Order* concerning the calculation of the expense adjustments for non-rural carriers. In that order, we amended § 36.631(d) of our rules so that the expense adjustment for study areas reporting more than 200,000 working loops would be calculated pursuant to the new forward-looking support mechanism or the interim hold-harmless provision, whichever is applicable, effective January 1, 2000. We inadvertently did not make a similar amendment to § 36.631(c) of our rules, which concerns study areas reporting 200,000 or fewer working loops, even though a small number of non-rural carriers serve such study areas. To remedy this oversight, we now amend § 36.631(c) so that the expense adjustment for non-rural carriers serving study areas reporting 200,000 or fewer working loops will be calculated pursuant to the new forward-looking support mechanism or the interim hold-harmless provision, whichever is applicable, effective January 1, 2000.

III. Procedural Matters

A. Regulatory Flexibility Act Certification

5. The Regulatory Flexibility Act (RFA) requires an Initial Regulatory Flexibility Analysis (IRFA) whenever an agency publishes a notice of proposed rulemaking, and a Final Regulatory Flexibility Analysis (FRFA) whenever an agency subsequently promulgates a final rule, unless the agency certifies that the proposed or final rule will not have ''a significant economic impact on a substantial number of small entities,'' and includes the factual basis for such certification. The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field

of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA defines a small telecommunications entity in SIC code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees.

6. In the *High-Cost Methodology Order*, the Commission certified pursuant to the RFA that the final rules adopted in that order would not have a significant economic impact on a substantial number of small entities. We concluded that the *High-Cost Methodology Order* adopted a final rule affecting only the amount of high-cost support provided to non-rural LECs. Non-rural LECs generally do not fall within the SBA's definition of a small business concern because they are usually large corporations or affiliates of such corporations. In a companion Further Notice of Proposed Rulemaking adopted in this docket, the Commission prepared an IRFA seeking comment on the economic impacts on small entities. No comments were received in response to that IRFA.

7. The rule changes adopted in this order are merely procedural and affect only the timing of the implementation of certain aspects of the *High-Cost Methodology Order*, and the correction of an oversight in the rules accompanying the *High-Cost Methodology Order*. The changes adopted in this order will affect only non-rural LECs. As mentioned, non-rural LECs generally do not fall within the definition of a small business concern. Therefore, we certify pursuant to section 605(b) of the RFA, that the final rules adopted in this order will not have a significant economic impact on a substantial number of small entities. The Consumer Information Bureau, Reference Information Center, will send a copy of the *Nineteenth Order on Reconsideration*, including a copy of this final certification, to the Chief Counsel for Advocacy of the SBA in accordance with the RFA. In addition, this certification and order will be published in the **Federal Register**. Finally, the Commission's Consumer Information Bureau, Reference Information Center, will send a copy of the *Nineteenth Order on Reconsideration*, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.

B. Effective Date of Final Rules

8. We conclude that the amendments to our rules adopted herein shall be effective December 30, 1999. In this order, we make minor amendments to the rules adopted in the *High-Cost Methodology Order*, which implement a new forward-looking high-cost support mechanism, effective January 1, 2000. Making the amendments effective 30 days after publication in the **Federal Register** would jeopardize the required January 1, 2000 implementation date. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the **Federal Register**.

IV. Ordering Clauses

9. The authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, and § 1.108 of the Commission's rules, the Ninetheenth Order on Reconsideration is adopted.

10. Parts 36 and 54 of the Commission's Rules, 47 CFR 36 and 54, are amended as set forth, effective December 30, 1999.

11. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Nineteenth Order on Reconsideration, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 36

Reporting and recordkeeping requirements, Telephone.

47 CFR Part 54

Universal service.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

Parts 36 and 54 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 403, and 410 unless otherwise noted.

2. Amend § 36.631 by revising paragraph (c) introductory text to read as follows:

§ 36.631 Expense adjustment.

* * * * *

(c) Beginning January 1, 1998, for study areas reporting 200,000 or fewer working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (c)(1) through (2). After January 1, 2000, the expense adjustment (additional interstate expense allocation) for non-rural telephone companies serving study areas reporting 200,000 or fewer working loops pursuant to § 36.611(h) shall be calculated pursuant to § 54.309 of this Chapter or § 54.311 of this Chapter (which relies on this part), whichever is applicable.

* * * * *

PART 54—UNIVERSAL SERVICE

3. 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.

4. Amend § 54.311 by revising paragraph (b) to read as follows:

§ 54.311 Interim hold-harmless support for non-rural carriers.

* * * * *

(b) *Distribution of Interim Hold-Harmless Support Amounts.* Until the third quarter of 2000, interim hold-harmless support shall be distributed pursuant to part 36 and, if applicable, § 54.303 of this subpart. Beginning in the third quarter of 2000, the total amount of interim hold-harmless support provided to each non-rural incumbent local exchange carrier within a particular State pursuant to paragraph (a) shall be distributed first to the carrier's wire center with the highest wire center average FLEC per line until that wire center's average FLEC per line, net of support, equals the average FLEC per line in the second most high-cost wire center. Support shall then be distributed to the carrier's wire center with the highest and second highest wire center average FLEC per line until those wire center's average FLECs per line, net of support, equal the average FLEC per line in the third most high-cost wire center. This process shall continue in a cascading fashion until all of the interim hold-harmless support provided to the carrier has been exhausted.

* * * * *

5. Amend § 54.313 by revising paragraph (c) to read as follows:

§ 54.313 State certification.

* * * * *

(c) *Filing Deadlines.* In order for a non-rural incumbent local exchange carrier in a particular State, and/or an eligible telecommunications carrier serving lines in the service area of a non-rural incumbent local exchange carrier, to receive federal high-cost support, the State must file an annual certification, as described in paragraph (b), with both the Administrator and the Commission. Support shall be provided in accordance with the following schedule:

(1) *First Program Year (January 1, 2000–December 31, 2000).* During the first program year (January 1, 2000–December 31, 2000), a carrier in a particular State shall receive support pursuant to § 54.311 of this subpart. If a State files the certification described in this section during the first program year, carriers eligible for support pursuant to § 54.309 shall receive such support pursuant to the following schedule:

(i) *Certifications filed on or before April 1, 2000.* Carriers subject to certifications that apply to the first and second quarters of 2000, and are filed on or before April 1, 2000, shall receive support pursuant to § 54.309 of this subpart for the first and third quarters of 2000 in the third quarter of 2000, and support for the second and fourth quarters of 2000 in the fourth quarter of 2000. Such support shall be net of any support provided pursuant to § 54.311 of this subpart for the first or second quarters of 2000.

(ii) *Certifications filed on or before July 1, 2000.* Carriers subject to certifications filed on or before July 1, 2000, shall receive support pursuant to § 54.309 of this subpart for the fourth quarter of 2000 in the fourth quarter of 2000.

(iii) *Certifications filed after July 1, 2000.* Carriers subject to certifications filed after July 1, 2000, shall not receive support pursuant to § 54.309 of this section in 2000.

* * * * *

[FR Doc. 99–33766 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[CS Docket No. 98–201; FCC 99–278]

Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document revises the rule applicable to the antenna and equipment testing procedure of the collection of field strength data to determine television broadcast signal intensity at individual locations. The action was taken in response to petitions filed by DIRECTV and EchoStar in connection with the Satellite Home Viewer Act. This action is intended to allow for flexibility in testing and reduced cost to the public.

DATES: Effective December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Jay Heimbach at (202) 418–7200 or via Internet at jheimbac@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order on Reconsideration, FCC 99–278, CS Docket No. 98–201, adopted October 5, 1999 and released October 7, 1999. The full text of this Notice is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service (''ITS''), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via internet at www.fcc.gov/csb. For copies in alternative formats, such as Braille, audio cassette or large print, please contact Sheila Ray at ITS.

Paperwork Reduction Act: The requirements adopted in this Order on Reconsideration have been analyzed with respect to the Paperwork Reduction Act of 1995 (the ''1995 Act'') and found to impose no new or modified information collection requirements on the public.

Synopsis of Report and Order

Introductory Background

1. In this proceeding, we address an issue involving petitions filed by two satellite carriers, DIRECTV and EchoStar, for reconsideration of the Commission's February 1, 1999 *Report and Order* concerning the 1988 Satellite Home Viewer Act (''SHVA'') (47 CFR 73). That Order addressed an issue involving the television broadcast industry, the direct-to-home satellite industry, and consumers who subscribe to satellite services for their broadcast network television programming.

2. Broadly stated, the issue is whether and where home satellite carriers may retransmit television broadcast network signals under the SHVA. Federal copyright law, which the SHVA is a part of, contains a copyright compulsory license authorizing the carriage of certain network broadcast signals by home satellite carriers. (17 U.S.C. 119(a)(2)(A) The compulsory license is limited, however, because it does not permit satellite carriers to retransmit a particular network's signal to a subscriber unless the subscriber is ''unserved'' by the local affiliate of the network. (17 U.S.C. 119(a)(2)(B)) ''Unserved'' is defined in the SHVA as a household that cannot receive an adequate television signal (defined as a signal of ''Grade B'' intensity) using a conventional outdoor rooftop antenna. The Grade B values (which represent the required field strength in dB above one micro-volt per meter) are defined for each over-the-air television channel in the Commission's rules. (47 CFR 683) There are also Grade A and ''city grade'' field strength values, which represent stronger signals.

[In dBu's]

	Grade B	Grade A	City grade
Channels 2–6 ...	47	68	74
Channels 7–13	56	71	77
Channels 14–69	64	74	80

Several judicial proceedings involving the SHVA have resulted in findings that some satellite carriers have violated that statute and have highlighted the significant disputes between broadcast networks and satellite carriers over which consumers are eligible to receive satellite-delivered network programming.

3. The *SHVA Report and Order* sought to help the consumers caught in these disputes by refining two tools to more accurately determine whether a household is truly unserved. The first tool is an on-site (or at-home) signal measurement test to determine the strength of a television signal at a consumer's household. The second tool is a computer-generated prediction model that might obviate the need for large numbers of on-site tests and that could be used by consumers when first signing up for satellite service (at the

''point of sale''). This Individual Location Longley-Rice (''ILLR'') model is a variation of the core Longley-Rice model that the Commission has long used to determine signal propagation. The ILLR is specifically designed to predict the strength of a television signal at an individual location, such as a consumer's home, by considering what happens to the signal as it travels from the transmitter to the home. The model accounts for the effects that signal interference and terrain have on signal strength. We concluded that other factors, specifically vegetation and buildings, can also affect the strength of television signals received at a home. However, the rulemaking record did not contain information sufficient for us to identify, endorse, or develop a way to apply these land use and land cover (''LULC'') factors in an application that would be ''accepted by the technical and scientific community.'' We noted that LULC data are available from the United States Geological Survey (''USGS'') and asked interested parties to develop an application for incorporating that data into the ILLR.

4. DIRECTV and EchoStar separately petitioned the Commission to reconsider parts of the Order regarding the eligibility of satellite subscribers to receive broadcast network signals through home satellite dishes. The National Association of Broadcasters (''NAB''), Entravision Holdings, and affiliates of ABC, NBC, CBS, and Fox (the ''Affiliates'') opposed the petitions. The National Rural Telecommunications Cooperative (''NRTC'') expressed its support for the petitions.

5. The Communications Act and our own rules govern our response to the petitions. (47 CFR 1.429) Reconsideration of a Commission decision is warranted only if the petitioner cites a material error of fact or law or presents additional facts and circumstances which raise substantial or material questions of fact that were not considered and that otherwise warrant Commission review of its prior action. The Commission will not reconsider arguments that have already been considered. For the reasons stated herein, the Order on Reconsideration affirms the decisions in the *SHVA Report and Order* and denies DIRECTV's Petition. The Order denies in part and grants in part EchoStar's Petition.

The Petitions for Reconsideration

DIRECTV's Petition

6. DIRECTV's Petition asks the Commission to allow satellite carriers to include the effects of land use and land cover in the ILLR prediction model now. The Petition contends that there are ''a variety of scientifically accepted means'' of including USGS data into the model using commercially available mapping software and emphasizes that DIRECTV itself is developing software. However, DIRECTV did not identify these means in any detail. In an accompanying statement, DIRECTV's expert states that the military targets cruise missiles using ''a comparison of data available through the Global Positioning System ('GPS') and USGS LULC data,'' but does not specifically identify the procedure used by the military, nor does it identify any other procedure or software application. DIRECTV's Reply offers some information on the specific LULC application it supports, but still does not offer the application itself. According to DIRECTV, their engineering consultants are actively in the process of developing an LULC loss algorithm implementation that can be ''readily achieved using the USGS database.''

7. Broadcasting interests, led by the NAB and the Affiliates, opposed the Petition and argued that DIRECTV is trying unilaterally to create and use an LULC application in direct contravention of the Commission's Order. ABC, CBS, and Fox affiliates go one step further by stating that overlaying LULC data in the ILLR would amount to ''double-counting'' the effects of trees and buildings. They contend that the core Longley-Rice programming language (on which the ILLR is based) already incorporates some LULC data into its calculations. The Affiliates also questioned using the USGS database, asserting that it covers too much land per grid area (200 meters) to be accurate for the purposes here involved. Both the NAB and the Affiliates emphasized that DIRECTV has not offered a specific software package for applying LULC data to the predictive model. When it does, the NAB asserts that it would support an expedited review by the Commission. On the other hand, the NRTC supported DIRECTV's Petition and asked the Commission for ''practical rules and recommendations * * * to use in determining a household's eligibility to receive distant network signals by satellite.''

8. The Commission believes that consumers will benefit when the effects of trees and buildings on a television signal are included in the ILLR prediction model. We stated in the *SHVA Report and Order:*

> While we expect the model to include land use and land cover, we are not aware of a standard means of including such information in the ILLR that has been accepted by the technical and scientific community. When an appropriate application has been developed and accepted, this information will be included in the ILLR.

The Commission specifically invited interested parties to develop such an application. Before such an application can be used, however, it is necessary that some consensus be developed as to the specifics of the technique involved so that the process is generally understood, the results can be replicated by all who would use the process, and any disputes as to accuracy of the technique can be addressed. Neither DIRECTV, nor any other party, may unilaterally incorporate LULC data into the Commission's ILLR until an application has been publicly reviewed. The Commission again encourages any interested party to develop an application and offer it for comment. Because DIRECTV has not fully offered the details of its application, such review is not possible here. The Order on Reconsideration therefore denies DIRECTV's Petition for Reconsideration.

EchoStar's Petition

9. EchoStar, in its Petition, first argued that the Commission could have and should have adopted a new definition of Grade B intensity specifically for SHVA purposes. The Petition, however, does not propose a new definition or standard. Second, EchoStar argued that the Commission should consider the effects of ''ghosting'' in a television picture, caused by signal ''multipathing,'' when determining who is unserved. Third, EchoStar took issue with several elements of the Commission's new on-site testing methodology, including (a) whether measurements should be taken at a house's roof or at the television set, (b) the orientation of the testing antenna, (c) the type of testing antenna that should be used, and (d) the number and location of the tests. Finally, EchoStar asked the Commission to raise the confidence factor in the predictive model from 50% to 90%, arguing that the latter is more consumer-friendly and, therefore, consistent with the SHVA's purposes.

10. The Order concludes that the record provided an inadequate basis for changing the Grade B signal intensity values either generally or for purposes of the SHVA specifically, and therefore, declined to change the definition of Grade B signal intensity. EchoStar disagreed with these conclusions, but

presented no new arguments or facts that warrant revisiting this issue. The Commission stands by the conclusions in the *SHVA Report and Order* and denies EchoStar's petition on this issue.

11. EchoStar contends that the Order did not specifically take account of the effects of multipathing and asks the Commission to do so now. Multipathing is the reflection of a single television signal off of buildings or other objects. It causes several transmissions of the same signal to arrive at a television at slightly different times, leading to ''ghosting'' on the screen (one fainter ''ghost'' picture superimposed on the main picture). Importantly, multipathing can affect picture quality on a consumer's television set even when a Grade B signal exists at the consumer's rooftop. EchoStar asked the Commission to institute proceedings to account for the effects of multipathing. The NRTC supported EchoStar's position, arguing that ''consumers want and deserve the best quality television picture available, and if ghosting or other environmental factors degrade picture quality * * * the Commission should recognize and incorporate these factors in the predictive model and testing methodology.'' The NAB and the Affiliates rejected the satellite carriers' position, noting that the SHVA speaks of Grade B intensity, an objective standard for determining who is unserved, rather than a subjective picture quality standard that would be very difficult to enforce and implement. Therefore, the broadcasters claimed that the Commission ''unquestionably lacks authority to alter the SHVA eligibility standard to deal with ghosting.'' EchoStar replied that ghosting is not so subjective that it is impossible to determine: ''Ghosting either exists or it does not, it is objectively ascertainable.''

12. The Order addressed multipathing in several places and, as with the Grade B definition issue, EchoStar has not offered any additional facts or new arguments that warrant a change in our conclusions. We recognize that ghosting is a problem that affects television pictures but note, as we did in the Order, that there is no simple solution. For example, raising the Grade B values to give a consumer a stronger television signal could actually exacerbate the problem of multipathing. As the signal strength increases, ''noise'' or ''snow'' in a television picture may be reduced, but the chance of ghosting increases. Moreover, the multipath ''interference'' created by the same signal is very difficult to measure objectively.

13. While the Commission welcomes concrete solutions to the ghosting problem, any solution must be objective and verifiable. EchoStar has not offered any new facts or arguments that describe how to predict or measure multipathing or even permit it to be taken into account under the current language in the SHVA. The Order on Reconsideration therefore denies Echostar's petition on this issue.

14. EchoStar believes the Commission's on-site measurement test is too complicated and costs too much (estimates are $99 to $119 per on-site test for four networks). In its comments to the petition, the NRTC agreed. EchoStar also suggested that the SHVA does not require signal measurements at a house's rooftop and that any such conclusion is merely ''a legal fallacy, propagated by the broadcasters.'' Instead, EchoStar argued that signal strength should be measured at the television set. Alternatively, EchoStar suggested changing several requirements mandated for the outdoor, on-site tests: (1) Eliminate the requirement that the testing antenna be oriented separately for each station being measured; (2) require fewer testing locations and measurements (for each station, replace 1 test at 5 locations with 3 tests at 1 location); (3) allow parties to choose the type of testing antenna, either a half-wave dipole (as the *SHVA Report and Order* required) or gain antenna; (4) clarify that the half-wave dipole required for testing in the Order can be of fixed length. The NAB rejected EchoStar's suggestions, except that it does admit that a properly calibrated gain antenna could be used to conduct signal intensity measurements. In a ''Revised Engineering Statement,'' however, the NAB added that a simple gain antenna is not sufficient and recommends that the Commission specify and endorse particular brands and models of antenna. Specifically, NAB's engineering expert, Jules Cohen, recommended that ''antennas with a relatively large number of elements are more likely to have a more consistent input impedance than the simpler types.'' He further notes that the Channel Master Model 3016 is such an antenna and added that similar antennas would be suitable ''if channel-by-channel gain figures are provided and certified by the manufacturer together with the antenna's input impedance characteristics.'' The Affiliates stated that EchoStar's suggestions, as a group, would reduce accuracy with very little cost savings and asserted that the Commission gave full and detailed attention to the creation of the new measurement methodology. In its Reply, EchoStar countered that any additional inaccuracies created by a less complex test would fall equally on broadcasters and satellite carriers.

15. When the Commission created the on-site test in the *SHVA Report and Order*, it was faced with balancing the cost of the test with the accuracy and objectivity that would result. In the end, the Order thoroughly considered and discussed many different issues. The Order on Reconsideration reiterates the Commission's intent that the test should be relatively inexpensive, simple enough so that an average antenna installer can conduct it, and objective enough so that the test results will not constantly fall in doubt. EchoStar offered neither new evidence nor new arguments with respect to orientation of the test antenna and the number of test measurements. EchoStar provided new information in its request that the rules permit testers to use either a half-wave dipole or an antenna with gain to conduct the tests. In the rulemaking, broadcasters also supported the use of a gain antenna, albeit with the recent qualification that the test antenna should have multiple elements to ensure proper calibration. Because a gain antenna is able to accurately measure the intensity of a television signal and because it will provide additional flexibility for technicians who conduct tests, we amend the testing rule to allow the use of either a gain antenna with several elements or the half-wave dipole that we originally endorsed. In response to the concerns raised by the NAB, the revised rule maintains an impedance match at the antenna at all frequencies. We believe this approach is preferable to endorsing a particular brand or model or requiring use of an expensive test antenna. In addition, we will amend the rule to allow use of signal level test instruments with a bandwidth of 200 kHz through one megahertz (1,000 kHz), rather than requiring a bandwidth of at least 450 kHz. (47 CFR 73.686(d)(2)(i)) We believe that this amendment will reduce the cost of the tests by permitting technicians to use test equipment they have on hand and not require them to purchase new equipment.

16. EchoStar asked the Commission to revisit the confidence factor used in the ILLR prediction methodology, an issue that the SHVA Report and Order addressed more exhaustively than any other in the proceeding. EchoStar contended that the Commission's decision to set the ILLR's confidence factor at 50% ''penalizes the consumer and errs in favor of some policy of 'belt-and-suspenders'' over-protection for the broadcaster's local franchise.'' Instead, the satellite carrier asserted that the

Commission should set the confidence factor at 90% because consumers' rights to a good television picture, not broadcasters' copyrights, must be ''the cornerstone of a predictive model.'' To prevent alleged ''overprediction'' of unserved households, EchoStar proposes a ''cap'' that would cut off eligibility for distant network satellite service if a household cannot be predicted (with 90% confidence) to receive 70.75 dBu or less. EchoStar essentially suggested a floor and ceiling for determining whether a household is unserved—the household should receive (a) at least a signal of 47 dBu with 90% confidence, and (b) less than a signal of 70.75 dBu with 90% confidence.

17. The Order on Reconsideration declines EchoStar's request to revisit the confidence factor issue. The SHVA Report and Order thoroughly considered and addressed the issues surrounding the confidence factor and EchoStar has offered no new arguments or facts that warrant a change in our conclusions. Its suggestion that we adopt a floor-and-ceiling approach to determining unserved households is legally untenable. EchoStar's suggested ceiling of 70.75 dBu would change the SHVA's definition of unserved household, which is defined only as a household that does not receive a signal of at least Grade B intensity, not as a household that also receives less than a signal of some other level. (17 U.S.C. 119(d)(10))

18. In any action brought under the SHVA, the burden of proof lies with the satellite carriers to demonstrate that a particular household is unserved. (17 U.S.C. 119(d)(5)(D)) To be useful in carrying this burden, any prediction system must demonstrate with a sufficient degree of confidence to be acceptable in a judicial proceeding which households are unserved. Conversely, it is not sufficient to demonstrate with confidence which households are served. Because of the statistical factors underlying the prediction system, which have not changed since the SHVA Report and Order, there is a considerable difference between demonstrating with confidence which households are served and which are unserved. EchoStar's suggestions did not advance the goal of more accurately identifying unserved households and its Petition with respect to the confidence factor must be denied.

Supplemental Final Regulatory Flexibility Analysis

Background

19. As required by the Regulatory Flexibility Act (RFA), (5 U.S.C. 603) an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated into the *Notice of Proposed Rulemaking* in this proceeding. (CS Docket No. 98–201, FCC 98–302, 63 FR 67439 (December 7, 1998)) The Commission sought written public comment on the expected impact of the proposed policies and rules on small entities in the Notice, including comments on the IRFA. The Commission included a Final Regulatory Flexibility Analysis (''FRFA'') into the *SHVA Report and Order*. While no petitioners seeking reconsideration of the Order raised issues directly related to the FRFA, the Commission is amending the rules in a manner that may affect small entities, although only in a minor way. Accordingly, this Supplemental Regulatory Flexibility Analysis (''Supplemental FRFA'') addresses those amendments and conforms to the RFA.

Need for and Objective of the Rules

20. In both the *SHVA Report and Order* and this Order on Reconsideration, the Commission has addressed methods for determining whether a household is ''unserved'' by network television stations for purposes of the 1988 Satellite Home Viewer Act. (17 U.S.C. 119) Our goal was to provide relatively simple and inexpensive prediction and testing methodologies to determine the intensity of a television signal at a consumer's household. The changes to the on-site test outlined in the current Order on Reconsideration clarify and simplify the rule and its implementation and, therefore, serve our objectives.

Legal Basis

21. This Order on Reconsideration is authorized under Sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j) and Section 119(d)(10)(a) of the Copyright Act, 17 U.S.C. 119(d)(10)(a).

Summary of Significant Issues Regarding FRFA Raised in Petitions for Reconsideration

22. No parties address the FRFA in their petitions for reconsideration, or any subsequent filings. The Commission has, however, addressed, on it's own motion, steps taken to further minimize the effect of these requirements on small entities.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

23. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed action. (5 U.S.C. 604(a)(3)) The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small business concern'' under Section 3 of the Small Business Act. (5 U.S.C. 604(a)(3)) Under the Small Business Act, a small business concern is one which: (1) Is independently owned and operated; (2) Is not dominant in its field of operation; and (3) Satisfies any additional criteria established by the SBA. (15 U.S.C. 632) The action taken in this Order will affect television broadcasting licensees and DTH satellite operators.

24. The rule developed in the *SHVA Report and Order* and reconsidered in this Order on Reconsideration will apply to television broadcasting licensees, and potential licensees of television service. The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. (13 CFR 121.201, Standard Industrial Code (''SIC'') 4833 (1996)) Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and that produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television broadcasting stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the nation as of May 31, 1998. In addition, as of October 31, 1997, there were 1,880 low power television broadcasting (''LPTV'') broadcasting stations that may also be affected by our proposed rule changes. For 1992 the number of television broadcasting stations that produced less than $10.0 million in revenue was 1,155 establishments. The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

25. The Commission has not developed a definition of small entities

applicable to geostationary or non-geostationary orbit fixed-satellite or DBS service applicants or licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified. This definition provides that a small entity is one with $11.0 million or less in annual receipts. (13 CFR 121.201, SIC Code 4899) The number of employees working for a ''small entity'' must be 750 or fewer. According to Census Bureau data, there are 848 firms that fall under the category of Communications Services, Not Elsewhere Classified that could potentially fall into the DTH category. Of those, approximately 775 reported annual receipts of $11 million or less and qualify as small entities. The action in the *SHVA Report and Order* and reconsidered in this Order on Reconsideration applies to entities providing DTH service, including licensees of DBS services and distributors of satellite programming. There are four licensees of DBS services under Part 100 of the Commission's rules. (47 CFR 100 *et seq.*) Three of those licensees are currently operational, and each of those licensees has annual revenues in excess of the threshold for a small business.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

26. The Commission did not prescribe reporting requirements in the original Order and do not do so in this Order on Reconsideration. As noted in the Order, parties who choose to conduct individual household measurements are required to memorialize their test observations and results.

Steps Taken To Minimize Significant Economic Impact On Small Entities and Significant Alternatives Considered

27. In formulating the testing rule in the Order, the Commission sought to minimize the effect on small entities while ensuring accurate determinations of signal intensity at individual locations such as households. These efforts are consistent with the Congress' goal of ensuring that ''unserved'' consumers are able to receive network broadcast signals through a home satellite dish. The actions the Commission is taking on reconsideration further refine the rule so as to advance this goal and further minimize unnecessary burdens on small entities.

28. Specifically, the Order only allows the use of one type of testing antenna. Here, on reconsideration, the Commission has increased test-takers' flexibility by allowing the use of a second type of antenna. Additionally, the Commission has amended it's rule to allow use of signal level test instruments with a bandwidth of 200 kHz through one megahertz (1,000 kHz), rather than requiring a bandwidth of at least 450 kHz, because the Commission wishes to reduce the cost of the test by permitting technicians to use test equipment they have on hand and not require them to purchase new equipment.

Report to Congress

29. The Commission will send a copy of the Order on Reconsideration, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. (5 U.S.C. 801(a)(1)(A)) In addition, the Commission will send a copy of the Order on Reconsideration, including Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order on Reconsideration and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**. (5 U.S.C. 604(b))

Paperwork Reduction Act of 1995 Analysis

30. This Order on Reconsideration has been analyzed with respect to the Paperwork Reduction Act of 1995 and has been found to contain no new or modified information collection requirements on the public.

Ordering Clauses

31. Pursuant to Section 405(a) of the Communications Act of 1934, 47 U.S.C. 405(a), and Section 1.429 of the Commission's rules, 47 CFR 1.429, DIRECTV's Petition for Reconsideration is denied.

32. Pursuant to Section 405(a) of the Communications Act of 1934, 47 U.S.C. 405(a), and Section 1.429 of the Commission's rules, 47 CFR 1.429, EchoStar's Petition for Reconsideration is granted in part and denied in part.

33. The NAB Motion for Leave to File Corrected Engineering Statement is granted.

34. Under authority of Sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), and 154(j), part 73 of Title 47 of the Code of Federal Regulations is amended as indicated in the Appendix.

35. The Commission's Office of Media Affairs, Reference Operations Division, shall send a copy of this Order on Reconsideration, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

List of Subjects in 47 CFR Part 73

Communications equipment, Television.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

Authority: 47 U.S.C. 154, 303, 334 and 336.

Subpart E—Television Broadcast Stations

2. Section 73.686(d) is revised to read as follows:

§ 73.686 Field strength measurements.

* * * * *

(d) Collection of field strength data to determine television signal intensity at an individual location—cluster measurements.

(1) *Preparation for measurements*—(i) *Testing antenna.* The test antenna shall be either a standard half-wave dipole tuned to the visual carrier frequency of the channel being measured or a gain antenna, provided its antenna factor for the channel(s) under test has been determined. Use the antenna factor supplied by the antenna manufacturer as determined on an antenna range.

(ii) *Testing locations.* At the location, choose a minimum of five locations as close as possible to the specific site where the site's receiving antenna is located. If there is no receiving antenna at the site, choose the minimum of five locations as close as possible to a reasonable and likely spot for the antenna. The locations shall be at least three meters apart, enough so that the testing is practical. If possible, the first testing point should be chosen as the center point of a square whose corners are the four other locations. Calculate the median of the five measurements (in units of dBu) and report it as the measurement result.

(iii) *Multiple signals.* If more than one signal is being measured (*i.e.*, signals from different transmitters), use the same locations to measure each signal.

(2) *Measurement procedure.* Measurements shall be made in accordance with good engineering practice and in accordance with this section of the Rules. At each measuring location, the following procedure shall be employed:

(i) *Testing equipment.* Measure the field strength of the visual carrier with a calibrated instrument with an i.f. bandwidth of at least 200 kHz, but no greater than one megahertz (1,000 kHz). Perform an on-site calibration of the instrument in accordance with the manufacturer's specifications. The instrument must accurately indicate the peak amplitude of the synchronizing signal. Take all measurements with a horizontally polarized antenna. Use a shielded transmission line between the testing antenna and the field strength meter. Match the antenna impedance to the transmission line at all frequencies measured, and, if using an unbalanced line, employ a suitable balun. Take account of the transmission line loss for each frequency being measured.

(ii) *Weather.* Do not take measurements in inclement weather or when major weather fronts are moving through the measurement area.

(iii) *Antenna elevation.* When field strength is being measured for a one-story building, elevate the testing antenna to 6.1 meters (20 feet) above the ground. In situations where the field strength is being measured for a building taller than one-story, elevate the testing antenna 9.1 meters (30 feet) above the ground.

(iv) *Antenna orientation.* Orient the testing antenna in the direction which maximizes the value of field strength for the signal being measured. If more than one station's signal is being measured, orient the testing antenna separately for each station.

(3) Written record shall be made and shall include at least the following:

(i) A list of calibrated equipment used in the field strength survey, which for each instrument, specifies the manufacturer, type, serial number and rated accuracy, and the date of the most recent calibration by the manufacturer or by a laboratory. Include complete details of any instrument not of standard manufacture.

(ii) A detailed description of the calibration of the measuring equipment, including field strength meters, measuring antenna, and connecting cable.

(iii) For each spot at the measuring site, all factors which may affect the recorded field, such as topography, height and types of vegetation, buildings, obstacles, weather, and other local features.

(iv) A description of where the cluster measurements were made.

(v) Time and date of the measurements and signature of the person making the measurements.

(vi) For each channel being measured, a list of the measured value of field strength (in units of dBu and after adjustment for line loss and antenna factor) of the five readings made during the cluster measurement process, with the median value highlighted.

[FR Doc. 99–33765 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 991222346–9346–01; I.D. 031997B]

RIN 0648–AN40

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Suspension of Effectiveness of Gear Marking Requirements for Northeast U.S. Fisheries

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

ACTION: Final rule; suspension.

SUMMARY: On February 16, 1999, NMFS issued a final rule implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP). This suspends the gear marking requirements for northeast U.S. fisheries contained in that rule. The other provisions of that rule, including the gear marking requirements for southeast U.S. (SEUS) fisheries under the ALWTRP, remain in effect. The current gear marking requirements for northeast U.S. fisheries under the rule are unlikely to provide useful information. The purpose of this suspension is to spare fishermen from unnecessary expenses while a better gear marking system is devised and implemented.

DATES: Effective December 30, 1999 50 CFR 229.32 (b), (c)(3)(ii), (c)(4)(ii), (c)(5)(ii), (d)(2)(ii), (d)(3)(ii), (d)(4)(ii), and (d)(5)(ii) are suspended until November 1, 2000.

FOR FURTHER INFORMATION CONTACT: Douglas Beach, NMFS, Northeast Region, 978–281–9254; or Gregory Silber, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1999, NMFS published a final rule (64 FR 7529) implementing the ALWTRP. Among other measures, the final rule required gear marking in all fisheries under the ALWTRP by April 1, 1999.

The Atlantic Large Whale Take Reduction Team (ALWTRT) met on February 8–10, 1999, discussed the gear marking scheme in detail, and recommended by consensus (with the NMFS members abstaining) that NMFS suspend the implementation of the gear marking requirement until November 1, 1999, or until a better system is designed. In order to provide an appropriate gear marking scheme that could be implemented by NMFS by November 1, 1999, the ALWTRT asked that the Gear Advisory Group (GAG) be reconvened quickly to design a better system for approval by the ALWTRT. The criteria established by the ALWTRT for the better gear marking system were that the system should: (1) identify the buoy lines by individual fishermen; (2) apply to all waters affected by the ALWTRP; (3) be easily implemented by the affected fisheries; (4) allow identification of gear type from a photograph so that it can be identified without being removed from a whale; and (5) allow identification of where the gear had been set.

In March 1999, an ad hoc group of ALWTRT members representing the scientific, conservation and state and Federal fishery managers of the northeastern area met to discuss gear marking. The group recognized many of the points discussed here and agreed that, under the gear marking requirements then in effect, it was highly probable that gear recovered from animals could be identified to the individual fisherman, thus allowing details on the gear (i.e., gear type, and date and location of set) to be determined in most cases. NMFS then changed the effective date of the gear marking measures contained in the final rule to November 1, 1999 (64 FR 17292, April 9, 1999), and tasked the GAG and the ALWTRT with reviewing the final rule=s gear scheme. NMFS committed to revise the final rule=s gear marking scheme if the GAG and ALWTRT reached consensus on an appropriate gear marking scheme.

Three GAG meetings were held in April at Sandwich, Massachusetts; Portsmouth, New Hampshire; and Ellsworth, Maine to gather the fishermens= perspectives from each region. A summary of the three GAG meetings is available upon request from

the contacts noted at the beginning of this document. The basic conclusions from the GAG members were:

(1) A single gear identification number is desirable. State and

Federal regulations require gear tagging or marking systems for both lobster and gillnet gear. A marking system that incorporates the existing marking requirements should be used.

(2) An individual fisherman=s identification would provide more information than the current ALWTRP color-coding system, which only requires marking in certain areas. Fishermen set gear across boundary areas and, under the current ALWTRP system, would have to re-rig their gear when moving into or out of a required area. With individual markings, the fishermen can provide specific information on where the gear had been set at any given time.

(3) The ALWTRP color-coded system does not provide the detailed information that a universal individual marking system throughout the range would provide. Better ways of marking buoy lines and high flyers with individual numbers are being tested, and the results of these tests will be available by Spring 2000.

(4) The ALWTRP marking system was based on the need to identify gear on whales that is observed from a distance that may never be recovered. Recent entanglement events and subsequent detailed investigations have resulted in up to 70 percent of the gear involved being identified, including the probable time and location the gear was set, for those whales that have been disentangled and the gear has been recovered. The current ALWTRP gear marking system would not have improved identification of gear in any of the recent Northeast entanglement events. Entangled animals are receiving close scrutiny, and photos or video images are routinely collected, allowing a more definitive analysis of gear type before a disentanglement is attempted. Thus, the current ALWTRP gear marking system is not needed to identify gear that is not removed from a whale.

In summary, the consensus of the GAG and the ALWTRT is that: (1) The gear marking measures for northeastern U.S. fisheries under the ALWTRP as contained in the February 16, 1999, final rule are unlikely to provide useful information; (2) the value of making a gear marking system being visible from a distance is questionable; (3) existing gear marking and buoy color-coding requirements applicable to the various northeastern U.S. fisheries allow gear type and ownership to be identified in most cases; (4) gillnet fisheries operating in the SEUS do not have the same level of existing gear marking requirements; (5) after 2 years of investigating gear entangled on whales, NMFS has found that it is possible to determine gear ownership in the majority of the entanglements and thus find out the details about the date and location of the set; and (6) better ways for buoy lines and high flyers to be marked with individual identification numbers are being tested and the results should be available soon. Therefore, in order to spare fishermen from unnecessary expense, NMFS is suspending the effectiveness of the gear marking requirements for northeast U.S. fisheries in the February 16, 1999, final rule implementing the ALWTRP. Gear marking requirements for SEUS fisheries remain in effect. The ALWTRT will meet in early Spring, 2000, to review the GAG report and the results of the testing of new gear marking methods, and make further recommendations to NMFS on how or whether to modify the ALWTRP gear marking system. By late Spring, 2000, NMFS will propose modifications to the ALWTRP gear marking system and implementing regulations with the aim of having an effective system implemented by November, 2000.

Classification

This rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an Environmental Assessment (EA) on the interim final rule preceding the February 16, 1999, final rule to implement the ALWTRP, and its findings applied to the February 16, 1999 final rule, as well. This action suspends the effectiveness of a portion of that final rule. Although this action falls within the scope of alternatives of that EA and the environmental consequences described in that action, NMFS has prepared a supplemental EA for this action with a finding of no significant impact.

A biological opinion (BO) on the ALWTRP was completed on July 15, 1997. That BO concluded that implementation of the ALWTRP and continued operation of fisheries conducted under the American Lobster and Northeast Multispecies fishery management plans (FMPs), and southeastern shark gillnet component of the Shark FMP, may adversely affect, but are not likely to jeopardize the continued existence of any listed species of large whales or sea turtles under NMFS jurisdiction. The February 16, 1999, final rule was determined not to change the basis for that BO. This action also does not change the basis for that BO.

The suspension of the effective date of the ALWTRP gear marking requirement for Northeast U.S. fisheries made by this rule will have no adverse impacts on marine mammals. In addition, this rule does not change the determination that the ALWTRP will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of the Atlantic states.

As noted above, the ALWTRP gear marking regime for the Northeast is unlikely to provide useful information. Fishermen should be spared the expense of having to comply with it prior to implementation of a better system. Accordingly, the Assistant Administrator for Fisheries, for good cause, finds that delaying this rule to allow for prior notice and opportunity for public comment would be contrary to the public interest. Because this suspension of effectiveness relieves a restriction, under 5 U.S.C. 553(d)(1) it is not subject to a 30-day delay in the effective date.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or by any other law , the analytical requirements of the Regulatory Flexibility Act do not apply.

This rule suspends the effectiveness of a collection-of-information requirement subject to the Paperwork Reduction Act previously approved by OMB (OMB Control Number: 0648–0364).

Dated: December 22, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–33810 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 122299B]

Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Suspension of Minimum Surf Clam Size for 2000

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

ACTION: Notification of suspension of surf clam minimum size limit.

SUMMARY: NMFS informs the public that the minimum size limit of 4.75 inches (12.065 cm) for Atlantic surf clams is suspended for the 2000 fishing year. This action is taken under the authority of the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP), which allows for the annual suspension of the minimum size limit based upon set criteria. The intended effect is to relieve the industry from a regulatory burden that is not necessary as the majority of surf clams harvested are larger than the minimum size limit.

DATES: Effective January 1, 2000, through December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 978-281-9104.

SUPPLEMENTARY INFORMATION: Section 648.72 (c) of the regulations implementing the FMP allows the Regional Administrator, Northeast Region (Regional Administrator), to suspend annually, by publication of a notification in the **Federal Register**, the minimum size limit for Atlantic surf clams. This action may be taken unless discard, catch, and survey data indicate that 30 percent or more of the Atlantic surf clam resource is smaller than 4.75 inches (12.065 cm) and the overall reduced size is not attributable to beds where growth of the individual clams has been reduced because of density dependent factors.

At its August meeting, the Mid-Atlantic Fishery Management Council (Council) accepted the recommendations of its Surf clam/Ocean Quahog Committee and voted to recommend that the Regional Administrator suspend the minimum size limit. Commercial surf clam shell length data for 1999 indicate that only 10.3 percent of the samples were composed of surf clams that were less than 4.75 inches (12.07 cm). Based on these data, the Regional Administrator adopts the Council's recommendation and publishes this notification to suspend the minimum size limit for Atlantic surf clams for the period January 1, 2000, through December 31, 2000.

This action is authorized by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: December 27, 1999.

George H. Darcy,

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

[FR Doc. 99–33980 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 250
Thursday, December 30, 1999

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 24494; Notice No. 85–7A]

RIN 2120–AA57

Airworthiness Standards; Crash Resistant Fuel Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); withdrawal.

SUMMARY: The FAA is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) that proposed to amend the airworthiness standards for normal, utility, acrobatic, and commuter category airplanes. That notice proposed upgrades in the requirements for fuel system components that would have improved crash resistance of these systems by limiting fuel spillage near ignition sources and thus provide additional time for survivors of the impact to evacuate the airplane. As a result of the comments received, the FAA completed a revised economic evaluation of these safety recommendations and has concluded that the costs of the proposed change are not justified by the potential benefits. Accordingly, the FAA is planning no additional proposals on this issue.

FOR FURTHER INFORMATION CONTACT: Scott Sedgwick, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 1990, the FAA published Notice of Proposed Rulemaking No. 85–7A (55 FR 7280) that proposed an amendment to 14 CFR part 23 and invited public comment. The comment period closed on June 28, 1990. Seventeen commenters responded to the notice.

Several commenters disagreed with the economic evaluation contained in the NPRM and believed that either the benefits had been overestimated, costs had been underestimated, or both. The FAA agrees, and after completing an extensive economic evaluation of these safety recommendations has determined that the costs of the proposed change are not justified by the potential benefits.

Some commenters believed that the proposed § 23.993(f) probably would result in the incorporation of some sort of self-closing device in fuel lines and that the reliability of such devices should be addressed. The FAA agrees, and the referenced economic evaluation also includes the effects of uncommanded operation of such devices.

Other Comments

There were both positive and negative overall comments on the NPRM proposals. However, as the proposals are not economically feasible at this time, every comment will not be addressed in specific detail. The most pertinent comments are summarized as follows.

Several commenters suggested definitions of a ''survivable'' crash along with specific improvements/changes to the proposed regulations. The FAA agrees that a definition of a survivable crash would be necessary to proceed with the proposal. Because the NPRM is being withdrawn, the FAA has noted these definitions, along with the comments specific to the actual wording of the proposed regulations, for possible future reference.

Several commenters disagreed with either mandating the use of flexible bladder tanks, certain aspects of their use, or both. The FAA agrees it is more appropriate to specify an objective test for fuel tanks (leaving the details of design and construction to the designer) than to mandate the use of flexible bladder tanks. Because this NPRM is being withdrawn, the FAA has noted these comments for possible future reference.

There were both positive and negative comments regarding the applicability of the proposal to previously type-certificated, newly manufactured (in addition to newly type-certificated) airplanes. These will not be addressed in specific detail because the NPRM is being withdrawn. However, one commenter did suggest making the standards applicable to newly manufactured airplanes on an individual model basis rather than on an overall basis as proposed. The commenter refers to a report by the FAA, DOT/FAA/CT–86/24, *Study of General Aviation Fire Accidents (1974–1983),* which the commenter believes shows that some airplane types are more prone to post-crash fires than others. The FAA agrees with the observation that some airplane types are more prone to post-crash fires than others. However, the FAA does not selectively apply airworthiness standards (such as these proposed rules) to specific airplane models. These standards define a minimum level of safety that applies to all airplanes certificated in a given category.

Additionally, two commenters objected that the proposals did not adhere to the recommendations made by the GASP II committee. The FAA's rationale for not following those recommendations is contained in the preamble to the NPRM and remains unchanged.

Several comments were beyond the scope of the NPRM and, though some were commendable, they will not be addressed further.

Withdrawal of Proposed Rule

In consideration of those comments to Notice No. 85–7A regarding the cost-benefit analysis, the Federal Aviation Administration has decided to withdraw Notice No. 85–7A for further internal study. Accordingly, Notice No. 85–7A, published on February 28, 1990 (55 FR 7280), is withdrawn.

Issued in Washington, D.C. on December 21, 1999.

Ronald T. Wojnar,

Acting Director, Aircraft Certification Service.

[FR Doc. 99–33801 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–353–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319 and A321 series airplanes. This proposal would require replacement of the actuator of the ram air turbine (RAT) with a new actuator. It would also require modification of the actuator wiring. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the RAT to deploy in an emergency situation, and consequent loss of electrical and hydraulic systems.

DATES: Comments must be received by January 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–353–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of 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 99–NM–353–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–353–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A319 and A321 series airplanes. The DGAC advises that the ram air turbine (RAT) may jam if the RAT deployment is initiated with the airplane in a negative-G flight condition. In such a case, the RAT is not usable or recoverable during flight. This condition, if not corrected, could result in failure of the RAT to deploy in an emergency situation, and consequent loss of electrical and hydraulic systems.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–29–1088, dated February 23, 1999, which describes procedures for replacement of the actuator of the ram air turbine (RAT) with a new actuator. It also specifies modification of the actuator wiring. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 1999–412–141(B), dated October 20, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

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

Cost Impact

The FAA estimates that 18 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the parts manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,320, or $240 per airplane.

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

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore,

in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Industrie: Docket 99–NM–353–AD.

Applicability: Model A319 and A321 series airplanes, certificated in any category; except those on which Airbus Modification 27015 or Airbus Service Bulletin A320–29–1088, dated February 23, 1999, has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 failure of the ram air turbine (RAT) to deploy in an emergency situation, and consequent loss of electrical and hydraulic systems, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD: Replace the RAT actuator with an improved actuator, and modify the wiring of the RAT actuator; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–29–1088, dated February 23, 1999.

Alternative Methods of Compliance

(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.

Special Flight Permits

(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.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–412–141(B), dated October 20, 1999.

Issued in Renton, Washington, on December 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33948 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–337–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 and A300–600 series airplanes, that currently requires repetitive inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. That AD also requires modification of Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. This action would expand the current inspection area for certain airplanes. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by January 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–337–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments

submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of 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 99–NM–337–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–337–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On September 2, 1999, the FAA issued AD 99–19–26, amendment 39–11313 (64 FR 49966, September 15, 1999), applicable to certain Airbus Model A300 and A300–600 series airplanes, to require repetitive inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. That AD also requires modification of Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

Since the issuance of AD 99–19–26, the manufacturer has issued Airbus Service Bulletins A300–57A0234, Revision 03, including Appendix 01, dated September 2, 1999 (for Model A300 series airplanes); and A300–57A6087, Revision 02, including Appendix 01, dated June 24, 1999 (for Model A300–600 series airplanes). These service bulletins expand the current inspection area for accomplishing the repetitive detailed visual and high frequency eddy current inspections to include holes 43, 48, 49, 50, 52, and 54 of Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange.

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive 1998–151–247(B) R2, dated June 16, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99–19–26 to continue to require repetitive inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. It also would continue to require modification of Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. This proposed AD would expand the current inspection area for certain airplanes. The inspections would be required to be accomplished in accordance with the service bulletins described previously.

Cost Impact

There are approximately 164 airplanes of U.S. registry that would be affected by this proposed AD.

The modification that is currently required by AD 99–19–26, and retained in this proposed AD takes approximately 62 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $10,270 per airplane. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $2,294,360, or $13,990 per airplane.

The new expanded inspections that are proposed in this AD action would take approximately 6 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 proposed requirements of this AD on U.S. operators is estimated to be $59,040, or $360 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11313 (64 FR 49966, September 15, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99–NM–337–AD. Supersedes AD 99–19–26, amendment 39–11313.

Applicability: Model A300 series airplanes, as listed in Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998; and Model A300–600 series airplanes, as listed in Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998; except airplanes on which Airbus Modification 11912 has been installed in production, or on which Airbus Modification 11932 has been accomplished; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the main landing gear (MLG) attachment fittings, which could result in reduced structural integrity of the airplane, accomplish the following:

Repetitive Inspections

(a) Perform a detailed visual and a high frequency eddy current (HFEC) inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998 (for Model A300–600 series airplanes); or A300–57–0234, Revision 01, dated March 11, 1998 (for Model A300 series airplanes); as applicable; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. After the effective date of this AD, only Airbus Service Bulletin A300–57A0234, Revision 02, dated June 24, 1999, or Revision 03, including Appendix 01, dated September 2, 1999 (for Model A300 series airplanes); or A300–57A6087, Revision 02, including Appendix 01, dated June 24, 1999 (for Model A300–600 series airplanes); as applicable; shall be used. Repeat the inspections thereafter at intervals not to exceed 1,500 flight cycles.

Detailed Visual Inspection

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of March 9, 1998: Inspect within 500 flight cycles after March 9, 1998.

(2) For airplanes that have accumulated less than 20,000 total flight cycles as of March 9, 1998: Inspect prior to the accumulation of 18,000 total flight cycles, or within 1,500 flight cycles after March 9, 1998, whichever occurs later.

Note 3: Accomplishment of the initial detailed visual and HFEC inspections in accordance with Airbus Service Bulletin A300–57A0234 or A300–57A6057, both dated August 1, 1997, as applicable, is considered acceptable for compliance with the initial inspections required by paragraph (a) of this AD.

Repair

(b) If any crack is detected during any inspection required by this AD, prior to further flight, accomplish the requirements of paragraphs (b)(1) or (b)(2) of this AD, as applicable.

(1) If a crack is detected at one hole only, and the crack does not extend out of the spotface of the hole, repair in accordance with Airbus Service Bulletin A300–57A0234, Revision 02, dated June 24, 1999, or Revision 03, including Appendix 01, dated September 2, 1999 (for Model A300 series airplanes); or A300–57A6087, Revision 02, including Appendix 01, dated June 24, 1999 (for Model A300–600 series airplanes); as applicable.

(2) If a crack is detected at more than one hole, or if any crack at any hole extends out of the spotface of the hole, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Generale de l'Aviation Civile (or its delegated agent).

Terminating Modification

(c) Prior to the accumulation of 21,000 total flight cycles, or within 2 years after October 20, 1999 (the effective date of AD 99–19–26, amendment 39–11313), whichever occurs later: Modify Gear Rib 5 of the MLG attachment fittings at the lower flange in accordance with Airbus Service Bulletin A300–57–6088, Revision 01, including Appendix 01 (for Model A300–600 series airplanes), or A300–57–0235, Revision 01, including Appendix 01 (for Model A300 series airplanes), all dated February 1, 1999, as applicable. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

Note 4: Accomplishment of the modification required by paragraph (d) of this AD prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–57–6088 or A300–57–0235, both dated August 1, 1998; as applicable; is acceptable for compliance with the requirements of that paragraph.

Alternative Methods of Compliance

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

(d)(2) Alternative methods of compliance, approved previously in accordance with AD 99–19–26, amendment 39–11313, are approved as alternative methods of compliance with this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 6: The subject of this AD is addressed in French airworthiness directive 1998–151–247(B), dated June 16, 1999.

Issued in Renton, Washington, on December 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–33949 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–241–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This proposal would require repetitive inspections to detect cracking of the fuselage skin in the area of the VHF2 antenna, repair, if necessary. This proposal also would provide for optional terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness

information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct such cracking, which could result in cabin depressurization of the airplane.

DATES: Comments must be received by January 31, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–241–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of 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 99–NM–241–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No.99–NM–241–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that cracks have been found in the fuselage skin aft of frame 54, between the airplane centerline and stringer 56R in the area of the VHF2 antenna. The cracks were caused by fatigue induced by the vibration of the VHF2 antenna during flight. This antenna is installed on both Model A330 and A340 series airplanes. Operators have reported 30 such occurrences on Model A330 and A340 series airplanes. Such cracking could result in cabin depressurization of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A330–53–3094, Revision 02, dated May 28, 1998 (for Model A330 series airplanes), and Service Bulletin A340–53–4105, Revision 02, dated May 25, 1998 (for Model A340 series airplanes); which provide instructions for repetitive HFEC inspections to detect cracks of the fuselage skin aft of frame 54, between the airplane centerline and stringer 56R in the area of the VHF2 antenna, and an interim repair procedure if cracks are found. Accomplishment of the interim repair will stop further crack propagation until a permanent repair can be accomplished. The interim repair consists of cutting out the cracked portion of the fuselage skin, and installing a filler plate in the skin cutout, two doublers, and shims. The DGAC classified these service bulletins as mandatory and issued French airworthiness directives 1998–192–071(B), Revision 01 (for Model A330 series airplanes) and 1998–193–089(B), Revision 01 (for Model A340 series airplanes), both dated March 24, 1999, in order to assure the continued airworthiness of these airplanes in France.

Airbus has also issued Service Bulletin A330–53–3097, Revision 01, dated May 21, 1999 (for Model A330 series airplanes), and Service Bulletin A340–53–4108, Revision 01, dated May 21, 1999 (for Model A340 series airplanes); which provide terminating action for the repetitive inspections. The terminating action consists of a modification to reinforce the fuselage structure in the area of the VHF2 antenna. These service bulletins were approved by the DGAC.

FAA's Conclusions

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

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below. This proposed AD also would provide for an interim repair, which if accomplished, would extend the interval for the repetitive inspections. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Operators should note that, to be consistent with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action specified in the service bulletins described previously. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane.

Differences Between Proposed Rule and Service Bulletins

Operators should note that, unlike the procedures described in Airbus Service Bulletins A330–53–3094 and Service

Bulletin A340–53–4105, this proposed AD would not permit further flight if cracks are detected in the fuselage skin. The service bulletins allow for a temporary repair to be applied to cracks below a certain size, consisting of stop drilling the crack tip, until the interim repair can be accomplished. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject fuselage skin that is found to be cracked must be repaired either with the interim repair or in accordance with a method approved by the FAA (as applicable) prior to further flight.

In addition, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 6 work hours to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $360 per airplane, per inspection cycle.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take approximately 112 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this optional terminating action is estimated to be $6,720 per airplane.

Regulatory Impact

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

For the reasons discussed above, I certify that this 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, Airplane, 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:

Airbus: Docket 99–NM–241–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category; except those on which Airbus production modification 46025 is installed or on which Airbus Service Bulletin A330–53–3097, Revision 01, dated May 21, 1999 (for Model A330 series airplanes), or Service Bulletin A340–53–4108, Revision 01, dated May 21, 1999 (for Model A340 series airplanes), has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (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 detect and correct cracking of the fuselage skin in the area of the VHF2 antenna, which could result in cabin depressurization of the airplane, accomplish the following:

Detailed Visual Inspection

(a) At the latest of the times specified in paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD, as applicable: Perform a detailed visual inspection (without removal of the VHF2 antenna) of the fuselage skin aft of frame 54, between the airplane centerline and stringer 56R in the area of the VHF2 antenna to detect cracks, in accordance with Airbus Service Bulletin A330–53–3094, Revision 02, dated May 28, 1998 (for Model A330 series airplanes), or Service Bulletin A340–53–4105, Revision 02, dated May 25, 1998 (for Model A340 series airplanes) (hereinafter referred to as the applicable service bulletin). Thereafter, if no cracks are detected, repeat the detailed visual inspection every 36 flight hours until accomplishment of the high frequency eddy current (HFEC) inspection required by paragraph (b) of this AD.

(1) Prior to the accumulation of 900 total flight hours.

(2) Within 1,250 flight hours since accomplishment of the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin, if the interim repair has been accomplished prior to the effective date of this AD.

(3) Within 300 flight hours since the most recent HFEC inspection accomplished in accordance with the applicable service bulletin, if the most recent HFEC inspection has been accomplished prior to the effective date of this AD.

(4) Within 36 flight hours after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

High Frequency Eddy Current Inspection

(b) Perform a high frequency eddy current (HFEC) inspection to detect cracks of the fuselage skin aft of frame 54, between the airplane centerline and stringer 56R in the

area of the VHF2 antenna, in accordance with the applicable service bulletin, at the applicable time specified by paragraph (b)(1) or (b)(2) of this AD. Accomplishment of this inspection terminates the requirements of paragraph (a) of this AD.

(1) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has not been accomplished: Prior to the accumulation of 900 total flight hours on the airplane, or within 500 flight hours after the effective date of this AD, whichever occurs later. Thereafter, accomplish the follow-on actions of paragraph (c) or (d) of this AD, as applicable.

(2) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has been accomplished: Within 1,250 flight hours after accomplishment of the interim repair, or within 500 flight hours after the effective date of this AD, whichever occurs later.

Repetitive Inspections

(c) If no crack is detected during the HFEC inspection required by paragraph (b) of this AD, accomplish the repetitive inspections required by paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has not been accomplished, accomplish the actions specified by paragraphs (c)(1)(i) and (c)(1)(ii) of this AD.

(i) Repeat the HFEC inspection specified by paragraph (b) at intervals not to exceed 500 flight hours.

(ii) Within 300 flight hours after each HFEC inspection required by this AD: Perform a detailed visual inspection (without removal of the VHF2 antenna) of the fuselage skin aft of frame 54, between the airplane centerline and stringer 56R in the area of the VHF2 antenna to detect cracks, in accordance with the applicable service bulletin. Thereafter, if no cracks are detected, repeat the detailed visual inspection every 36 flight hours until accomplishment of the next HFEC inspection required by paragraph (c)(1)(i) of this AD.

(2) For airplanes on which the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has been accomplished, repeat the HFEC inspection specified by paragraph (b) of this AD at intervals not to exceed 1,250 flight hours.

Corrective Actions

(d) If any crack is detected during any inspection required by paragraph (a), (b), or (c) of this AD, and the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has not been accomplished: Prior to further flight, accomplish the actions specified by paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) If only one crack is detected and that crack is 9.45 inches or less, and is within the limits specified by the applicable service bulletin: Install the interim repair specified in paragraph 2.C.(4) of the applicable service bulletin. Thereafter, repeat the HFEC inspection specified by paragraph (b) of this AD at intervals not to exceed 1,250 flight hours.

Note 3: The interim repair referenced by this AD consists of cutting out the cracked portion of the fuselage skin, and installing a filler plate in the skin cutout, two doublers, and shims, as described in paragraph 2.C.(4) of the applicable service bulletin.

Note 4: Accomplishment of the interim repair in accordance with paragraph 4.3 of Airbus Industrie All Operator Telex (AOT) 53–10, dated September 24, 1997, is acceptable for compliance with the requirements of paragraph (d)(1) of this AD.

(2) If any crack is detected that is longer than 9.45 inches, or is outside the limits specified by the service bulletin, or if more than one crack is detected: Repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Generale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(e) If any crack is detected during any inspection required by paragraph (a), (b), or (c) of this AD and the interim repair specified by paragraph 2.C.(4) of the applicable service bulletin has been accomplished: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116; or the DGAC (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(f) Accomplishment of the modification as described in Airbus Service Bulletin A330–53–3097, Revision 01, dated May 21, 1999 (for Model A330 series airplanes), or Service Bulletin A340–53–4108, Revision 01, dated May 21, 1999 (for Model A340 series airplanes), terminates the repetitive inspections required by paragraphs (a), (b), and (c) of this AD.

Note 5: Accomplishment of Airbus production modification 46025, or the modification as described in Airbus Service Bulletin A330–53–3097, dated July 29, 1998 (for Model A330 series airplanes), or Service Bulletin A340–53–4108, dated July 31, 1998 (for Model A340 series airplanes), also constitutes terminating action for the repetitive inspections required by paragraphs (a), (b), and (c) of this AD.

Alternative Methods of Compliance

(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, International Branch, ANM–116. 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 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

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

Note 7: The subject of this AD is addressed in French airworthiness directives 1998–192–071(B)R1 (for Model A330 series airplanes) and 1998–193–089(B)R1 (for Model A340 series airplanes), both dated March 24, 1999.

Issued in Renton, Washington, on December 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Airplane Certification Service.

[FR Doc. 99–33950 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–101492–98]

RIN 1545–AV92

Relief for Service in Combat Zone and for Presidentially Declared Disaster

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the postponement of certain tax-related deadlines due either to service in a combat zone or a Presidentially declared disaster. The proposed regulations reflect changes to the law made by the Taxpayer Relief Act of 1997. The proposed regulations affect taxpayers serving in a combat zone and taxpayers affected by a Presidentially declared disaster.

DATES: Written or electronically generated comments and requests for a public hearing must be received by March 30, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–101492–98), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–101492–98), 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.gov/tax regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Beverly A. Baughman, (202) 622–4940; concerning the hearing and submissions of written comments, Guy Traynor (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Regulations on Procedure and Administration (26 CFR part 301) under section 7508 of the Internal Revenue Code (Code), relating to postponement of certain acts by reason of service in a combat zone, and section 7508A, relating to postponement of certain tax-related deadlines by reason of a Presidentially declared disaster. Section 7508A was added to the Code by section 911 of the Taxpayer Relief Act of 1997, Pub. L. 105–34 (111 Stat. 788 (1997)), effective for any period for performing an act that had not expired before August 5, 1997.

In general, section 7508 provides that the time individuals serve in a ''combat zone'' plus 180 days will be disregarded in determining whether acts listed in section 7508(a)(1), such as filing returns, paying taxes, filing certain petitions with the Tax Court, filing a claim for credit or refund, bringing suit, and assessing tax, are performed within the time prescribed. Under section 7508(a)(1)(K), the Secretary has the authority to provide by regulation other acts to which section 7508 will apply.

Section 7508A provides that, in the case of a taxpayer determined by the Secretary to be affected by a Presidentially declared disaster, the Secretary may postpone certain tax-related deadlines for up to 90 days. The deadlines that may be postponed are determined by cross-reference to section 7508(a)(1). Pursuant to section 7508A(b), the provision does not apply for purposes of determining interest on any overpayment or underpayment (if the underpayment arose prior to the disaster). See also H.R. Rep. No. 148, 105th Cong., 1st Sess. 397 (1997).

Explanation of Provisions

Under section 7508, the proposed regulations provide that, in addition to the acts described in section 7508(a)(1), the IRS may postpone other acts specified in revenue rulings, revenue procedures, notices, or other guidance published in the Internal Revenue Bulletin.

Under section 7508A, the proposed regulations provide that, for any tax, penalty, additional amount, or addition to the tax of an affected taxpayer in a Presidentially declared disaster area, the IRS may disregard up to 90 days in determining whether certain tax-related deadlines described in section 7508(a)(1) were satisfied and the amount of any credit or refund. The proposed regulations apply to taxpayer deadlines, such as the time for filing returns and paying taxes relating to most income taxes (including domestic service employment taxes), estate taxes, and gift taxes; filing certain court documents, including petitions filed in United States Tax Court for redetermination of a deficiency; and filing claims for refund. In addition, under the authority in section 7508(a)(1)(K), the proposed regulations provide that for purposes of section 7508A, the IRS may disregard up to 90 days in determining whether the deadlines for filing returns and paying taxes relating to certain excise taxes and employment taxes have been met. Although the proposed regulations do not apply to deadlines for depositing federal taxes pursuant to section 6302 and the underlying regulations, it is anticipated that the failure to deposit penalty under section 6656 will be waived in appropriate circumstances, and thus section 7508A relief will not be necessary.

The proposed regulations also provide for the postponement of certain government deadlines, such as the time for making assessments, taking collection action, and bringing suit. However, the IRS and Treasury Department anticipate that the authority to postpone government deadlines will only be used in limited circumstances when it is determined that such a postponement is necessary and appropriate.

The proposed regulations provide that an affected taxpayer is (1) any individual whose principal residence is located in a covered disaster area; (2) any business whose principal place of business is located in a covered disaster area; (3) any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a covered disaster area; (4) any individual whose principal residence or any business whose principal place of business is located outside the disaster area, but whose tax records necessary to meet certain tax-related deadlines are maintained in a location, such as a practitioner's office, in a covered disaster area; (5) any estate or trust whose tax records necessary to meet certain tax-related deadlines are maintained in a location, such as a practitioner's office, in a covered disaster area; (6) any individual who files a joint return with an affected taxpayer; or (7) any other person who is determined by the IRS to be affected by a Presidentially declared disaster. A covered disaster area means the location of a Presidentially declared disaster to which the IRS determines section 7508A applies.

It is anticipated that the IRS's authority to grant extensions of time to file tax returns under section 6081 and to pay tax with respect to such returns under section 6161 will provide taxpayers with the necessary relief in the case of many Presidentially declared disasters. However, if the IRS determines that section 7508A applies, it will publish guidance to inform taxpayers of the counties included in the covered disaster area, the taxpayer and government deadlines to which section 7508A applies, and the period to be disregarded (up to 90 days). Guidance will be published as soon as practicable after the declaration of a Presidentially declared disaster.

Section 6404(h) provides that in the case of a Presidentially declared disaster, if there is an extension of time to file income tax returns under section 6081 and an extension of time to pay income tax with respect to such returns under section 6161, interest will be abated during the extension period. The proposed regulations clarify that if, in addition to an extension under sections 6081 and 6161, there is a postponement of tax-related deadlines under section 7508A, interest will be abated under section 6404(h) for the period of time disregarded under section 7508A in addition to the period of time covered by the extensions of time to file and pay. The abatement of interest only applies in the case of underpayments of income tax that arise during the extension period.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory 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 these regulations do 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 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 or written comments (a signed original and 8 copies) that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person who timely submits 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 Beverly A. Baughman, 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 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read in part as follows:

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

Section 301.7508–1 also issued under 26 U.S.C. 7508(a)(1)(K).

Section 301.7508A–1 also issued under 26 U.S.C. 7508(a)(1)(K) and 7508A(a). * * *

Par. 2. Section 301.7508–1 is added to read as follows:

§ 301.7508–1 Time for performing certain acts postponed by reason of service in a combat zone.

(a) *General rule.* The period of time that may be disregarded for performing certain acts pursuant to section 7508 applies to acts described in section 7508(a)(1) and to other acts specified in a revenue ruling, revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(b) *Effective date.* This section applies to any period for performing an act that has not expired before December 30, 1999.

Par. 3. Section 301.7508A–1 is added to read as follows:

§ 301.7508A–1 Postponement of certain tax-related deadlines by reason of Presidentially declared disaster.

(a) *Scope.* This section prescribes rules by which the Internal Revenue Service (IRS) may postpone deadlines for performing certain acts with respect to taxes other than taxes not administered by the IRS such as taxes imposed for firearms (chapter 32, section 4181); harbor maintenance (chapter 36, section 4461); and alcohol and tobacco (subtitle E).

(b) *Postponed deadlines.* For any tax, penalty, additional amount, or addition to the tax of an affected taxpayer (defined in paragraph (d)(1) of this section), the IRS may disregard a period of up to 90 days in determining, under the internal revenue laws—

(1) Whether any or all of the acts described in paragraph (c) of this section were performed within the time prescribed; and

(2) The amount of any credit or refund.

(c) *Acts for which a period may be disregarded*—(1) *Acts performed by taxpayers.* Paragraph (b) of this section applies to the following acts performed by taxpayers—

(i) Filing any return of income, estate, gift, excise (other than taxes imposed for firearms (chapter 32, section 4181); harbor maintenance (chapter 36, section 4461); and alcohol and tobacco (subtitle E)) or employment tax (including income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby);

(ii) Payment of any income, estate, gift, excise (other than taxes imposed for firearms (chapter 32, section 4181); harbor maintenance (chapter 36, section 4461); and alcohol and tobacco (subtitle E)) or employment tax (including income tax withheld at source and income tax imposed by subtitle C or any law superseded thereby) or any installment thereof (including payment under section 6159 relating to installment agreements) or of any other liability to the United States in respect thereof, but not including deposits of taxes pursuant to section 6302 and the regulations thereunder;

(iii) Filing a petition with the Tax Court for redetermination of a deficiency, or for review of a decision rendered by the Tax Court;

(iv) Allowance of a credit or refund of any tax;

(v) Filing a claim for credit or refund of any tax;

(vi) Bringing suit upon a claim for credit or refund of any tax; and

(vii) Any other act specified in a revenue ruling, revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(2) *Acts performed by the government.* Paragraph (b) of this section applies to the following acts performed by the government—

(i) Assessment of any tax;

(ii) Giving or making any notice or demand for the payment of any tax, or with respect to any liability to the United States in respect of any tax;

(iii) Collection by the Secretary, by levy or otherwise, of the amount of any liability in respect of any tax;

(iv) Bringing suit by the United States, or any officer on its behalf, in respect of any liability in respect of any tax; and

(v) Any other act specified in a revenue ruling, revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2) of this chapter).

(d) *Definitions*—(1) *Affected taxpayer* means—

(i) Any individual whose principal residence (for purposes of section 1033(h)(4)) is located in a covered disaster area;

(ii) Any business whose principal place of business is located in a covered disaster area;

(iii) Any individual who is a relief worker affiliated with a recognized government or philanthropic organization and who is assisting in a covered disaster area;

(iv) Any individual whose principal residence (for purposes of section 1033(h)(4)) or any business whose principal place of business is not located in a covered disaster area, but whose records necessary to meet a deadline for an act specified in paragraph (c) of this section are maintained in a location, such as a practitioner's office, in a covered disaster area;

(v) Any estate or trust whose tax records necessary to meet a deadline for an act specified in paragraph (c) of this section are maintained in a location, such as a practitioner's office, in a covered disaster area;

(vi) The spouse of an affected taxpayer, solely with regard to a joint return of the husband and wife; or

(vii) Any other person determined by the IRS to be affected by a Presidentially

declared disaster (within the meaning of section 1033(h)(3)).

(2) *Covered disaster area* means an area of a Presidentially declared disaster (within the meaning of section 1033(h)(3)) to which the IRS has determined paragraph (b) of this section applies.

(e) *Notice of postponement of certain acts.* If any tax-related deadline is postponed pursuant to section 7508A and this section, the IRS will publish a revenue ruling, revenue procedure, notice, announcement, news release, or other guidance (see § 601.601(d)(2) of this chapter) describing the acts postponed, the number of days disregarded with respect to each act, the time period to which the postponement applies, and the location of the covered disaster area. Guidance under this paragraph (e) will be published as soon as practicable after the declaration of a Presidentially declared disaster.

(f) *Abatement of interest under section 6404(h).* In the case of a Presidentially declared disaster, if there is an extension of time to file income tax returns under section 6081 and an extension of time to pay income tax with respect to such return under section 6161, and, in addition, a postponement of tax-related deadlines under section 7508A, interest on an underpayment of income tax that arises during such period will be abated under section 6404(h) for the period of time disregarded under section 7508A in addition to the period of time covered by the extension of time to file and the extension of time to pay.

(g) *Examples.* The rules of this section are illustrated by the following examples:

Example 1. (i) Corporation M, a calendar year taxpayer, has its principal place of business in County A in State X. Pursuant to a timely filed request for extension of time to file, Corporation M's 1999 Form 1120, ''U.S. Corporation Income Tax Return,'' is due on September 15, 2000. Also due on September 15, 2000, is Corporation M's third quarter estimated tax payment for 2000. Corporation M's 2000 third quarter Form 720, ''Quarterly Federal Excise Tax Return,'' and third quarter Form 941, ''Employer's Quarterly Federal Tax Return,'' are due on October 31, 2000. In addition, Corporation M has an employment tax deposit due on September 15, 2000.

(ii) On September 1, 2000, a hurricane strikes County A. On September 6, 2000, the President declares that County A is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County A in State X is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on September 1, 2000, and ending on November 6, 2000, 90 days will be disregarded in determining whether the acts are performed timely.

(iii) Because Corporation M's principal place of business is in County A, Corporation M is an affected taxpayer. Accordingly, Corporation M's 1999 Form 1120 will be filed timely if filed on or before December 14, 2000. Corporation M's 2000 third quarter estimated tax payment will be made timely if paid on or before December 14, 2000. In addition, because excise and employment tax returns are described in paragraph (c) of this section, Corporation M's 2000 third quarter Form 720 and third quarter Form 941 will be filed timely if filed on or before January 29, 2001. However, because deposits of taxes are excluded from the scope of paragraph (c) of this section, Corporation M's employment tax deposit is due on September 15, 2000.

Example 2. The facts are the same as in *Example 1*, except that during 2000, Corporation M's 1996 Form 1120 is being examined by the IRS. Pursuant to a timely filed request for extension of time to file, Corporation M timely filed its 1996 Form 1120 on September 15, 1997. Without application of this section, the statute of limitations on assessment for 1996 income tax will expire on September 15, 2000. However, pursuant to paragraph (c) of this section, assessment of tax is one of the government acts for which up to 90 days may be disregarded. The IRS determines that an extension of the statute of limitations is necessary and appropriate under these circumstances. Because the September 15, 2000, expiration date of the statute of limitations on assessment falls within the period of the disaster as described in the IRS's published guidance, the 90 day period disregarded under paragraph (b) of this section begins on September 16, 2000, and ends on December 14, 2000. Accordingly, the statute of limitations on assessment for Corporation M's 1996 income tax will expire on December 14, 2000.

Example 3. The facts are the same as in *Example 2*, except that the examination of the 1996 taxable year was completed earlier in 2000, and on July 28, 2000, the IRS mailed a statutory notice of deficiency to Corporation M. Without application of this section, Corporation M has 90 days (or until October 26, 2000) to file a petition with the Tax Court. However, pursuant to paragraph (c) of this section, filing a petition with the Tax Court is one of the taxpayer acts for which up to 90 days may be disregarded. Because Corporation M is an affected taxpayer, Corporation M's petition to the Tax Court will be filed timely if filed on or before January 24, 2001.

Example 4. (i) H and W, individual calendar year taxpayers, intend to file a joint Form 1040, ''U.S. Individual Income Tax Return,'' for the 2001 taxable year and are required to file a Schedule H, ''Household Employment Taxes.'' The joint return is due on April 15, 2002. H and W fully and timely paid all taxes for the 2001 taxable year, including domestic service employment taxes, through withholding and estimated tax payments. H and W's principal residence is in County B in State Y.

(ii) On April 2, 2002, a severe ice storm strikes County B. On April 5, 2002, the President declares that County B is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County B in State Y is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on April 2, 2002, and ending on April 19, 2002, 90 days will be disregarded in determining whether the acts are performed timely.

(iii) Because H and W's principal residence is in County B, H and W are affected taxpayers. Because April 15, 2002, the due date of H and W's 2001 Form 1040 and Schedule H, falls within the period of the disaster as described in the IRS's published guidance, the 90 day period disregarded under paragraph (b) of this section begins on April 16, 2002, and ends on July 14, 2002, a Sunday. Pursuant to section 7503, if the last day for performing an act falls on Saturday, Sunday, or a legal holiday, the performance of the act shall be considered timely if it is performed on the next succeeding day that is not a Saturday, Sunday, or legal holiday. Accordingly, H and W's 2001 Form 1040 will be filed timely if filed on or before July 15, 2002. In addition, the Schedule H will be filed timely if filed on or before July 15, 2002.

Example 5. The facts are the same as in *Example 4*, except H and W want to file an amended return to request a refund of 1998 taxes. H and W timely filed their 1998 income tax return on April 15, 1999. Without application of this section, H and W's amended 1998 tax return must be filed on or before April 15, 2002. However, pursuant to paragraph (c) of this section, filing a claim for refund of a tax is one of the taxpayer acts for which up to 90 days may be disregarded. Ninety days are disregarded under paragraph (b) of this section beginning on April 16, 2002, and ending on July 14, 2002. Accordingly, H and W's claim for refund for 1998 taxes will be filed timely if filed, as in *Example 4*, on or before July 15, 2002.

Example 6. (i) L is an unmarried, calendar year taxpayer whose principal residence is located in County R in State T. L does not timely file a 2001 Form 1040, ''U.S. Individual Income Tax Return,'' which is due on April 15, 2002, and does not timely pay tax owed on that return. Absent reasonable cause, L is subject to the failure to file and failure to pay penalties under section 6651 beginning on April 16, 2002.

(ii) On May 10, 2002, a tornado strikes County R. On May 14, 2002, the President declares that County R is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County R in State T is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on May 10, 2002, and ending on June 27, 2002, 90 days will be disregarded in determining whether the acts are timely.

(iii) On May 31, 2002, L files a 2001 Form 1040, ''U.S. Individual Income Tax Return,'' and pays the tax owed for 2001.

(iv) Because L's principal residence is in County R, L is an affected taxpayer. For purposes of penalties under section 6651, 90

days are disregarded under paragraph (b) of this section beginning on May 10, 2002. Because L files the return on May 31, 2002, the penalties under section 6651 will run from April 16, 2002, until May 10, 2002. However, because the underpayment arose prior to the extension period, L will be liable for underpayment interest for the entire period of April 16, 2002, through May 31, 2002.

Example 7. The facts are the same as in *Example 6*, except L does not file the 2001 Form 1040 until November 25, 2002. Ninety days are disregarded under paragraph (b) of this section beginning on May 10, 2002, and ending on August 8, 2002. Therefore, the section 6651 penalties will run from April 16, 2002, until May 10, 2002, and from August 9, 2002, until November 25, 2002. However, because the underpayment arose prior to the extension period, L will be liable for underpayment interest for the entire period of April 16, 2002, through November 25, 2002.

Example 8. (i) H and W, individual calendar year taxpayers, intend to file a joint Form 1040, ''U.S. Individual Income Tax Return,'' for the 2001 taxable year. The joint return is due on April 15, 2002. After credits for withholding under section 31 and estimated tax payments, H and W owe tax for the 2001 taxable year. H and W's principal residence is in County C in State Z.

(ii) On March 1, 2002, severe flooding strikes County C. On March 5, 2002, the President declares that County C is a disaster area within the meaning of section 1033(h)(3). The IRS determines that County C in State Z is a covered disaster area and publishes guidance informing taxpayers that for acts described in paragraph (c) of this section that are required to be performed within the period beginning on March 1, 2002, and ending on April 25, 2002, 90 days will be disregarded in determining whether the acts are performed timely. The guidance also grants affected taxpayers an additional 6 month extension of time to file returns under section 6081 and an additional 6 month extension of time to pay under section 6161.

(iii) Because H and W's principal residence is in County C, H and W are affected taxpayers. Pursuant to the published guidance, H and W have until January 13, 2003, to file their return and pay the tax. This date is computed as follows: Under sections 6081 and 6161, H and W will have an additional 6 months, until October 15, 2002, to file and pay the tax. Further, under paragraph (f) of this section, 90 days are disregarded in determining the period of the extension. Therefore, H and W's return and payment of tax will be timely if filed and paid on or before January 13, 2003. In addition, under section 6404(h), underpayment interest under section 6601 is abated for the entire period, from April 16, 2002, until January 13, 2003.

(h) *Effective date.* This section applies to disasters declared after December 30, 1999.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–32823 Filed 12–29–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–777]

RIN No. 1218–AB36

Ergonomics Program; Corrections

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Proposed rule; technical corrections.

SUMMARY: This document makes technical corrections in OSHA's proposed ergonomics program standard, which was published on November 23, 1999.

FOR FURTHER INFORMATION CONTACT: OSHA's Ergonomics Team at (202) 693–2116, or visit the OSHA Homepage at www.osha.gov.

SUPPLEMENTARY INFORMATION: OSHA published its proposed ergonomics program standard on November 23, 1999 (64 FR 65768). The published document contained miscellaneous errors. We are publishing this document to correct errors that appeared in the preamble and regulatory text of the proposed standard. The corrections refer to page numbers and columns in the November 23, 1999 **Federal Register**.

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this document. OSHA is issuing this document under the authority of sections 4, 6(b), and 8 of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 657), and 29 CFR part 1911.

Accordingly, OSHA is correcting the following errors in FR Doc. 99–28981 published in the November 23, 1999 **Federal Register**:

Corrections to Preamble

1. On page 65768, left column, bottom paragraph, in the last sentence, correct the words ''approximately $900 per covered establishment'' to read ''approximately $700 per general industry establishment''.

2. On page 65778, left column, top partial paragraph, correct the last sentence to read as follows: ''Where employers do not have manual handling or manufacturing jobs, or jobs that have given rise to a covered MSD, the ergonomics program standard would not apply at all.''

3. On page 65790, left column, first full paragraph, correct the second sentence to read as follows: ''As explained in the summary and explanation for those sections, a covered MSD, as defined by this standard, is one that occurs after the effective date of this standard; is an OSHA-recordable MSD (as defined by OSHA's recordkeeping rule, 29 CFR part 1904); and is determined by the employer to have occurred in a job in which the physical work activities and conditions are reasonably likely to have caused or contributed to the type of MSD reported (or to have aggravated a pre-existing MSD), and those activities and conditions are a core element of the job and/or make up a significant amount of the employee's worktime.''

4. On page 65797, right column, bullet points under the first full paragraph, add the following as a fifth bullet point: ''• The requirements of the ergonomics program standard.''

5. On page 65804, right column, third full paragraph, fifth sentence, correct the introductory language to read: ''For these employers, the job hazard analysis includes two possible results:''.

6. On page 65804, right column, third full paragraph, fifth sentence, correct the last part of the sentence (beginning ''and second, * * *'') to read as follows: ''and second, the employer has determined that no job fix is needed because risk factors are not present to the extent that a covered MSD is reasonably likely to occur.''.

7. On page 65821, left column, under heading ''Section 1910.918 What must I do to analyze a problem job?'', correct the paragraph heading ''(b)'' to read ''(d)''.

8. On page 65829, right column, correct the third paragraph from the end to read as follows: ''Back belts/braces and wrist braces/splints are not considered PPE for the purposes of this standard.''

9. On page 65836, left column, second paragraph under the table, correct the first sentence by deleting the words ''prior to the occurrence of covered MSDs''.

10. On page 65844, left column, first full paragraph, correct the exhibit number at the end of the paragraph to read ''Ex. 26–432''.

11. On page 65844, left column, in the text of section 1910.932, paragraph (d), correct the word ''work-related'' to read ''covered''.

12. On page 65853, left column, second full paragraph, in the last sentence, correct the number ''6'' to read ''7''.

13. On page 65862, left column, in the note to the table at the top of the column, correct the introductory language to read ''Note to § 1910.940:''.

14. On page 65864, right column, in the second full paragraph, correct the term ''medical management'' to read ''MSD management'' in the second and fourth sentences.

15. On page 65986, right column, bottom paragraph, correct the next to last sentence (''Table VIII–1 shows that the total MSD incidence rates * * *'') to read as follows: ''Table VIII–1 shows that the total MSD incidence rates in general industry range as high as 1,448 per 10,000 workers (in Public Building and Related Furniture (SIC 253)).''

16. On pages 65987 to 65993, column ''Total MSD incidence rate (per 10,000 workers)'' of Table VIII–1 Estimated Number of Establishments and Employees and Estimated Annual Incidence of All MSDs, by 3-Digit SIC, contained errors for some SICs. The correct numbers are shown below.

CORRECTIONS TO TABLE VIII–1: ESTIMATED NUMBER OF ESTABLISHMENTS AND EMPLOYEES AND ESTIMATED ANNUAL INCIDENCE OF ALL MSD'S, BY 3-DIGIT SIC

SIC	Industry	Total MSD incidence rate (per 10,000 workers)
302	Rubber and plastics footwear	724
313	Footwear cut stock	347
315	Leather gloves and mittens	753
328	Cut stone and stone prods	397
387	Watches, clocks, and parts	144
417	Bus terminals	509
423	Trucking Terminals fac	501
461	Pipelines, excpt natural gas	446
474	Rental of railroad cars	113
482	Telegrph and other comm	75
489	Communication ser., n.e.c	45
496	Steam and air-cond. supplies	225
527	Department stores	371
544	Dairy products stores	91
545	Retail bakeries	68
552	Used car dealers	28
557	Motorcycle dealers	20
559	Auto dealers, n.e.c	28
563	Wm's access. and specialty strs	41
564	Chldrn's and infants' wear strs	53
608	Foreign banking	47
611	Federal credit agencies	15
614	Personal cred. institutions	11
622	Commodity contracts brokers	18
635	Surety insurance	48
636	Title insurance	97
637	Pension and health funds	42
639	Ins. Carriers, n.e.c	72
654	Title abstract offices	102
671	Holding offices	57
679	Miscellaneous investing	43
703	Camps and rec. vehicle parks	21
704	Membership-basis org. hotels	21
724	Barber shops	134
725	Shoe Repair	134
731	Advertising	124
754	Automotive serv., exc repair	153
762	Electrical repair shops	133
763	Watch and jewelry repair	133
764	Reupholstery and furn. repair	96
781	Motion picture production	249
782	Motion picture dist	575
783	Motion picture theaters	324
784	Video tape rental	312
791	Dance studios and schools	203
802	Dentists offices and clinics	50
803	Osteopathic physicians	28
823	Libraries	22
824	Vocational schools	23
829	Schools, n.e.c	22

17. On page 66018, correct Table VIII–4 by deleting this page.

18. On page 66019, left column, second paragraph from the bottom, correct the third sentence to read: ''In an industry such as this, even the very small cost of the proposed ergonomics standard per affected establishment—$446—represents a large share of annual profits.''

19. On page 66019, right column, third paragraph from the bottom, in the

last sentence, correct ''27 industries'' to read ''15 industries''.

20. On page 66019, right column, second paragraph from the bottom, in the first sentence, correct ''0.04 percent'' to read ''0.05 percent''.

21. On pages 66020 to 66026, the columns entitled ''Annualized Compliance Costs as a Percentage of Revenue—SBA (percent)'' and ''Annualized Compliance Costs as a Percentage of Profits—SBA (percent)'' of Table VIII–5 contained errors. Substitute the following corrected Table VIII–5.

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Table VIII-5 Estimated Economic Impacts, Under Worst-Case Scenarios, of the Proposed Ergonomics Standard on Firms Meeting SBA Size Criteria, by 3-Digit SIC

						For all small firms			For small affected firms (Those with MSDs)			
SIC	Industry	SBA size criterion (Number of Employees)*	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [b]	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues--SBA (percent)	Annualized Compliance Costs as a Percentage of Profits--SBA (percent)	Number of Affected Small Firms Over 10 years	Annualized Costs per Affected Small Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
710	Soil prep. services	100	$827,563	6.0%	$49,406	$232	0.03	0.5	261	$569	0.07	1.15
720	Crop services	100	$920,171	7.9%	$72,694	$823	0.09	1.1	1,618	$2,060	0.22	2.83
740	Veterinary services	100	$323,809	8.7%	$28,171	$259	0.08	0.9	8,885	$663	0.20	2.35
750	Animal serv., excpt vet.	100	$130,385	6.0%	$7,784	$99	0.08	1.3	1,686	$608	0.47	7.81
780	Lndscape & hort. services	500	$224,169	4.4%	$9,863	$411	0.18	4.2	22,191	$1,264	0.56	12.81
810	Timber tracts	100	$655,119	3.1%	$20,243	$433	0.07	2.1	183	$2,029	0.31	10.02
830	Forest products	1000	na [c]	3.1%	na	$1,936	na	na	34	$7,822	na	na
850	Forestry services	500	$651,017	3.1%	$20,116	$393	0.06	2.0	341	$1,804	0.28	8.97
910	Commercial fishing	100	$467,143	5.0%	$23,357	$206	0.04	0.9	255	$1,567	0.34	6.71
920	Fish hatcheries	100	$263,926	5.0%	$13,196	$691	0.26	5.2	21	$3,004	1.14	22.76
970	Hunting & trapping	100	$221,182	5.0%	$11,059	$258	0.12	2.3	49	$1,766	0.80	15.97
1310	Crude petrol. & nat. gas	500	$3,965,915	5.7%	$226,454	$308	0.01	0.1	1,239	$1,930	0.05	0.85
1320	Natural gas liquids	500	$48,139,333	4.8%	$2,320,316	$842	0.00	0.0	26	$18,379	0.04	0.79
1380	Oil & gas field services	500	$626,980	2.0%	$12,289	$828	0.13	6.7	1,730	$4,175	0.67	33.97
2010	Meat products	500	$8,956,331	2.3%	$205,996	$2,623	0.03	1.3	642	$11,427	0.13	5.55
2020	Dairy products	500	$15,094,385	2.2%	$332,076	$3,388	0.02	1.0	348	$18,122	0.12	5.46
2030	Presrvd fruits & vegetables	500	$9,121,313	4.2%	$383,095	$2,397	0.03	0.6	375	$12,416	0.14	3.24
2040	Grain mill products	500	$9,680,093	2.7%	$261,363	$2,053	0.02	0.8	439	$12,065	0.12	4.62
2050	Bakery products	500	$2,270,290	2.2%	$49,946	$2,042	0.09	4.1	735	$9,530	0.42	19.08
2060	Sugar and confect. prods	500	$6,274,334	4.6%	$288,619	$2,413	0.04	0.8	227	$11,253	0.18	3.90
2070	Fats and oils	500	$17,798,517	2.9%	$516,157	$2,250	0.01	0.4	67	$16,977	0.10	3.29
2080	Beverages	500	$10,514,066	4.5%	$473,133	$3,163	0.03	0.7	462	$15,407	0.15	3.26
2090	Misc. food products	500	$4,590,098	2.9%	$133,113	$1,808	0.04	1.4	853	$8,404	0.18	6.31
2110	Cigarettes	1000	na [c]	3.9%	na	$58,343	na	na	3	$328,533	na	na
2120	Cigars	500	$1,804,300 [c]	3.9%	$70,368	$1,115	0.06	1.6	6	$7,955	0.44	11.31
2130	Chewing & smoking tobacco	500	$21,752,278	3.9%	$848,339	$2,309	0.01	0.3	4	$13,614	0.06	1.60
2140	Tobacco stemm. & redrying	500	na [c]	3.9%	na	$4,760	na	na	5	$26,690	na	na
2210	Brdwven fab. mills, cotton	1000	$15,713,726	3.6%	$565,694	$7,087	0.05	1.3	143	$20,446	0.13	3.61
2220	Broadwoven fabric mills	500	$5,404,147	2.4%	$129,700	$3,382	0.06	2.6	108	$13,015	0.24	10.03
2230	Brdwvn fab. mills, wool	500	$5,776,513	2.4%	$138,636	$1,624	0.03	1.2	30	$4,932	0.09	3.56
2240	Narrow fabric mills	500	$3,448,690	1.3%	$44,833	$2,554	0.07	5.7	98	$7,170	0.21	15.99
2250	Knitting mills	500	$3,597,430	2.7%	$97,131	$2,354	0.07	2.4	658	$6,714	0.19	6.91
2260	Tex. finishing, excpt wool	500	$4,235,317	1.2%	$50,824	$1,923	0.05	3.8	253	$6,375	0.15	12.54
2270	Carpets and rugs	500	$5,177,762	1.7%	$88,022	$2,040	0.04	2.3	135	$6,824	0.13	7.75
2280	Yarn and thread mills	500	$8,354,331	4.0%	$334,173	$4,622	0.06	1.4	125	$21,020	0.25	6.29
2290	Misc. textile goods	500	$4,445,480	2.4%	$106,692	$1,868	0.04	1.8	316	$5,877	0.13	5.51
2310	Men's & boys' suits & coats	500	$2,881,376	4.0%	$115,255	$1,863	0.06	1.6	72	$7,232	0.25	6.27
2320	Men's & boys' furnishings	500	$3,171,012	3.2%	$101,472	$2,590	0.08	2.6	504	$10,478	0.33	10.33
2330	Wm's & misses' outerwear	500	$1,569,746	2.0%	$31,395	$510	0.03	1.6	2,430	$1,870	0.12	5.96
2340	Wm's & chldrn's undergarmnts	500	$3,775,503	2.2%	$83,061	$2,613	0.07	3.1	91	$10,338	0.27	12.45
2350	Hats, caps, & millinery	500	$1,649,005	4.3%	$70,907	$881	0.05	1.2	104	$3,208	0.19	4.52
2360	Girls' & chldrn's outerwear	500	$2,669,747	1.4%	$37,376	$1,263	0.05	3.4	154	$4,752	0.18	12.71
2370	Fur goods	500	$1,027,540 [c]	2.4%	$24,661	$88	0.01	0.4	29	$409	0.04	1.66
2380	Misc. apparel & accessories	500	$1,580,292	2.4%	$37,927	$944	0.06	2.5	263	$3,333	0.21	8.79
2390	Misc. fab. textile prods	500	$1,304,873	2.4%	$31,317	$705	0.05	2.2	2,525	$2,442	0.19	7.80
2410	Logging	500	$929,614	3.9%	$36,255	$75	0.01	0.2	1,998	$539	0.06	1.49
2420	Sawmills & planing mills	500	$2,910,249	3.8%	$110,589	$1,332	0.05	1.2	2,028	$4,004	0.14	3.62
2430	Millwork & plywood	500	$1,826,529	3.7%	$67,582	$1,344	0.07	2.0	3,340	$3,829	0.21	5.67
2440	Wood containers	500	$1,369,020	3.6%	$49,285	$706	0.05	1.4	1,041	$1,918	0.14	3.89
2450	Wood bldings & mobile homes	500	$4,950,488	3.7%	$183,168	$4,995	0.10	2.7	290	$17,727	0.36	9.68
2490	Misc. wood products	500	$2,178,297	2.8%	$60,992	$1,033	0.05	1.7	1,040	$3,502	0.16	5.74

Table VIII-5 Estimated Economic Impacts, Under Worst-Case Scenarios, of the Proposed Ergonomics Standard on Firms Meeting SBA Size Criteria, by 3-Digit SIC (continued)

					For all small firms				For small affected firms (Those with MSDs)			
SIC	Industry	SBA size criterion (Number of Employees)[a]	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [b]	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues--SBA (percent)	Annualized Compliance Costs as a Percentage of Profits--SBA (percent)	Number of Affected Small Firms Over 10 years	Annualized Costs per Affected Small Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
2510	Household furniture	500	$2,073,124	2.9%	$60,121	$1,595	0.08	2.7	1,498	$5,763	0.28	9.59
2520	Office furniture	500	$3,012,350	3.9%	$117,482	$2,455	0.08	2.1	277	$8,986	0.30	7.65
2530	Pub blding & related furn.	500	$5,819,938	3.0%	$174,598	$5,263	0.09	3.0	130	$17,683	0.30	10.13
2540	Partitions and fixtures	500	$2,089,272	3.0%	$62,678	$1,216	0.06	1.9	940	$3,867	0.19	6.17
2590	Misc furniture and fixtures	500	$2,117,271	3.0%	$63,518	$1,025	0.05	1.6	414	$3,475	0.16	5.47
2610	Pulp mills	750	$134,667,674 [c]	3.8%	$5,117,372	$10,469	0.01	0.2	16	$40,502	0.03	0.79
2620	Paper mills	750	$191,302,866	4.7%	$8,991,235	$35,806	0.02	0.4	77	$160,361	0.08	1.78
2630	Paperboard mills	750	$196,732,297 [c]	4.7%	$9,246,418	$17,393	0.01	0.2	43	$91,758	0.05	0.99
2650	Paperbrd containers & boxes	500	$8,670,479	4.0%	$346,819	$3,672	0.04	1.1	688	$14,915	0.17	4.30
2670	Misc. cnvrtd paper products	500	$6,820,292	2.7%	$184,148	$3,055	0.04	1.7	937	$9,692	0.14	5.26
2710	Newspapers	500	$1,125,756	6.0%	$67,545	$1,195	0.11	1.8	2,564	$4,079	0.36	6.04
2720	Periodicals	500	$2,200,657	3.7%	$81,424	$326	0.01	0.4	1,407	$1,332	0.06	1.64
2730	Books	500	$2,457,053	4.0%	$98,282	$816	0.03	0.8	1,021	$2,798	0.11	2.85
2740	Miscellaneous publishing	500	$1,795,050	5.1%	$91,548	$407	0.02	0.4	783	$1,691	0.09	1.85
2750	Commercial printing	500	$1,315,823	3.3%	$43,422	$539	0.04	1.2	12,442	$1,488	0.11	3.43
2760	Manifold business forms	500	$5,561,192	2.7%	$150,152	$2,493	0.04	1.7	308	$7,334	0.13	4.88
2770	Greeting cards	500	$6,967,041	3.8%	$264,748	$3,783	0.05	1.4	46	$10,909	0.16	4.12
2780	Blankbooks & bookbinding	500	$1,749,401	3.8%	$66,477	$1,752	0.10	2.6	645	$4,271	0.24	6.42
2790	Printing trade services	500	$1,124,497	3.0%	$33,735	$306	0.03	0.9	776	$1,352	0.12	4.01
2810	Indust. inorganic chemicals	1000	$50,087,613	4.1%	$2,053,592	$3,489	0.01	0.2	106	$45,940	0.09	2.24
2820	Plastics mat. & synthetics	750	$100,234,215	5.0%	$5,011,711	$4,326	0.00	0.1	116	$32,782	0.03	0.65
2830	Drugs	500	$11,576,143	5.5%	$636,688	$1,450	0.01	0.2	230	$9,702	0.08	1.52
2840	Soap, clnrs, & toilet goods	500	$6,619,474	2.9%	$191,965	$1,083	0.02	0.6	385	$6,751	0.10	3.52
2850	Paints & allied products	500	$6,147,975	2.8%	$172,143	$947	0.02	0.6	228	$6,116	0.10	3.55
2860	Indust. organic chemicals	500	$18,842,994	3.3%	$621,819	$1,554	0.01	0.2	95	$14,701	0.08	2.36
2870	Agricultural chemicals	500	$7,976,028	3.4%	$271,185	$688	0.01	0.3	117	$5,456	0.07	2.01
2890	Misc. chemical products	500	$6,784,471	3.8%	$257,810	$939	0.01	0.4	494	$4,860	0.07	1.89
2910	Petroleum refining	1500	$836,868,684 [c]	3.1%	$25,942,929	$15,004	0.00	0.1	77	$53,844	0.01	0.21
2950	Asphlt pavng & roofng mat.	500	$7,498,719	3.3%	$247,458	$1,614	0.02	0.7	234	$9,441	0.13	3.82
2990	Misc. pet. & coal prods	500	$10,440,575 [c]	3.7%	$386,301	$1,111	0.01	0.3	112	$4,603	0.04	1.19
3010	Tires and inner tubes	1000	$110,959,868	3.9%	$4,327,435	$27,946	0.03	0.6	31	$153,001	0.14	3.54
3020	Rubber & plastics footwear	1000	$14,058,755	4.2%	$590,468	$9,891	0.07	1.7	13	$45,753	0.33	7.75
3050	Hose, bltng, and gaskets	500	$3,876,049	4.4%	$170,546	$2,773	0.07	1.6	168	$13,254	0.34	7.77
3060	Fab. rubber prod., n.e.c.	500	$4,274,557	3.9%	$166,708	$2,682	0.06	1.6	369	$12,622	0.30	7.57
3080	Misc plastics, n.e.c.	500	$4,687,853	3.4%	$159,387	$2,109	0.04	1.3	3,269	$8,723	0.19	5.47
3110	Leather tan. & finishing	500	$3,171,214	1.7%	$53,911	$2,123	0.07	3.9	114	$6,300	0.20	11.69
3130	Footwear cut stock	500	na [c]	1.8%	na	$1,350	na	na	26	$3,668	na	na
3140	Footwear, except rubber	500	$3,351,889	1.9%	$63,686	$4,214	0.13	6.6	115	$13,237	0.39	20.79
3150	Leather gloves & mittens	500	na [c]	1.8%	na	$1,829	na	na	22	$5,820	na	na
3160	Luggage	500	$2,550,508 [c]	1.8%	$45,909	$1,023	0.04	2.2	89	$2,979	0.12	6.49
3170	Hndbags & prsnal leathr gds.	500	$1,514,988 [c]	1.8%	$27,270	$967	0.06	3.5	114	$2,888	0.19	10.59
3190	Leather goods, n.e.c.	500	$1,368,278	1.8%	$24,629	$991	0.07	4.0	143	$2,885	0.21	11.71
3210	Flat glass	1000	$44,411,164	4.5%	$1,998,502	$16,902	0.04	0.8	20	$66,938	0.15	3.35
3220	Glass, pressed or blown	750	$18,905,290	6.8%	$1,285,560	$8,125	0.04	0.6	139	$34,412	0.18	2.68
3230	Prod. of purchased glass	500	$1,988,946	4.4%	$87,514	$1,948	0.10	2.2	422	$7,500	0.38	8.57
3240	Cement, hydraulic	750	$32,779,097	4.5%	$1,475,059	$5,681	0.02	0.4	50	$26,357	0.08	1.79
3250	Structural clay products	500	$3,234,269	6.0%	$194,056	$3,422	0.11	1.8	137	$14,805	0.46	7.63
3260	Pottery & related prods	500	$1,082,204	4.5%	$48,699	$1,792	0.17	3.7	317	$6,711	0.62	13.78
3270	Concrete & plast. prdcts	500	$3,222,724	4.3%	$138,577	$1,376	0.04	1.0	2,133	$6,124	0.19	4.42
3280	Cut stone & stone prods	500	$965,036	4.2%	$40,532	$703	0.07	1.7	342	$2,200	0.23	5.43
3290	Misc. nonmet. mineral prods.	500	$3,852,558	5.7%	$219,596	$2,286	0.06	1.0	372	$9,758	0.25	4.44

Table VIII-5 Estimated Economic Impacts, Under Worst-Case Scenarios, of the Proposed Ergonomics Standard on Firms Meeting SBA Size Criteria, by 3-Digit SIC (continued)

						For all small firms			For small affected firms (Those with MSDs)			
SIC	Industry	SBA size criterion (Number of Employees)[a]	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [b]	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues--SBA (percent)	Annualized Compliance Costs as a Percentage of Profits--SBA (percent)	Number of Affected Small Firms Over 10 years	Annualized Costs per Affected Small Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
3310	Basic steel products	750	$71,587,838	4.7%	$3,364,628	$10,440	0.01	0.3	253	$52,946	0.07	1.57
3320	Iron and steel foundries	500	$5,316,943	4.7%	$249,896	$4,038	0.08	1.6	272	$16,348	0.31	6.54
3330	Primary nonfer. metals	750	$104,585,150	4.5%	$4,706,332	$8,632	0.01	0.2	43	$40,387	0.04	0.86
3340	Secondary nonfer. metals	500	$19,152,945	3.6%	$689,506	$2,661	0.01	0.4	63	$12,500	0.07	1.81
3350	Nonfer. rolling & drawing	750	$58,983,857	5.6%	$3,303,096	$8,858	0.02	0.3	223	$43,822	0.07	1.33
3360	Nonfer. foundries (cstngs)	500	$3,491,201	3.7%	$129,174	$2,284	0.07	1.8	425	$8,841	0.25	6.84
3390	Misc. primary metal prdcts	750	$5,066,740	0.5%	$25,840	$1,177	0.02	4.6	246	$4,525	0.09	17.51
3410	Met. cans & ship. containers	500	$8,487,749	2.8%	$237,657	$4,197	0.05	1.8	73	$24,972	0.29	10.51
3420	Cutlery, hndtls, & hardware	500	$3,168,148	4.7%	$148,903	$2,157	0.07	1.4	754	$6,859	0.22	4.61
3430	Plumbing & heating fixtures	500	$5,500,578	3.8%	$209,022	$3,724	0.07	1.8	214	$11,696	0.21	5.60
3440	Fab. struct. metal prdcts	500	$3,142,031	4.0%	$125,681	$1,523	0.05	1.2	4,464	$4,533	0.14	3.61
3450	Screw machine products	500	$3,399,471	3.9%	$132,579	$1,750	0.05	1.3	925	$4,903	0.14	3.70
3460	Met. forgings & stampings	500	$5,900,679	4.5%	$265,531	$3,484	0.06	1.3	1,216	$10,429	0.18	3.93
3470	Metal services, n.e.c.	500	$1,930,459	5.7%	$110,036	$925	0.05	0.8	1,885	$2,712	0.14	2.46
3480	Ordnance and access., n.e.c.	500	$1,916,047	4.4%	$84,306	$1,632	0.09	1.9	113	$6,002	0.31	7.12
3490	Misc. fab. metal products	500	$3,139,004	4.8%	$150,672	$1,779	0.06	1.2	2,269	$5,655	0.18	3.75
3510	Engines and turbines	1000	$56,430,684	4.4%	$2,482,950	$12,325	0.02	0.5	101	$45,252	0.08	1.82
3520	Farm & garden machinery	500	$3,024,716	4.1%	$124,013	$1,768	0.06	1.4	514	$5,917	0.20	4.77
3530	Construct. & related mach.	500	$4,366,578	5.0%	$218,329	$2,252	0.05	1.0	974	$7,547	0.17	3.46
3540	Metalworking machinery	500	$1,923,153	4.6%	$88,465	$925	0.05	1.0	3,687	$2,951	0.15	3.34
3550	Special industry mach.	500	$3,696,115	4.5%	$166,325	$1,339	0.04	0.8	1,392	$4,575	0.12	2.75
3560	General indust. mach.	500	$4,271,460	4.5%	$192,216	$2,206	0.05	1.1	1,204	$7,894	0.18	4.11
3570	Computer & office equip.	500	$6,625,168	3.3%	$218,631	$1,234	0.02	0.6	475	$5,265	0.08	2.41
3580	Refrig. & serv. indust mach.	500	$4,721,613	2.0%	$94,432	$2,869	0.06	3.0	611	$10,155	0.22	10.75
3590	Industrial mach., n.e.c.	500	$1,086,294	5.5%	$59,746	$459	0.04	0.8	5,890	$2,016	0.19	3.37
3610	Elect. dist. equipment	750	$14,873,332	4.0%	$594,933	$2,500	0.02	0.4	142	$15,357	0.10	2.58
3620	Elect. indust. apparatus	500	$3,392,834	4.0%	$135,713	$1,478	0.04	1.1	340	$9,541	0.28	7.03
3630	Household appliances	500	$5,756,270	3.4%	$195,713	$2,815	0.05	1.4	60	$19,679	0.34	10.05
3640	Elct. lghtng & wire equip.	500	$4,355,541	4.6%	$200,355	$1,635	0.04	0.8	328	$10,265	0.24	5.12
3650	Household audio & vid. equip.	750	$17,721,076	5.9%	$1,045,543	$1,845	0.01	0.2	129	$11,620	0.07	1.11
3660	Communications equipment	750	$30,039,483	5.4%	$1,622,132	$2,370	0.01	0.1	307	$16,296	0.05	1.00
3670	Electrnic compnnts & access.	500	$4,279,984	5.4%	$231,119	$931	0.02	0.4	942	$6,289	0.15	2.72
3690	Misc. elect. equipment	500	$4,403,609	5.0%	$220,180	$1,758	0.04	0.8	240	$12,642	0.29	5.74
3710	Motor vehicles & equipt.	500	$5,821,819	3.9%	$227,051	$1,935	0.03	0.9	490	$18,774	0.32	8.27
3720	Aircraft and parts	1000	$64,238,252	4.3%	$2,762,245	$4,463	0.01	0.2	144	$52,379	0.08	1.90
3730	Ship, boat blding and repair [a]	500	$1,358,254	3.6%	$48,897	$433	0.03	0.9	261	$4,423	0.33	9.05
3740	Railroad equipment	1000	$43,644,454 [c]	2.8%	$1,222,045	$5,496	0.01	0.4	18	$64,378	0.15	5.27
3750	Motorcycles & bicycles	500	$2,531,479	3.8%	$96,196	$531	0.02	0.6	36	$5,329	0.21	5.54
3760	Guided missiles	1000	$228,855,179 [c]	3.8%	$8,696,497	$9,485	0.00	0.1	8	$117,349	0.05	1.35
3790	Misc. transportation equip.	500	$3,063,312	3.8%	$116,406	$795	0.03	0.7	170	$5,240	0.17	4.50
3810	Srch & navigation equipment	750	$51,158,168	4.7%	$2,404,434	$5,279	0.01	0.2	114	$32,312	0.06	1.34
3820	Meas. & contrlling devices	500	$3,508,984	5.3%	$185,976	$1,013	0.03	0.5	878	$5,387	0.15	2.90
3840	Medical instrmnts & supplies	500	$3,717,069	6.2%	$230,458	$1,031	0.03	0.4	757	$5,937	0.16	2.58
3850	Ophthalmic goods	500	$1,524,020	4.2%	$64,009	$803	0.05	1.3	104	$4,461	0.29	6.97
3860	Photo. equip. & supplies	500	$3,934,531	5.3%	$208,530	$1,085	0.03	0.5	112	$6,869	0.17	3.29
3870	Watches, clocks, & parts	500	$2,121,654	5.6%	$118,813	$552	0.03	0.5	25	$3,065	0.14	2.58
3910	Jwlry, slvrwre, and plate	500	$1,704,571	2.8%	$47,728	$432	0.03	0.9	648	$1,870	0.11	3.92
3930	Musical instruments	500	$1,432,933	3.3%	$47,287	$1,273	0.09	2.7	134	$5,206	0.36	11.01
3940	Toys and sporting goods	500	$2,141,491	3.5%	$74,952	$1,126	0.05	1.5	918	$4,277	0.20	5.71
3950	Office and art supplies	500	$1,910,943	3.3%	$63,061	$700	0.04	1.1	255	$2,829	0.15	4.49
3960	Costume jewelry & notions	500	$1,192,271	3.3%	$39,345	$437	0.04	1.1	243	$1,953	0.16	4.96

Table VIII-5 Estimated Economic Impacts, Under Worst-Case Scenarios, of the Proposed Ergonomics Standard on Firms Meeting SBA Size Criteria, by 3-Digit SIC (continued)

						For all small firms			For small affected firms (Those with MSDs)			
SIC	Industry	SBA size criterion (Number of Employees)*	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [b]	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues--SBA (percent)	Annualized Compliance Costs as a Percentage of Profits--SBA (percent)	Number of Affected Small Firms Over 10 years	Annualized Costs per Affected Small Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
3990	Misc. manufactures	500	$1,443,695	3.4%	$49,086	$676	0.05	1.4	4,123	$1,439	0.10	2.93
4110	Local & suburban trans.	500	$693,674	6.2%	$43,008	$2,341	0.34	5.4	4,738	$4,702	0.68	10.93
4120	Taxicabs	500	$334,160	5.9%	$19,715	$341	0.10	1.7	715	$1,574	0.47	7.98
4130	Intercty & rural bus trans.	500	$2,047,822	7.0%	$143,348	$4,431	0.22	3.1	146	$14,516	0.71	10.13
4140	Bus charter service	500	$1,112,257	3.8%	$42,266	$1,055	0.09	2.5	611	$2,472	0.22	5.85
4150	School buses	500	$655,154	5.9%	$38,654	$1,663	0.25	4.3	1,601	$4,401	0.67	11.38
4170	Bus terminals	100	$178,250	5.9%	$10,517	$520	0.29	4.9	26	$1,099	0.62	10.45
4210	Trking & Courier Service	100	$682,252	3.2%	$21,832	$952	0.14	4.4	32,512	$3,359	0.49	15.38
4220	Pub. warehousing & storage	1000	$645,103	9.4%	$60,640	$1,452	0.23	2.4	4,289	$4,015	0.62	6.62
4230	Trucking terminal fac.	500	$528,972 [c]	4.2%	$22,217	$1,215	0.23	5.5	33	$2,959	0.56	13.32
4510	Air trans., scheduled	1500	$84,888,883	4.0%	$3,395,555	$18,711	0.02	0.6	1,186	$104,226	0.12	3.07
4520	Air trans., nonsched.	1500	$2,785,728	6.0%	$167,144	$172	0.01	0.1	629	$500	0.02	0.30
4580	Airports and services	100	$815,921	4.6%	$37,532	$200	0.02	0.5	1,326	$574	0.07	1.53
4610	Pipelines, excpt natural gas	1500	$85,999,109 [c]	4.9%	$4,213,956	$13,744	0.02	0.3	62	$214,972	0.25	5.10
4720	Pass. trans. arrangements	100	$291,573	2.7%	$7,872	$61	0.02	0.8	2,944	$681	0.23	8.65
4730	Freight trans. arrangements	1000	$1,127,447	3.7%	$41,716	$650	0.06	1.6	4,822	$1,992	0.18	4.78
4740	Rental of railroad cars	20	$3,112,041	3.4%	$105,809	$151	0.00	0.1	16	$987	0.03	0.93
4780	Misc. trans. services	100	$597,838	3.4%	$20,326	$978	0.16	4.8	679	$3,744	0.63	18.42
4810	Telephone communication	1500	$30,966,070	7.7%	$2,384,387	$3,508	0.01	0.1	1,118	$85,583	0.28	3.59
4820	Telegrph & other comm.	100	$1,587,993	5.7%	$90,516	$169	0.01	0.2	49	$1,564	0.10	1.73
4830	Radio & TV broadcasting	100	$828,013	2.4%	$19,872	$143	0.02	0.7	994	$1,212	0.15	6.10
4840	Cable & othr pay TV services	100	$2,309,048	5.4%	$124,689	$638	0.03	0.5	405	$6,908	0.30	5.54
4890	Communication serv., n.e.c.	100	$1,476,773	5.7%	$84,176	$95	0.01	0.1	120	$1,144	0.08	1.36
4910	Electric services	100	$10,459,747	10.8%	$1,129,653	$1,057	0.01	0.1	257	$22,613	0.22	2.00
4920	Gas product. & distribution	10	$5,639,801	6.7%	$377,867	$184	0.00	0.0	67	$5,196	0.09	1.38
4930	Comb. utility services	20	$1,749,337	8.3%	$145,195	$227	0.01	0.2	23	$8,823	0.50	6.08
4940	Water supply	100	$417,626	10.6%	$44,268	$189	0.05	0.4	527	$1,314	0.31	2.97
4950	Sanitary services	100	$1,250,569	7.6%	$95,043	$865	0.07	0.9	987	$5,476	0.44	5.76
4960	Steam & air-cond. supplies	100	$1,091,696	8.3%	$90,611	$587	0.05	0.6	10	$4,026	0.37	4.44
4970	Irrigation systems	100	$176,445 [c]	8.3%	$14,645	$149	0.08	1.0	95	$572	0.32	3.91
5010	Motor vehicles	100	$7,338,706	2.0%	$146,774	$636	0.01	0.4	13,204	$2,181	0.03	1.49
5020	Furn. & homefurnishings	100	$3,107,868	2.0%	$62,157	$563	0.02	0.9	5,429	$1,715	0.06	2.76
5030	Lumber & construct. mat.	100	$3,956,240	1.9%	$75,169	$953	0.02	1.3	8,570	$2,610	0.07	3.47
5040	Prof. & commercial equip.	100	$2,865,424	2.5%	$71,636	$456	0.02	0.6	12,520	$1,851	0.06	2.58
5050	Met. & minerals, excpt pet.	100	$10,345,693	2.8%	$289,679	$880	0.01	0.3	3,648	$2,712	0.03	0.94
5060	Electrical goods	100	$5,334,184	2.2%	$117,352	$461	0.01	0.4	9,925	$1,913	0.04	1.63
5070	Hardware supplies	100	$3,243,960	2.2%	$71,367	$718	0.02	1.0	8,258	$2,254	0.07	3.16
5080	Mach., equipt, & supplies	100	$3,120,491	2.9%	$90,494	$567	0.02	0.6	23,717	$1,809	0.06	2.00
5090	Misc. durable goods	100	$3,072,234	3.2%	$98,311	$389	0.01	0.4	10,654	$1,450	0.05	1.47
5110	Paper and paper products	100	$4,200,691	1.6%	$67,211	$519	0.01	0.8	3,765	$2,540	0.06	3.78
5120	Drugs, propriet., & sundries	100	$6,828,751	2.9%	$198,034	$566	0.01	0.3	1,457	$2,708	0.04	1.37
5130	Apparel and notions	100	$3,898,982	2.1%	$81,879	$297	0.01	0.4	4,780	$1,336	0.03	1.63
5140	Groceries & related products	100	$6,267,970	1.4%	$87,752	$1,003	0.02	1.1	12,569	$3,326	0.05	3.79
5150	Farm-prod. raw materials	100	$13,088,804	1.7%	$222,510	$233	0.00	0.1	1,829	$1,356	0.01	0.61
5160	Chemicals & allied prods	100	$6,688,714	3.2%	$214,039	$417	0.01	0.2	3,212	$1,950	0.03	0.91
5170	Petrol. & petrol. prods	100	$18,899,169	1.2%	$226,790	$537	0.00	0.2	2,938	$2,388	0.01	1.05
5180	Beer, wine, & dist. bev.	100	$7,805,539	2.3%	$179,527	$2,003	0.03	1.1	1,630	$5,786	0.07	3.22
5190	Misc. nondurable goods	100	$2,420,357	1.9%	$45,987	$422	0.02	0.9	18,050	$1,257	0.05	2.73
5210	Lumber & other blding mat.	100	$2,041,155	1.9%	$38,782	$1,480	0.07	3.8	10,952	$3,113	0.15	8.03
5230	Paint, glass, wallpaper strs	100	$746,327	0.9%	$6,717	$449	0.06	6.7	3,228	$1,361	0.18	20.27
5250	Hardware stores	100	$747,354	2.3%	$17,189	$514	0.07	3.0	6,760	$1,085	0.15	6.31

Table VIII-5 Estimated Economic Impacts, Under Worst-Case Scenarios, of the Proposed Ergonomics Standard on Firms Meeting SBA Size Criteria, by 3-Digit SIC (continued)

						For all small firms			For small affected firms (Those with MSDs)			
SIC	Industry	SBA size criterion (Number of Employees)[a]	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [b]	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues--SBA (percent)	Annualized Compliance Costs as a Percentage of Profits--SBA (percent)	Number of Affected Small Firms Over 10 years	Annualized Costs per Affected Small Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
5260	Retail nurseries and gardens	100	$685,629	2.2%	$15,084	$616	0.09	4.1	5,227	$1,325	0.19	8.78
5270	Mobile home dealers	100	$2,506,918	2.9%	$72,701	$949	0.04	1.3	2,293	$1,976	0.08	2.72
5310	Department stores	500	$90,424,242	2.6%	$2,351,030	$13,243	0.01	0.6	145	$976,462	1.08	41.53
5330	Variety stores	500	$518,168	2.7%	$13,991	$782	0.15	5.6	2,693	$3,151	0.61	22.52
5390	Misc. gen. merchandise strs.	100	$867,314	1.6%	$13,877	$620	0.07	4.5	2,834	$3,055	0.35	22.01
5410	Grocery stores	500	$1,354,669	1.2%	$16,256	$1,395	0.10	8.6	31,006	$5,803	0.43	35.70
5420	Meat and fish markets	500	$698,037	1.3%	$9,074	$280	0.04	3.1	2,197	$1,003	0.14	11.05
5430	Fruit & vegetable markets	500	$670,436	1.3%	$8,716	$161	0.02	1.8	614	$877	0.13	10.06
5440	Candy, nut, & confctnry strs	500	$356,630	1.3%	$4,636	$153	0.04	3.3	698	$1,043	0.29	22.49
5450	Dairy products stores	500	$357,975	1.3%	$4,654	$111	0.03	2.4	297	$950	0.27	20.42
5460	Retail bakeries	500	$310,632	3.0%	$9,319	$216	0.07	2.3	4,795	$910	0.29	9.76
5490	Misc. food stores	100	$485,584	1.8%	$8,741	$122	0.03	1.4	2,047	$588	0.12	6.72
5510	New and used car dealers	100	$14,022,797	1.1%	$154,251	$2,830	0.02	1.8	15,764	$4,068	0.03	2.64
5520	Used car dealers	1000	$1,204,329	2.5%	$30,108	$50	0.00	0.2	1,935	$573	0.05	1.90
5530	Auto & home supply stores	100	$734,699	1.9%	$13,959	$643	0.09	4.6	15,128	$1,860	0.25	13.32
5540	Gas service stations	100	$1,661,818	1.6%	$26,589	$298	0.02	1.1	22,903	$1,250	0.08	4.70
5550	Boat dealers	100	$1,497,285	2.2%	$32,940	$529	0.04	1.6	2,280	$1,176	0.08	3.57
5560	Rec. vehicle dealers	20	$1,564,906	1.7%	$26,603	$595	0.04	2.2	1,298	$1,201	0.08	4.51
5570	Motorcycle dealers	100	$1,722,849	3.1%	$53,408	$80	0.00	0.2	456	$668	0.04	1.25
5590	Auto dealers, n.e.c.	500	$1,054,926	2.6%	$27,428	$67	0.01	0.2	125	$665	0.06	2.42
5610	Men's & boys' clothing strs	100	$734,468	0.1%	$734	$146	0.02	19.8	1,695	$1,188	0.16	161.69
5620	Women's clothing stores	100	$521,388	4.0%	$20,856	$117	0.02	0.6	3,610	$1,307	0.25	6.27
5630	Wm's access.& specialty strs	100	$424,294	4.5%	$19,093	$86	0.02	0.4	705	$1,049	0.25	5.49
5640	Chldrn's & infants' wear strs	100	$442,743	1.2%	$5,313	$205	0.05	3.9	822	$1,289	0.29	24.27
5650	Family clothing stores	100	$811,771	1.3%	$10,553	$774	0.10	7.3	3,914	$3,824	0.47	36.23
5660	Shoe stores	100	$720,198	2.6%	$18,725	$159	0.02	0.8	1,931	$2,614	0.36	13.96
5690	Misc. apparel stores	500	$486,401	1.2%	$5,837	$62	0.01	1.1	956	$659	0.14	11.30
5710	Furnitre & homefurnishng strs	100	$837,185	2.3%	$19,255	$623	0.07	3.2	26,271	$1,560	0.19	8.10
5720	Household appliance strs	100	$851,037	2.3%	$19,574	$552	0.06	2.8	4,005	$1,380	0.16	7.05
5730	Radio, TV, & comptr strs	100	$1,073,328	2.3%	$24,687	$329	0.03	1.3	6,675	$1,907	0.18	7.72
5810	Eating & drinking places	500	$469,053	3.0%	$14,072	$328	0.07	2.3	128,415	$1,190	0.25	8.46
5910	Drug stores	100	$1,276,589	2.5%	$31,915	$450	0.04	1.4	10,658	$1,821	0.14	5.71
5920	Liquor stores	1000	$803,413	1.4%	$11,248	$45	0.01	0.4	3,029	$423	0.05	3.76
5930	Used merchandise stores	500	$327,184	4.6%	$15,050	$237	0.07	1.6	5,829	$955	0.29	6.35
5940	Misc. shopping goods strs.	100	$506,822	2.2%	$11,150	$243	0.05	2.2	29,906	$1,049	0.21	9.40
5960	Nonstore retailers	100	$831,934	2.0%	$16,639	$664	0.08	4.0	9,386	$2,081	0.25	12.51
5980	Fuel dealers	100	$1,502,002	0.8%	$12,016	$590	0.04	4.9	3,581	$1,859	0.12	15.47
5990	Retail stores, n.e.c.	100	$392,251	2.6%	$10,199	$158	0.04	1.6	14,159	$1,063	0.27	10.43
6010	Central res. depository	10	na [c]	12.7%	na	$233	na	na	1	$3,130	na	na
6020	Commercial banks	10	$1,727,898	12.7%	$219,443	$67	0.00	0.0	112	$20,574	1.19	9.38
6030	Savings institutions	10	$1,974,399	12.7%	$250,749	$55	0.00	0.0	33	$15,956	0.81	6.36
6060	Credit unions	10	$494,582	12.7%	$62,812	$52	0.01	0.1	937	$587	0.12	0.93
6080	Foreign banking	10	$6,126,893	12.7%	$778,115	$74	0.00	0.0	6	$2,180	0.04	0.28
6090	Banking-related functions	100	$918,459	12.7%	$116,644	$131	0.01	0.1	486	$1,547	0.17	1.33
6110	Federal credit agencies	20	$1,722,770	14.6%	$251,524	$27	0.00	0.0	3	$9,859	0.57	3.92
6140	Personal cred. institutions	20	$856,550	18.1%	$155,036	$19	0.00	0.0	128	$2,706	0.32	1.75
6150	Business cred. institutions	20	$1,814,771	15.5%	$281,290	$55	0.00	0.0	219	$1,151	0.06	0.41
6160	Mortgage bankers & brokers	100	$695,722	9.6%	$66,789	$68	0.01	0.1	1,549	$949	0.14	1.42
6210	Security brokers & dealers	20	$842,572	10.5%	$88,470	$31	0.00	0.0	370	$1,764	0.21	1.99
6220	Commodity contracts brokers	100	$1,061,365	11.7%	$124,180	$37	0.00	0.0	85	$709	0.07	0.57
6230	Security & commod. exchanges	100	$1,600,957	11.7%	$187,312	$165	0.01	0.1	11	$1,573	0.10	0.84

Table VIII-5 Estimated Economic Impacts, Under Worst-Case Scenarios, of the Proposed Ergonomics Standard on Firms Meeting SBA Size Criteria, by 3-Digit SIC (continued)

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SIC	Industry	SBA size criterion (Number of Employees)*	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [b]	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues--SBA (percent)	Annualized Compliance Costs as a Percentage of Profits--SBA (percent)	Number of Affected Small Firms Over 10 years	Annualized Costs per Affected Small Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
6280	Security & commod. services	100	$731,044	14.1%	$103,077	$26	0.00	0.0	437	$1,062	0.15	1.03
6310	Life insurance	100	$7,739,146	12.7%	$982,872	$176	0.00	0.0	135	$14,390	0.19	1.46
6320	Medical & health insur.	20	$4,637,512	12.7%	$588,964	$134	0.00	0.0	67	$4,124	0.09	0.70
6330	Fire, marine, & caslty ins.	1500	$140,086,752	12.7%	$17,791,018	$3,452	0.00	0.0	248	$283,937	0.20	1.60
6350	Surety insurance	20	$2,086,520	12.7%	$264,988	$56	0.00	0.0	13	$2,014	0.10	0.76
6360	Title insurance	100	$628,048	12.7%	$79,762	$189	0.03	0.2	109	$4,292	0.68	5.38
6370	Pension and health funds	1000	$758,021	12.7%	$96,269	$108	0.01	0.1	249	$1,193	0.16	1.24
6390	Ins. carriers, n.e.c.	100	$1,836,789	12.7%	$233,272	$141	0.01	0.1	46	$878	0.05	0.38
6410	Insurance agents	100	$376,269	6.8%	$25,586	$42	0.01	0.2	9,495	$557	0.15	2.18
6510	Real estate operators	100	$723,466	15.4%	$111,414	$203	0.03	0.2	23,947	$850	0.12	0.76
6530	RE agents and managers	100	$452,717	12.1%	$54,779	$127	0.03	0.2	17,090	$919	0.20	1.68
6540	Title abstract offices	100	$450,454	12.1%	$54,505	$146	0.03	0.3	1,204	$629	0.14	1.15
6550	Subdividers & developers	100	$686,118	9.1%	$62,437	$314	0.05	0.5	3,755	$1,543	0.22	2.47
6710	Holding offices	100	$1,458,012	17.5%	$255,152	$161	0.01	0.1	846	$1,759	0.12	0.69
6720	Investment offices	20	$2,504,933	17.5%	$438,363	$63	0.00	0.0	32	$1,656	0.07	0.38
6730	Trusts	100	$964,611	17.5%	$168,807	$80	0.01	0.0	907	$771	0.08	0.46
6790	Miscellaneous investing	20	$1,309,443	17.5%	$229,152	$48	0.00	0.0	575	$656	0.05	0.29
7010	Hotels and motels	100	$562,982	7.0%	$39,409	$639	0.11	1.6	13,478	$2,010	0.36	5.10
7020	Rooming & boarding houses	1000	$274,294	7.0%	$19,201	$285	0.10	1.5	519	$890	0.32	4.64
7030	Camps and rec. vehicle parks	1000	$403,297	7.0%	$28,231	$33	0.01	0.1	427	$576	0.14	2.04
7040	Membership-basis org. hotels	100	$216,959	7.0%	$15,187	$29	0.01	0.2	167	$414	0.19	2.72
7210	Laundry & garment srvices	100	$247,311	3.8%	$9,398	$365	0.15	3.9	19,329	$1,062	0.43	11.30
7220	Photo studios, portrait	500	$278,014	3.9%	$10,843	$114	0.04	1.1	1,511	$995	0.36	9.18
7230	Beauty shops	500	$142,666	4.6%	$6,563	$42	0.03	0.6	7,931	$430	0.30	6.55
7240	Barber shops	100	$82,197	4.6%	$3,781	$108	0.13	2.9	1,016	$478	0.58	12.63
7250	Shoe repair	100	$101,726	4.6%	$4,679	$113	0.11	2.4	418	$596	0.59	12.74
7260	Fun. service and crematories	100	$590,431	7.9%	$46,644	$150	0.03	0.3	2,838	$834	0.14	1.79
7290	Misc personal services.	500	$212,827	4.6%	$9,790	$50	0.02	0.5	1,091	$1,420	0.67	14.51
7310	Advertising	100	$765,849	3.8%	$29,102	$217	0.03	0.7	3,055	$1,373	0.18	4.72
7320	Credit report.& collection	100	$674,626	7.0%	$47,224	$133	0.02	0.3	966	$930	0.14	1.97
7330	Mailing, reprod, steno., serv	100	$500,227	4.6%	$23,010	$163	0.03	0.7	5,396	$1,048	0.21	4.55
7340	Services to buildings	500	$258,731	3.7%	$9,573	$176	0.07	1.8	12,290	$935	0.36	9.76
7350	Misc. equipt. rental	100	$985,159	9.2%	$90,635	$327	0.03	0.4	4,016	$2,010	0.20	2.22
7360	Pers. supply services	500	$1,103,842	3.0%	$33,115	$1,381	0.13	4.2	6,019	$8,402	0.76	25.37
7370	Comptr & data proc. services	500	$1,097,682	5.2%	$57,079	$138	0.01	0.2	7,146	$1,711	0.16	3.00
7380	Misc. business services	500	$557,848	3.4%	$18,967	$242	0.04	1.3	14,724	$1,402	0.25	7.39
7510	Auto rentals, no drivers	100	$1,154,193	5.7%	$65,789	$427	0.04	0.6	1,671	$2,651	0.23	4.03
7520	Automobile parking	100	$682,842	4.8%	$32,776	$254	0.04	0.8	414	$5,421	0.79	16.54
7530	Automotive repair shops	500	$374,580	3.9%	$14,609	$198	0.05	1.4	36,758	$751	0.20	5.14
7540	Automotive serv., exc repair	500	$349,680	6.5%	$22,729	$408	0.12	1.8	9,281	$1,186	0.34	5.22
7620	Electrical repair shops	100	$384,314	2.6%	$9,992	$363	0.09	3.6	5,382	$1,293	0.34	12.94
7630	Watch and jewelry repair	100	$156,483	3.4%	$5,320	$151	0.10	2.8	398	$684	0.44	12.86
7640	Reupholstery & furn. repair	100	$149,960	3.4%	$5,099	$112	0.07	2.2	1,452	$528	0.35	10.36
7690	Misc. repair shops	100	$456,359	5.9%	$26,925	$376	0.08	1.4	12,308	$1,186	0.26	4.41
7810	Motion picture production	500	$990,868	5.4%	$53,507	$418	0.04	0.8	2,454	$2,492	0.25	4.66
7820	Motion picture dist.	20	$1,444,490	5.8%	$83,780	$365	0.03	0.4	445	$1,005	0.07	1.20
7830	Motion picture theaters	100	$652,241	5.8%	$37,830	$958	0.15	2.5	1,580	$3,958	0.61	10.46
7840	Video tape rental	500	$297,050	7.2%	$21,388	$275	0.09	1.3	7,203	$795	0.27	3.72
7910	Dance studios & schools	100	$147,902	4.1%	$6,064	$210	0.14	3.5	2,061	$582	0.39	9.59
7920	Prducrs, orch., entertainers	100	$713,474	3.6%	$25,685	$191	0.03	0.7	3,228	$977	0.14	3.80
7930	Bowling centers	500	$480,995	4.2%	$20,202	$258	0.05	1.3	1,830	$809	0.17	4.00

Table VIII-5 Estimated Economic Impacts, Under Worst-Case Scenarios, of the Proposed Ergonomics Standard on Firms Meeting SBA Size Criteria, by 3-Digit SIC (continued)

						For all small firms			For small affected firms (Those with MSDs)		
SIC	Industry	SBA size criterion (Number of Employees)*	Average Revenue per Firm (SBA)	Profits as a Percentage of Revenues [b]	Average Profit per Firm (SBA) ($)	Average Cost per Firm (SBA) ($)	Annualized Compliance Costs as a Percentage of Revenues--SBA (percent)	Annualized Compliance Costs as a Percentage of Profits--SBA (percent)	Number of Affected Small Firms Over 10 years	Annualized Costs per Affected Small Firm	Annualized Costs as a Percent of Revenues	Annualized Costs as a Percent of Profits
7940	Commercial sports	100	$1,064,778	3.6%	$38,332	$416	0.04	1.1	1,259	$1,498	0.14	3.91
7990	Misc. recreation services	500	$602,501	4.2%	$25,305	$681	0.11	2.7	17,198	$2,443	0.41	9.65
8010	Offices of medical doctors	100	$775,789	6.3%	$48,875	$184	0.02	0.4	30,591	$1,113	0.14	2.28
8020	Dentists offices and clinics	500	$413,582	11.3%	$46,735	$75	0.02	0.2	15,864	$531	0.13	1.14
8030	Osteopathic physicians	500	$501,172	5.4%	$27,063	$43	0.01	0.2	786	$500	0.10	1.85
8040	Other health practitioners	500	$289,816	6.5%	$18,838	$145	0.05	0.8	17,520	$703	0.24	3.73
8050	Nursing & personal care fac.	500	$2,533,384	4.3%	$108,936	$5,958	0.24	5.5	6,066	$23,504	0.93	21.58
8060	Hospitals	100	$2,933,028	5.1%	$149,584	$3,119	0.11	2.1	329	$12,379	0.42	8.28
8070	Med. & dental labs	100	$567,385	7.9%	$44,823	$236	0.04	0.5	2,039	$1,725	0.30	3.85
8080	Home hlth care services	500	$1,352,121	3.5%	$47,324	$2,695	0.20	5.7	3,534	$12,169	0.90	25.71
8090	Hlth & allied serv., n.e.c.	500	$1,242,429	11.0%	$136,667	$794	0.06	0.6	4,121	$4,012	0.32	2.94
8110	Legal services	100	$499,601	5.0%	$24,980	$69	0.01	0.3	13,330	$864	0.17	3.46
8210	Elem. & secondary schools	100	$1,176,073	5.9%	$69,388	$420	0.04	0.6	3,421	$2,066	0.18	2.98
8220	Colleges & universities	100	$1,325,665	6.2%	$82,191	$632	0.05	0.8	260	$5,624	0.42	6.84
8230	Libraries	1000	$390,031	5.9%	$23,012	$62	0.02	0.3	164	$852	0.22	3.70
8240	Vocational schools	100	$557,312	5.9%	$32,881	$68	0.01	0.2	481	$944	0.17	2.87
8290	Schools, n.e.c.	1000	$500,377	5.0%	$25,019	$53	0.01	0.2	1,288	$636	0.13	2.54
8320	Individual & fam. services	500	$609,148	4.1%	$24,975	$944	0.16	3.8	12,854	$3,159	0.52	12.65
8330	Job train. & related serv.	500	$1,095,666	2.5%	$27,392	$2,250	0.21	8.2	2,477	$8,240	0.75	30.08
8350	Child day care services	1000	$266,652	3.8%	$10,133	$250	0.09	2.5	15,684	$854	0.32	8.42
8360	Residential care	500	$860,750	2.6%	$22,380	$2,038	0.24	9.1	9,280	$6,310	0.73	28.20
8390	Social services, n.e.c.	100	$982,940	3.4%	$33,420	$376	0.04	1.1	2,944	$1,958	0.20	5.86
8410	Museums & art galleries	100	$413,094	6.1%	$25,199	$258	0.06	1.0	906	$1,255	0.30	4.98
8420	Bot. & zoology gardens	100	$580,625	6.1%	$35,418	$713	0.12	2.0	133	$2,921	0.50	8.25
8610	Business associations	100	$658,954	3.3%	$21,745	$67	0.01	0.3	1,566	$669	0.10	3.08
8620	Prof. organizations	100	$732,835	4.8%	$35,176	$67	0.01	0.2	642	$730	0.10	2.07
8630	Labor organizations	100	$432,735	6.4%	$27,695	$45	0.01	0.2	1,557	$561	0.13	2.03
8640	Civic & social assoc.	500	$382,131	3.4%	$12,992	$252	0.07	1.9	7,826	$1,187	0.31	9.14
8650	Political organizations	100	$362,243	6.4%	$23,184	$89	0.02	0.4	371	$615	0.17	2.65
8660	Religious organizations	500	$328,231	9.1%	$29,869	$34	0.01	0.1	7,712	$695	0.21	2.33
8690	Membership orgs., n.e.c.	100	$482,414	6.4%	$30,874	$325	0.07	1.1	1,571	$1,843	0.38	5.97
8710	Eng. and arch. services	100	$647,979	4.2%	$27,215	$140	0.02	0.5	9,322	$1,164	0.18	4.28
8720	Accntng, auditng, & bkeeping	100	$324,342	12.0%	$38,921	$120	0.04	0.3	9,288	$1,075	0.33	2.76
8730	Research & testing services	100	$976,053	3.4%	$33,186	$504	0.05	1.5	3,434	$2,742	0.28	8.26
8740	Management & pub. relations	100	$540,229	6.2%	$33,494	$194	0.04	0.6	11,955	$1,516	0.28	4.53
8990	Services, n.e.c.	100	$470,966	5.0%	$23,548	$285	0.06	1.2	5,755	$848	0.18	3.60
	Total Average (unweighted)		$11,070,190	4.9%	$481,756	$1,898	0.05	1.48	1,210,067	$13,666	0.23	6.67

Source: Office of Regulatory Analysis.
Revenue data are from U.S. Dept. of Commerce, Bureau of Census. Compliance costs are from Chapter V of this Preliminary Economic Analysis. Profit rates are from, in most cases, Robert Morris Associates' "RMA Studies."

* Approximated, to make use of available firm revenue data.
[a] Excludes SIC 3731
[b] A profit rate of 5 percent of revenues was estimated for SICs 910,920,970,8110, and 8990; a profit rate of 4 percent. was estimated for SICs 2280, 2310, and 5620.
[c] Revenue data were wholly or partially suppressed by the Census Bureau for the SBA small entity size category to protect confidentiality. Any projected economic impacts are therefore overestimated for these industries. Where estimated costs as a percent of profits would be in excess of 20 percent in those industries for which the Bureau suppressed the data, OSHA reported profit impacts as "na."

22. On page 66054, left column, correct the reference to the Eastern Research Group document to read as follows: ''Eastern Research Group [ERG, 1999]. *Tabulations from OSHA's 1993 Ergonomics Survey,* Lexington, MA, 1999, Ex. 28–7.''

23. On page 66054, left column, in the reference to the Robert Morris Associates document, add '', Ex. 26–1641'' after ''Philadelphia, PA 1996''.

24. On page 66063, left column, in paragraph 5 under ''G. MSD Management,'' correct ''medical'' to ''MSD'' in the first line.

25. On page 66065, left column, in the first paragraph under ''C. Notice of Intention to Appear at the Hearings,'' correct the date in the first line to read ''January 24, 2000''.

Corrections to Regulatory Text

PART 1910—[CORRECTED]

Subpart Y—[Corrected]

§ 1910.945 [Corrected]

1. On page 66075, left column, correct the section number ''§ 910.945'' to read ''§ 1910.945''.

2. On page 66075, left column, in § 1910.945, in the definition of ''Administrative controls,'' lines 2 and 3, correct the phrase ''magnitude, frequency or duration'' to read ''magnitude, frequency, and/or duration''.

3. On page 66075, left column, in § 1910.945, in the definition of ''Covered MSD,'' correct paragraphs (1)(iv) and (2)(iv) by adding the words ''of the job'' after the words ''core element''.

4. On page 66075, right column, in § 1910.945, in paragraph (2) of the definition of ''Ergonomic risk factors,'' lines 5 and 6, correct the phrase ''duration, frequency and magnitude'' to read ''duration, frequency, and/or magnitude''.

5. On page 66076, left column, in § 1910.945, in the definition for ''Manual handling jobs,'' in the heading of the table, correct ''(2) EXAMPLES OF JOB/TASKS THAT TYPICALLY ARE NOT MANUAL HANDLING JOBS'' to read ''(2) EXAMPLES OF JOBS THAT TYPICALLY ARE NOT MANUAL HANDLING JOBS''.

6. On page 66077, right column, in § 1910.945, in paragraph (1) of the definition of ''OSHA recordable MSD,'' line 2, correct ''pre-existing MSD.'' to read ''pre-existing MSD; and''.

Signed at Washington, DC, this 23rd day of December, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–33860 Filed 12–29–99; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Workshops on Further Supplementary Proposed Rule—Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public workshops.

SUMMARY: The Minerals Management Service (MMS) is giving notice of three public workshops concerning the further supplementary proposed rule.

DATES: The public workshop dates are:

Workshop 1—Houston, Texas, on January 19, 2000, beginning at 9 a.m. and ending at 5 p.m., Central time.

Workshop 2—Albuquerque, New Mexico, on January 19, 2000, beginning at 9 a.m. and ending at 5 p.m., Mountain time.

Workshop 3—Washington, D.C., on January 20, 2000, beginning at 9 a.m. and ending at 5 p.m., Eastern time.

ADDRESSES: The workshop locations are:

Workshop 1 will be held at the Houston Compliance Division Office, Minerals Management Service, 4141 North Sam Houston Parkway East, Houston, Texas 77032, telephone number (281) 987–6802.

Workshop 2 will be held at the Bureau of Land Management, Albuquerque District Office, 435 Montano Road, Albuquerque, New Mexico 87107, telephone number (505) 761–8700.

Workshop 3 will be held at the Main Interior Building, 1849 C Street, NW, Washington, D.C. 20240 (South Penthouse Room), telephone number, (202) 208–3512.

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

SUPPLEMENTARY INFORMATION: The workshops will be open to the public without advance registration. Public attendance may be limited to the space available. We encourage a workshop atmosphere; members of the public are encouraged to participate in a discussion of the further supplementary proposed rule. For building security measures, each person may be required to present a picture identification to gain entry to the workshops.

Dated: December 23, 1999.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 99–33861 Filed 12–29–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

Student Financial Assistance

AGENCY: Department of Education.

ACTION: Notice of intention to establish negotiated rulemaking committees on issues under Title IV of the Higher Education Act of 1965, as amended.

SUMMARY: We announce our intention to establish two negotiated rulemaking committees to prepare proposed regulations under Title IV of the Higher Education Act of 1965, as amended. Each committee will include representatives of the interests that are significantly affected by the subject matter of the regulations. We request nominations for participants from anyone who believes that his or her organization or group should participate in this negotiated rulemaking process.

DATES: We will consider all nominations for membership on the committees that we receive by January 18, 2000. We will also be holding a meeting on January 18, 2000, at the Department of Education for interested parties to discuss the procedures for the negotiated rulemaking sessions.

ADDRESSES: Please send your nomination to Beth Grebeldinger, U.S. Department of Education, 400 Maryland Ave., SW., ROB–3, Washington, DC 20202–5257, or fax to Beth Grebeldinger at (202) 708–7196. You may also email your nominations to:
beth grebeldinger@ed.gov

The meeting will be held at the Department of Education at the address above. Anyone interested in attending the meeting should contact Beth Grebeldinger at (202) 205–8822.

FOR FURTHER INFORMATION CONTACT: Beth Grebeldinger, U.S. Department of Education, 400 Maryland Ave., SW., ROB–3, Washington, DC 20202–5257. Telephone: (202) 205–8822. If you use a

telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.* interpreting service, assistive listening device, or materials in alternate format), notify the contact person listed in this NPRM in advance of the scheduled meeting date. Although we will attempt to meet a request we receive, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Structure of Committees

We anticipate having two negotiating committees. The ultimate goal of negotiated rulemaking is to reach a consensus on proposed regulations through discussion and negotiation among interested and affected parties, including the Department of Education. With this in mind, we will conduct these negotiations within a structure that is designed to meet this goal fairly and efficiently. We expect to make the committees large enough to allow significantly affected parties to be represented, without making the committees so large as to be unmanageable and potentially unsuccessful. We therefore encourage organizations and groups to work together to nominate someone who would represent a coalition of organizations or groups. The meetings will be open to the public.

We list below the issues each committee is likely to address. The list was developed through topic sessions held with representatives of the participants in the student financial aid programs in Washington, DC, through listening sessions held in Atlanta, Chicago, and San Francisco, and through listening sessions conducted by the Office of Student Financial Assistance's (OSFA's) Customer Service Task Force. This list of issues is tentative and may be revised as the process continues.

Note: A comprehensive review of delinquency and default management (including due diligence) has not been included on the list of issues for this round of negotiated rulemaking. Because of the complexity of these issues, we will convene discussions in early 2000 with all interested parties to begin consideration of these issues and to discuss what issues, if any, should be included in a future session of negotiated rulemaking.

Committee I: Loan Issues Committee

Cohort Default Rates

- Restructure and revise cohort default rate provisions for clarity and consistency (34 CFR 668.17).
- Address the effect of changes of ownership on calculation of cohort default rates and related determinations of eligibility (34 CFR 668.17(g)).
- Remove or modify the list of default reduction measures in Appendix D to Part 668.
- Develop regulations regarding electronic appeal submission and processing, including consideration of the functions to be performed by guaranty agencies, schools, and the Department.

Death and Disability—address evidentiary requirements for death discharges; standards for granting disability discharges; and processes for evaluating discharge applications (34 CFR 682.402(b) and (c)).

Delinquency and Default Management—address post-default due diligence (34 CFR 682.410(b)(6) and (7)).

Teacher Loan Forgiveness

False Certification Discharges—address implications of the decision in *Jordan* v. *Riley* and the existing ability to benefit standards (34 CFR 682.402(e)).

Federal Perkins Loans—address proof of claim requirements in bankruptcy (34 CFR 674) and criteria regarding institutions' ability to maintain an acceptable record of collecting on loans.

Cash Management—address just-in time provisions (34 CFR 668.162 and 668.167).

Committee II: Program and Eligibility Issues Committee

Change of Ownership—(34 CFR 668.12 and 668.13 and 34 CFR 600.20, 600.21, 600.30, and 600.31)

- Address changes of ownership of publicly traded corporations.
- Consider changes of control issues that are unique to public institutions.
- Clarify application procedures and information required for changes of ownership and other situations.
- Consolidate and clarify change of ownership provisions, including application procedures.

Nontraditional Programs

- Consider the definitions of standard term, nonstandard term and non-term (34 CFR 668.2).
- Address the application of the 12 hour rule as found in the academic year and eligible programs definitions (34 CFR 668.2 and 668.8).
- Revise notification and approval requirements for additional locations and new programs (34 CFR 600.10, 600.20, 600.21, and 600.30).
- Consider revisions to regulatory provisions governing consortium and contractual agreements (34 CFR 600.9).

Special Leveraging Education Assistance Partnerships (SLEAP)

Electronic Authorization and Verification, and Electronic Retention

- Address these issues for certain Title IV programs and purposes.

Each negotiating committee will include representatives of significantly affected interests, such as students, and/or legal assistance organizations that represent students, institutions of higher education, guaranty agencies, lenders, secondary markets, loan servicers, guaranty agency servicers, and collection agencies.

Schedule for Negotiations

There are expected to be a total of approximately four meetings of each committee, all of which will be held in the metropolitan Washington, DC area. The following is the tentative schedule for negotiations for each of the committees. This schedule is subject to change.

Committee I

Session 1: February 7–8
Session 2: March 27–29
Session 3: May 1–3
Session 4: May 30–31

Committee II

Session 1: February 17–18
Session 2: March 29–31
Session 3: May 3–5
Session 4: June 1–2

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Program Authority: 20 U.S.C. 1098a.

(Catalog of Federal Domestic Assistance Number does not apply)

Richard W. Riley,

Secretary of Education.

[FR Doc. 99–33951 Filed 12–29–99; 8:45 am]

BILLING CODE 4000–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6515–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) proposes to delete the Monticello Radioactive Contaminated Properties Site (Site), located in Monticello, Utah, from the National Priorities List (NPL). The NPL is the National Oil and Hazardous Substances Pollution and Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA). This action is being taken because EPA, with the preliminary concurrence of the State of Utah Department of Environmental Quality (UDEQ), has determined that responsible parties have implemented all appropriate response actions required and that no further response at the Site is appropriate.

A detailed rationale for this Proposal to Delete is set forth in the direct final rule which can be found in the Rules and Regulations section of this **Federal Register**. The direct final rule is being published because EPA views this deletion action as a noncontroversial revision and anticipates no significant adverse or critical comments. If no significant adverse or critical comments are received, no further activity is contemplated. If EPA receives significant adverse or critical comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Comments concerning this action must be received by EPA by January 31, 2000.

ADDRESSES: Comments may be mailed to: Mr. Jerry Cross (8EPR–F), Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone (303) 312–6664.

Information repositories: Comprehensive information on the Site is available for viewing and copying at the Site information repositories at the following locations: U.S. Department of Energy Grand Junction Project Office Public Reading Room, 2597 B$^{3}/_{4}$ Road, Grand Junction, Colorado 81503, (970) 248–6344; Monticello City Offices, 17 North First East Street, Monticello, Utah 84535, (435) 587–2271.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Cross (8EPR–F), Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone (303) 312–6664; Mr. Joel Berwick, Project Manager, U.S. Department of Energy, 2597 B$^{3}/_{4}$ Road, Grand Junction, Colorado, 81503, (970) 248–6020; Mr. David Bird, Project Manager, State of Utah Department of Environmental Quality, 168 North 1950 West, Salt Lake City, Utah, 84116, (801) 536–4219.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: December 15, 1999.

William P. Yellowtail,

Regional Administrator, Region 8.

[FR Doc. 99–33524 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2759; MM Docket No. 99–353; RM–9787]

Radio Broadcasting Services; Mojave, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Linda A. Davidson requesting the allotment of Channel 241A to Mojave, California, as that community's second local FM transmission service. As Mojave is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the requested allotment of Channel 241A at that community must be obtained. Coordinates used for this proposal are 35–06–11 NL; 118–10–22 WL.

DATES: Comments must be filed on or before January 31, 2000, and reply comments on or before February 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Linda A. Davidson, 2134 Oak St., Unit C, Santa Monica, CA 90405.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–353, adopted December 1, 1999, and released December 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–33891 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2759; MM Docket No. 99–352; RM–9786]

Radio Broadcasting Services; Gaviota, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Brian Costello, requesting the allotment of Channel 266A to Gaviota, California, as that locality's first local aural transmission service. Coordinates used for this proposal are 34–27–37 NL; 120–04–25 WL.

DATES: Comments must be filed on or before January 31, 2000, and reply comments on or before February 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Brian Costello, 15275 Old Cazadero Road, Guerneville, CA 95446.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–352, adopted December 1, 1999, and released December 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–33892 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2759; MM Docket No. 99–351; RM–9785]

Radio Broadcasting Services; Holbrook, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Navajo Broadcasting Company, Inc., licensee of Station KZUA-FM, Channel 221C1, Holbrook, Arizona, requesting the substitution of Channel 253C1 for Channel 221C1 at Holbrook and modification of its authorization accordingly. Coordinates used for this proposal are 34–41–25 NL; 110–06–00 WL.

DATES: Comments must be filed on or before January 31, 2000, and reply comments on or before February 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Hayes, Jr., Esq., 8404 Lee's Ridge Road, Warrenton, VA 20186.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–351, adopted December 1, 1999, and released December 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–33893 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2810, MM Docket No. 99–359, RM–9784]

Radio Broadcasting Services; Powers, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Lyle R. Evans proposing the allotment of Channel 297C3 at Powers, Michigan. The channel can be allotted to Powers in compliance with the Commission's spacing requirements without a site restriction at coordinates 45–41–12 NL and 87–31–30 WL. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before February 7, 2000, and reply comments on or before February 22, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Lyle R. Evans, 1296 Marian Ln., Green Bay, Wisconsin 54304 and Denise B. Moline, 1212 No. Naper Blvd, Suite 119, Naperville, Illinois 60540.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–359, adopted December 8, 1999, and released December 17, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–33897 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2810, MM Docket No. 99–358, RM–9783]

Radio Broadcasting Services; Burnet, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Elgin Fm Limited Partnership proposing the allotment of Channel 240A at Burnet, Texas. The channel can be allotted to Burnet in compliance with the Commission's spacing requirements with a site restriction 12.1 kilometers (7.5 miles) northwest of the community at coordinates 30–51–05 NL and 98–17–35 WL.

DATES: Comments must be filed on or before February 7, 2000, and reply comments on or before February 22, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Ann C. Farhat, Bechtel & Cole Chartered, 1901 L Street, NW, Suite 250, Washington, DC 20036.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–358, adopted December 8, 1999, and released December 17, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–33898 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2810, MM Docket No. 99–357, RM–9780]

Radio Broadcasting Services; Eldorado, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Schleicher County Radio proposing the allotment of Channel 293A at Eldorado, Texas. The channel can be allotted to Eldorado in compliance with the Commission's spacing requirements without a site restriction at coordinates 30–51–36 NL and 100–36–00 WL. Mexican concurrence will be requested for the allotment at Eldorado.

DATES: Comments must be filed on or before February 7, 2000, and reply comments on or before February 22, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Randy Parker, Schleicher County Radio 25415 Glenn Loch, The Woodlands, Texas 77380.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–357, adopted December 8, 1999, and released December 17, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–33899 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 99–2810, MM Docket No. 99–356, RM–9779]

Radio Broadcasting Services; Mertzon, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Schleicher County Radio proposing the allotment of Channel 266A at Mertzon, Texas. The channel can be allotted to Mertzon in compliance with the Commission's spacing requirements without a site restriction at coordinates 31–15–30 NL and 100–49–00 WL. Mexican concurrence will be requested for the allotment at Mertzon.

DATES: Comments must be filed on or before February 7, 2000, and reply comments on or before February 22, 2000.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Randy Parker, Schleicher County Radio, 25415 Glenn Lock, The Woodlands, Texas 77380.

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–356, adopted December 8, 1999, and released December 17, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805. Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–33900 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2759; MM Docket No. 99–350; RM–9769]

Radio Broadcasting Services; Simmesport, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of C. Wayne Dowdy, requesting the allotment of Channel 287A to Simmesport, Louisiana, an incorporated community, as that locality's first local aural transmission service. Coordinates used for this proposal are 30–53–30 NL; 91–47–00 WL.

DATES: Comments must be filed on or before January 31, 2000, and reply comments on or before February 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Lawrence J. Bernard, Jr., Esq., 5224 Chevy Chase Parkway, NW, Washington, DC 20015.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–350, adopted December 1, 1999, and released December 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–33894 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2759; MM Docket No. 99–349; RM–9766]

Radio Broadcasting Services; Hemet, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Arana Productions requesting the allotment of Channel 273A to Hemet, California, as that community's second local FM transmission service. As Hemet is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to the requested allotment of Channel 273A to that community is required.

Coordinates used for this proposal are 33–44–41 NL; 116–59–13 WL.

DATES: Comments must be filed on or before January 31, 2000, and reply comments on or before February 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Peter Gutmann, Esq., Pepper & Corazzini, L.L.P., 1776 K Street, N.W., Suite 200, Washington, DC 20006.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–349, adopted December 1, 1999, and released December 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–33895 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–2759; MM Docket No. 99–348; RM–9765]

Radio Broadcasting Services; Tallulah, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Joe Kool Broadcasting requesting the allotment of Channel 248A to Tallulah, Louisiana, as that community's second local FM transmission service. Coordinates used for this proposal are 32–25–07 NL; 91–12–15 WL.

DATES: Comments must be filed on or before January 31, 2000, and reply comments on or before February 15, 2000.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Donald B. Brady, d/b/a Joe Kool Broadcasting, 204 Duncan Avenue, Jackson, MS 39202.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–348, adopted December 1, 1999, and released December 10, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 99–33896 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Docket RSPA–99–5455]

RIN 2137–AC34

Pipeline Safety: Areas Unusually Sensitive to Environmental Damage

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule defines drinking water and ecological areas that are unusually sensitive to environmental damage if there is a hazardous liquid pipeline release. We refer to these areas as unusually sensitive areas (USAs). The proposed definition was created through a series of public workshops and our collaboration with a wide-range of federal, state, public, and industry stakeholders. RSPA is working on a pilot test that implements the proposed definition and identifies USAs in three states: Texas, Louisiana, and California. Other government agencies, environmental groups, and academia will evaluate the final results of this pilot test. RSPA will publish the results of the pilot test and technical analysis once they are complete. This proposed rule would not require specific action by pipeline operators. However, this proposed definition would be used as criteria in evaluating requirements by certain existing and future regulations.

DATES: Send written comments by June 27, 2000.

ADDRESSES: Send written comments in duplicate to the Dockets Facility, U.S. Department of Transportation, Room #PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Persons who want confirmation of mailed comments must include a self-addressed stamped postcard. Comments may also be e-mailed to

ops.comments@rspa.dot.gov in ASCII or text format. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Persons interested in receiving future information, including the final pilot results, should visit the OPS Home Page at http://ops.dot.gov, or send their name, affiliation, address, and phone number to Christina Sames, U.S. Department of Transportation, Office of Pipeline Safety, 400 Seventh Street SW, DPS–11, Washington, D.C. 20590–0001.

FOR FURTHER INFORMATION CONTACT: Christina Sames at (202) 366–4561 or christina.sames@rspa.dot.gov. Copies of this document or other material in the docket, including material from the public workshops, can be obtained from the Dockets Facility. The public may also review material in the docket by accessing the Docket Management System's home page at http://dms.dot.gov. An electronic copy of any document published in the **Federal Register** may be downloaded from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661.

SUPPLEMENTARY INFORMATION:

Legislative Mandates

In 1992, Congress amended the federal pipeline safety statute to require the Secretary of Transportation (Secretary) to prescribe regulations that establish criteria for identifying each hazardous liquid pipeline facility and gathering line located in an area that the Secretary describes as unusually sensitive to environmental damage if there is a hazardous liquid pipeline accident (USAs). The Secretary was to consider all hazardous liquid pipeline facilities and gathering lines, whether or not they are subject to safety regulation under 49 U.S.C. Chapter 601. The Secretary also had to consult with the Environmental Protection Agency (EPA) in establishing the criteria.

The following were to be considered:

- Earthquake zones and areas subject to substantial ground movements, such as landslides;
- Areas where ground water contamination would be likely in the event of the rupture of a pipeline facility;
- Freshwater lakes, rivers, and waterways; and
- River deltas and other areas subject to soil erosion or subsidence from flooding or other water action, where pipeline facilities are likely to become exposed or undermined.

In 1996, Congress amended the USA identification requirements (49 U.S.C. Section 60109). The Secretary was still required to prescribe standards that establish criteria for identifying each hazardous liquid pipeline facility and gathering line located in an USA. However, in establishing criteria, the Secretary was now to consider areas where a pipeline rupture would likely cause permanent or long-term environmental damage, including:

- Locations near pipeline rights-of-way that are critical to drinking water, including intake locations for community water systems and critical sole source aquifer protection areas; and
- Locations near pipeline rights-of-way that have been identified as critical wetlands, riverine or estuarine systems, national parks, wilderness areas, wildlife preservation areas or refuges, wild and scenic rivers, or critical habitat areas for threatened and endangered species.
- A Presidential memorandum that accompanied the 1996 statute clarified Administration policy on USAs. The memorandum said that the listed examples should be considered, but are not exclusive and that DOT was to accord full protection to all wetlands and other aquatic areas. DOT was also to consider both the potential for short term and permanent or long term injuries to natural resources or the environment.

The Secretary was to use the identification of these unusually sensitive environmental areas in future rulemakings, that include requiring additional prevention and inventory measures in these sensitive areas. For instance, 49 U.S.C. 60109(a)(2) directs the Secretary to require operators to identify unusually sensitive environmental areas through maps and pipeline inventories.

The Secretary is to consider requiring each pipeline in an unusually sensitive environmental area to be inspected periodically and to prescribe when an instrumented internal inspection device should be used to inspect the pipeline (49 U.S.C. 60102(f)(2)). Also, the Secretary is to survey and assess the effectiveness of emergency flow restricting devices and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures, and to prescribe regulations on the circumstances under which an operator of a hazardous liquid pipeline facility must use an emergency flow restricting device or such other procedure, system, or equipment (49 U.S.C. 60102(j)).

June 1994 Public Meeting: Consideration of an OPA Approach to USAs

On June 28, 1994, RSPA held a public meeting to gather data that would allow RSPA to establish criteria for identifying environmentally sensitive areas on or near hazardous liquid pipelines. RSPA would then use the established criteria to carry out the requirements of the Oil Pollution Act (OPA) and 49 U.S.C. Section 60109.

Under our regulations that implement OPA requirements for pipelines (49 CFR part 194), an operator of an onshore oil pipeline that, because of its location, could reasonably be expected to cause substantial harm or significant and substantial harm to the environment by a release into or on any navigable waters or adjoining shorelines, must prepare and submit an oil spill response plan. These requirements are intended to improve response capabilities and to reduce the environmental impact of oil discharged from onshore oil pipelines.

The OPA regulations require an operator to identify the areas potentially affected by its pipeline that are of greatest vulnerability to an oil discharge, including navigable waters, public drinking water intakes, and environmentally sensitive areas. Environmentally sensitive areas were defined as ''an area of environmental importance which is in or adjacent to navigable waters.'' These areas included wetlands, national parks, wilderness and recreational areas, wildlife refuges, marine sanctuaries, and conservation areas.

We hoped to create a single definition for environmentally sensitive areas that could be used for OPA spill response planning and for the preventive measures intended by the pipeline safety statute. As previously discussed, these pipeline safety requirements included increased inspection requirements, emergency flow restricting devices, and maps and pipeline inventories of pipelines in unusually sensitive areas.

Participants at the meeting included representatives from the EPA, U.S. Coast Guard, Department of Agriculture, Department of Interior, Department of Commerce, hazardous liquid pipeline industry, and the public. Participants discussed a draft definition that focused on areas where a hazardous liquid release could create significant long-term environmental harm or represent an imminent threat to human health. These areas included community water intakes; freshwater lakes, rivers and waterways; state or Federal wetlands, parks, natural areas, wilderness areas,

wild or scenic rivers, wildlife refuges or wildlife sanctuaries specifically designated, identified, and located by the Area Contingency Plans; and river deltas and other areas subject to soil erosion or subsidence from flooding or other water action, where pipeline facilities are likely to become exposed or undermined. Participants also discussed whether common criteria could be created for both spill response planning and prevention measures.

Meetings With Other Federal Agencies and the Pipeline Industry

RSPA held several meetings with other federal agencies and the pipeline industry following the June 1994 public meeting. The meetings were held to obtain additional information on sensitive resources that should be considered when defining USAs. Participants at the meetings included the EPA; the U.S. Coast Guard; the Departments of Interior, Commerce, and Agriculture; and the hazardous liquid pipeline industry.

Several participants at the meetings stated that it would be better to separate the OPA definition of environmentally sensitive areas from the USA definition. They stated that it would be better to maintain a broad definition within OPA for spill response functions and that a narrow definition should be created for USAs and the prevention measures the USA definition would be applied to.

Participants at the meetings also discussed the resources that should be considered when defining USAs. These included community drinking water intakes, threatened and endangered species, populated areas, economic resources, and commercial water intakes. Participants stated that a decision tree or matrix should be developed to help identify which environmentally sensitive areas were USAs.

RSPA used the information gathered at these meetings to create a revised draft definition for USAs. The definition built upon the values other Federal agencies had established for activities under OPA, but more narrowly identified those areas that were unusually sensitive to damage from a hazardous liquid release. The revised definition focused on areas where a release would reach the sensitive area before the release was contained or before the area was protected.

June 1995 Public Workshop: Consideration of a Three Tier Approach to USAs

On June 15 and 16, 1995, RSPA held a public workshop to openly discuss the revised draft definition for USAs (60 FR 27948, May 26, 1995). Participants included representatives from the U.S. Coast Guard; the Departments of Interior, Agriculture, and Commerce; the EPA; non-government agencies; the hazardous liquid pipeline industry; and the public.

The revised draft definition considered three tiers of USAs. RSPA considered phasing in the three tiers to give operators more time to determine which USAs could be affected by a hazardous liquid pipeline release.

Tier One consisted of areas that could affect human health if contaminated, such as intakes for community drinking water systems and sole source aquifers. Sole source aquifers supply at least half of the drinking water consumed in the area above the aquifer and have no alternative sources that could supply all those who get their drinking water from the aquifer. In the tier model, community drinking water systems and sole source aquifers that could reasonably be expected to be affected by a release would be considered the most sensitive and highest priority areas.

We gave Tier Two, USAs along surface water, the second highest priority. Tier Two took into account the surface water habitat's natural ability to restore itself to the condition that existed before the release, and the biological and human use resources in the body of water and along the water's edge. The habitat, the biological resources, and the human use resources were assigned numerical sensitivity ratings. Combining the numerical ratings of these three resources determined if a particular area was an USA.

Tier Three, USAs within terrestrial environments, was given the third highest priority. Tier Three, like Tier Two, took into account biological resources and human use resources be studied to determine if a given area is an USA. Each was assigned a numerical sensitivity rating; the combination of these ratings determined if a particular area was an USA.

Participants at the workshop discussed the above approach and criteria. Participants stated the tiered approach was complicated and that operators may not be able to carry out the process. Participants requested that additional workshops be held to further discuss this complex topic.

October 1995 Public Workshop: Discussions on the Three Tier Approach Continue and Discussions on the USA Process

On October 17, 1995, RSPA held a second public workshop on USAs (60 FR 44824; August 29, 1995) that focused on developing a process that could be used to determine if an area is an USA. Participants asked that the process include a series of workshops on topics such as guiding principles, defining terms that may be used when referring to USAs, and protecting drinking water sources, biological resources, and human use resources.

The hazardous liquid pipeline industry provided information on its current research on USAs and recommended that a definition consider the resource to be protected, the likelihood of a given pipeline impacting that resource, and what can be done to reduce the risk to the resource. Other participants recommended integrating factors on the likelihood of a rupture occurring and the severity of the consequence into the USA definition. Participants also discussed guiding principles that could be used when determining if a given area is a USA.

January 1996 Public Workshop: Guiding Principles and the Creation of a USA Model

RSPA held a third workshop on January 18, 1996, to further discuss the guiding principles for determining USAs (61 FR 342; January 4, 1996). Participants at the workshop included the EPA; the Departments of Interior, Agriculture, and Commerce; the hazardous liquid pipeline industry, and the public. The participants stated that significant drinking water and ecological resources should be considered USAs, but that economic or recreational areas should not. They maintained that economic and recreational areas could be restored following a hazardous liquid release, but certain drinking water or ecological resources could be irreparable if affected by a release. Several participants also questioned including cultural resources as USAs. These participants stated that most cultural resources can be repaired or replaced if they are impacted by a hazardous liquid release. Indian tribal concerns were also discussed and participants requested that additional research be conducted in this area.

Participants at the workshop identified consensus guiding principles to help RSPA determine which resources we should concentrate on (areas of primary concern), which areas of primary concern are the most sensitive to a hazardous liquid release, and how to collect and process resource data. The following is the list of those guiding principles:

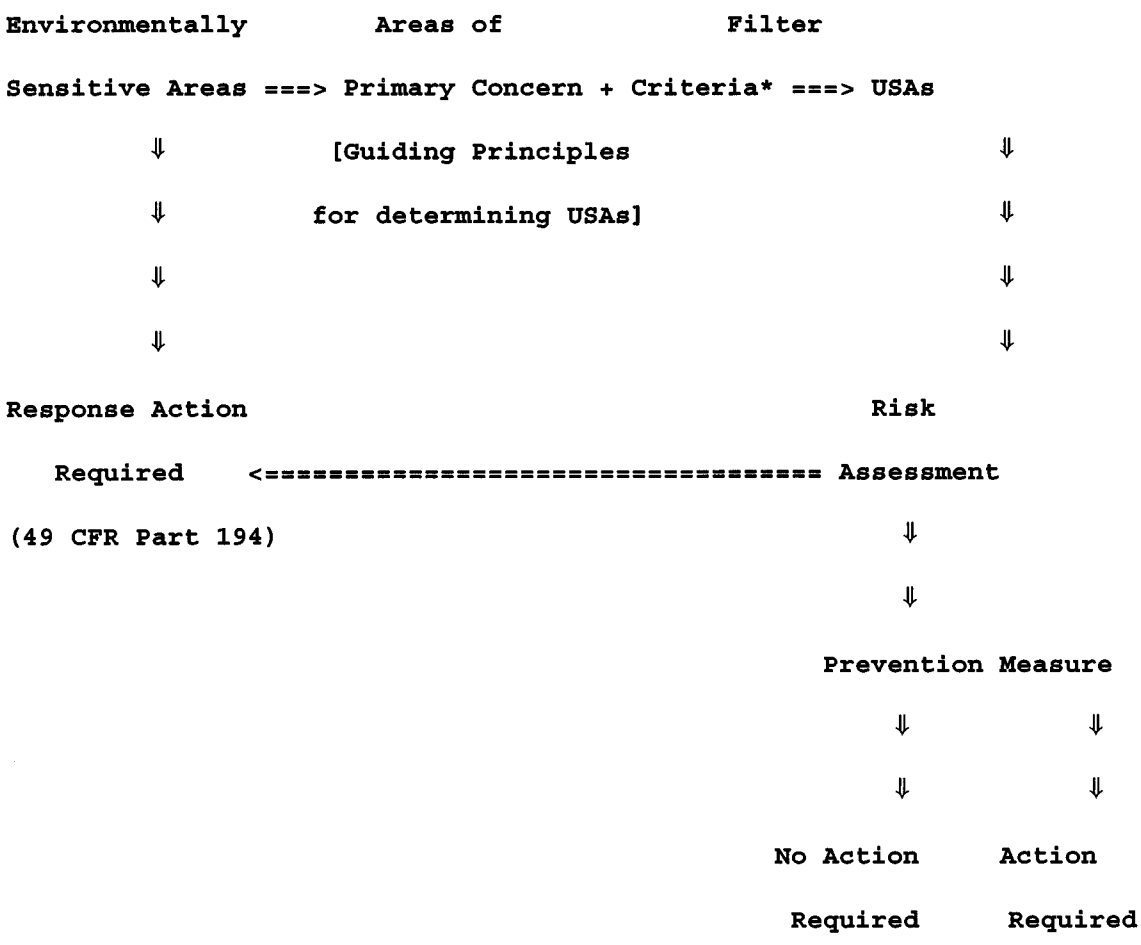
- Human health and safety and serious threat of contamination are always to be considered.

- A functional definition of significant must be developed to determine USAs.
- Only areas in the trajectory of a potential spill, e.g. down gradient, should be considered.
- It is expected that no pipeline operator will be required to collect natural field resource data to determine USAs.
- USAs should be subject to a systematic review process. USAs may change through time as species migrate, change location, or for other reasons. The USA definition should be explicit and practical in application.
- All phases of the USA definition process should be pilot tested for validity, practicality, and workability, to the extent practical.
- The government agencies must describe and identify USAs so that the data will not be subject to various interpretations and will be applied consistently.
- Sources of USA data must be readily available to the public and uniform in criteria and standards.
- The standards and criteria for resource sensitivity should be uniform on a national basis such that equivalent resources receive equivalent sensitivity assessments regardless of regionally based priorities.

In addition to the guiding principles, the following guidelines were created:

- Workshops for each phase of developing a USA definition should include technical experts, representatives, and field personnel with appropriate experience from agencies as well as from industry.
- Public workshops should be used to gather information on the criteria that will determine USAs.
- The USA definition should be complete before its use in a rulemaking.
- The implementation of resource assessment and protection under the USA definition could be phased.
- All terms in the USA definition should be defined.
- National consistency in application of the USA definition should be the goal.
- Guidelines for data quality should include consistency, accuracy, and scope.
- Encourage open communication with land or resource managers in USAs.
- The ranking of resources or adding of values of several resources to reach a threshold USA quantity, as discussed in the June 1995 workshop, is not practical for many pipeline operators.

Participants at the workshop also created the following model of how the USA process could work. In this model, all areas that have been designated as environmentally sensitive are considered. From this large set, areas of greater concern due to their sensitivity to a hazardous liquid release are identified. These resource areas are called areas of primary concern. Filter criteria are then applied to the areas of primary concern to determine which areas of primary concern are unusually sensitive to damage from a potential hazardous liquid release. Filter criteria are designed to consider the likelihood that the resource could be impacted by a release, the guiding principles, the sensitivity of the resource, if the resource is irreparable or irreplaceable, if there are substitutes for the resource, and the criticality of the resource.



This model was used in all of the ensuing workshops and technical meetings and continues to be used in the current proposal. Finally, participants considered and identified the USA terms that they thought needed to be clarified.

April 1996 Public Workshop: USA Terms

The fourth public workshop on April 10–11, 1996, (61 FR 13144; March 26, 1996; Docket PS–140(d)), focused on criteria, components, and parameters of terms that have been used when describing USAs. These terms include the following: Significant, Threat of significant contamination, Contamination, Ecological, Drinking water resources, Recreational areas, Economic areas, Cultural areas, Readily available, and Uniform. Participants also discussed the scope and objectives of any additional USA workshops.

API Technical Meeting on Drinking Water Resources

On May 9–10, 1996, the API held a meeting of technical experts to discuss drinking water resources. RSPA and EPA attended this meeting and discussed our draft paper on drinking water resources that RSPA intended to present at its public workshop on drinking water resources. The draft discussed possible resource areas of primary concern and filtering criteria that could be used in determining which drinking water resources are unusually sensitive to damage from a hazardous liquid pipeline release.

June 1996 Public Workshop: Drinking Water Resources

RSPA held a fifth workshop on June 18–19, 1996, (61 FR 27323; May 31, 1996; Docket PS–140(e)) to discuss drinking water resources. Participants at this workshop included the EPA, the American Waterworks Association, Stanford University, the University of Alaska, and the public. This workshop focused on identifying critical drinking water resources (drinking water areas of primary concern) and possible filtering criteria that could be used to identify drinking water resources that are USAs.

Participants identified public water systems, wellhead protection areas, and sole source aquifers as drinking water areas of primary concern. Filtering criteria discussed include the depth of the aquifer, the geology surrounding the drinking water resource, and if the public water system has an adequate alternative drinking water supply.

Additional Technical Meetings

In addition to the five public workshops, we have had over a dozen meetings with other government agencies to discuss drinking water, ecological, and cultural resources. The API has also held meetings of technical experts to discuss unusually sensitive drinking water and ecological resources. RSPA, EPA, the Departments of Interior, Commerce, and Agriculture, The Nature Conservancy, and academia attended the API meetings.

API's technical meetings were on October 23–24, 1996, and June 25–26, 1997. Attendees discussed possible ecological areas of primary concern and filtering criteria that could be used to determine which ecological resources are unusually sensitive to damage from a hazardous liquid pipeline release. The significant ecological resources that were identified during the meetings included threatened and endangered species, critically imperiled and imperiled species, depleted marine mammals, and areas containing a large percent of the world's population of a migratory waterbird species. Filtering criteria focused on the extent to which a species is endangered, areas that are critical to multiple sensitive species, and areas where a large percent of a species population could be impacted. Notes from these technical meetings are in the Docket.

How RSPA Will Use the USA Definition

RSPA will use the definition for identifying USAs in current and future regulations. Any regulatory application of this definition will be aimed at ensuring that operators implement appropriate protective measures for pipelines in USAs.

Regulations where operators may have to identify USAs include the Risk-based Alternative to Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines (63 FR 59475; November 4, 1998), Response Plans for Onshore Oil Pipelines (62 FR 67292; December 24, 1997), Hazardous Liquid Pipelines Operated at 20% or Less of Specified Minimum Yield Strength (49 CFR Part 195), Emergency Flow Restricting Devices, (Docket PS–133), Increased Inspection Requirements, (Docket PS–141) and Pipeline Safety: Enhanced Safety and Environmental Protection for Gas Transmission and Hazardous Liquid Pipelines in High Consequence Areas, (64 FR 56725; October 21, 1999)

Under the ''Risk-based Alternative to Pressure Testing Older Hazardous Liquid and Carbon Dioxide Pipelines'' rule (49 CFR § 195.303), operators may elect a risk-based alternative in lieu of hydrostatically testing certain older pipelines. The alternative establishes test priorities based on the inherent risk of a given pipeline segment. One of the risk factors is to determine the pipeline segment's proximity to environmentally sensitive areas when we issued the final rule (63 FR 59475; November 4, 1998), we explained that until we defined these areas, operators were to use their best judgement in applying this factor. We further said that we may define the environmental factor in a future rulemaking.

Under 49 CFR part 194, ''Response Plans for Onshore Oil Pipelines,'' operators must consider areas of environmental importance that are in or adjacent to navigable waters for spill response planning. These regulations were mandated by the Federal Water Pollution Control Act as amended by the Oil Pollution Act of 1990 (OPA). RSPA intends to amend the definition of environmental importance to include USAs, once USAs are defined.

Hazardous liquid pipelines that operate at 20% of the specified minimum yield strength (SMYS) or less are currently exempt from 49 CFR part 195 regulations if they are in rural areas. When we issued the final rule extending 49 CFR part 195 regulations to certain pipelines operating at 20% SMYS or less (59 FR 35465; July 12, 1994), we deferred proposing to regulate non-hazardous volatile liquid low stress pipelines in rural environmentally sensitive areas. We did this because a definition of environmentally sensitive areas did not exist. We stated that we would revisit the issue once we defined such areas.

In 49 USC 60102(j), we are required to survey and assess the effectiveness of EFRDs and other procedures, systems, and equipment used to detect and locate hazardous liquid pipeline ruptures, and to prescribe regulations on the circumstances under which an operator of a hazardous liquid pipeline facility must use an EFRD or other device. In an EFRD rulemaking (Docket PS–133), we will consider requiring operators to use an EFRD or other procedure or equipment on their pipelines located in USAs to mitigate the extent and impact of a release in the event of a failure.

We must also (49 USC 60102(f)(2)) prescribe, if necessary, additional standards that require the periodic inspection of certain pipelines in USAs using an instrumented internal inspection device or another inspection method that is at least as effective as using the device. RSPA plans to address this mandate in a proposed rule in early CY 2000 (Docket PS–141).

RSPA recently held a public meeting to discuss the need for additional protection in high consequence areas. (Pipeline Safety: Enhanced Safety and Environmental Protection for Gas Transmission and Hazardous Liquid Pipelines in High Consequence Areas, 64 FR 56725; October 21, 1999). We stated that we planned to strengthen current pipeline safety regulations with respect to high consequence areas, including USAs. We will consider increased inspection, enhanced damage prevention, improved emergency response, and other preventive measures for pipelines in these areas.

We recognize that inventories of USAs will have to be updated on a periodic basis to incorporate new information and databases, and to reflect changes in species listings and their locations and the availability of drinking water resources. We intend to identify the locations of USAs through a comprehensive collection and analysis of drinking water and ecological resource data, contingent on the availability of funding and resources. These areas will be mapped using the National Pipeline Mapping System. Operators will have access to these maps through the internet. Operators will then be able to determine which areas of their pipeline intersect USAs. Operators may need to contact resource agencies to obtain additional information on a particular species or drinking water intake.

Existing Protections for Environmentally Sensitive Areas

Currently, pipeline safety regulations on pipeline design, construction, operation, maintenance, emergency and spill response planning generally protect all environmentally sensitive areas, cultural resources, and economic resources. The pipeline design and construction standards specify how pipeline components must be designed, welded together, installed in the ditch, and replaced to ensure the pipeline is constructed in a safe manner. The design and construction standards also cover the design and location of valves and flanges to minimize any potential release. The operation and maintenance standards specify the pipeline's acceptable operating pressure, require personnel training, and require operators to perform inspection, monitoring, and testing to assure that the pipeline continues to operate in a safe manner. Emergency and spill response planning regulations are also in place that require the identification of areas of environmental importance and that operators have response capabilities in place to minimize the release and impact of a pipeline accident on these resources.

In addition to current and intended future pipeline safety regulations, there are many other Federal, state, and local government regulations in place to protect sensitive resources. These include regulations to protect drinking water resources, threatened and endangered species, critical habitats for various species, and spawning areas. Areas have been created and designated to protect and maintain aquatic life, wildlife, various natural resources, and water resources. Permits from various Federal, state, and local agencies are needed before a pipeline can be installed or construction to modify or repair an existing line take place. Environmental reviews and consultations with resource experts are routinely conducting as part of the permit process. RSPA's existing and planned regulations complement these other Federal, state, and local government regulations on sensitive drinking water and ecological resources.

Our Current Proposal for Identifying USAs

We have developed our current proposed process for identifying USAs after extensive consultation with drinking water experts, conservation biologists, government agencies, and other stakeholders. This identification uses a process that begins by designating and assessing environmentally sensitive areas (ESAs), determining which of these ESAs are potentially more susceptible to permanent or long term damage from a hazardous liquid release (areas of primary concern), and finally identifying filtering criteria to determine which areas of primary concern can be reached by a release and sustain permanent or long-term damage. The areas that result are USAs.

RSPA has considered, but has not included, everything listed in the pipeline safety statute and the Presidential memorandum that accompanied the 1996 statute. RSPA has focused on the resources that could suffer permanent or long-term environmental damage if affected by a hazardous liquid release. RSPA has looked beyond the boundaries of the national parks, wetlands, wildlife preservation areas, refuges, etc. to the ecological species and drinking water resources that could suffer irreparable harm if affected by a hazardous liquid release.

Cultural resources, recreational resources, and economic resource areas are not being considered in this NPRM. These areas should be addressed as a separate risk factor and under separate regulations. We also believe that drinking water and ecological resources that do not qualify as USAs should also be addressed as a separate risk factor and under separate regulations. RSPA currently protects these resources under OPA's spill response plan requirements and will consider if additional measures are needed to better protect these areas. RSPA will issue additional regulations to protect these resources if it is determined that additional protections are needed.

The following discusses the areas of primary concern and filtering criteria that RSPA proposes as standards for drinking water and ecological resources.

Drinking Water Resources: Areas of Primary Concern

Drinking water resource areas of primary concern are a subset of all surface intakes and groundwater-based drinking water supplies that provide potable water for domestic, commercial, and industrial users. Drinking water resource areas of primary concern include drinking water resources for permanent communities such as cities and towns, transient communities such as campgrounds, or individual domestic supplies for residential consumption. As defined by the EPA, the drinking water areas of primary concern that we are proposing include the following:

A. *Public Water Systems (PWS):* provide piped water for human consumption to at least 15 service connections or serve an average of at least 25 people for at least 60 days each year. These systems include the sources of the water supplies—i.e., surface or ground. PWS can be community, non-transient non-community, or transient non-community systems, as described below:

1. *Community Water System (CWS):* a PWS that provides water to the same population year round.

2. *Non-transient Non-community Water System (NTNCWS):* a PWS that regularly serves at least 25 of the same people at least six months of the year. Examples of these systems include schools, factories, and hospitals that have their own water supplies.

3. *Transient Non-community Water System (TNCWS):* a PWS that caters to transitory customers in nonresidential areas. Examples of these systems include campgrounds, motels, rest stops, and gas stations.

B. *Wellhead Protection Areas (WHPA):* the surface and subsurface area surrounding a well or well field that supplies a public water system through which contaminants are likely to pass

and eventually reach the water well or well field.

C. *Sole Source Aquifers (SSA):* areas designated by the U.S. Environmental Protection Agency under the Sole Source Aquifer program as the ''sole or principal'' source of drinking water for an area. Such designations are made if the aquifer's ground water supplies 50% or more of the drinking water for an area, and if that aquifer were to become contaminated, it would pose a public health hazard.

Drinking Water Resources: Filtering Criteria

Filtering criteria would be applied to the drinking water areas of primary concern to determine which of these areas are USAs. We believe the following filtering criteria would help identify which drinking water areas of primary concern are necessary for uninterrupted consumption by human populations and could be permanently affected, or have long term damage, from a hazardous liquid release.

A. *Filter Criterion #1*: TNCWS intakes would not be designated as USAs.

B. *Filter Criterion #2*: For CWS and NTNCWS that obtain their water supply primarily from surface water sources, and do not have an adequate alternative source of water, the water intakes would be designated as USAs.

C. *Filter Criterion #3*: For CWS and NTNCWS that obtain their water supply primarily from ground water sources, where the source aquifer is identified as a Class I or Class IIa (as identified in Pettyjohn et al., 1991; EPA Document: EPA/600/2–91/043, August 1991; see Attachment A), and do not have an adequate alternative source of water, the WHPAs for such systems would be designated as USAs.

D. *Filter Criterion #4*: For CWS and NTNCWS that obtain their water supply primarily from ground water sources, where the source aquifer is identified as a Class IIb, III, or Class U (as identified in Pettyjohn et al., 1991; EPA Document: EPA/600/2–91/043, August 1991; see Attachment A,) the public water systems that rely on these aquifers would not be designated as USAs.

E. *Filter Criterion #5*: For CWS and NTNCWS that obtain their water supply primarily from ground water sources, where the source aquifer is identified as a Class I or Class IIa (as identified in Pettyjohn et al., 1991; EPA Document: EPA/600/2–91/043, August 1991; see Attachment A), and the aquifer is designated as a sole source aquifer, an area twice the WHPA would be designated a USA.

Ecological Resources: Areas of Primary Concern

On April 10–11, 1996, RSPA held a public workshop to discuss the elements that should define ecological resources (61 FR 13144, March 26, 1996). Participants concluded that ecological resources should include fish, wildlife, plants, biota and their habitats which may include land, air, and/or water. Examples of ecological resources are provided in a National Oceanic and Atmospheric Administration (NOAA) Guidance Document issued in March 1994 (59 FR 14714). Ecological resources include sensitive fish, wildlife, plant, and habitat resources that are at risk from hazardous liquid spills. These include such resources as breeding, spawning, and nesting areas; early life stage concentration and nursery areas; wintering or migratory areas; rare, threatened, and endangered species locations; and other types of high concentration or sensitive areas.

Ecological areas of primary concern are a subset of all ecological resources. These areas of primary concern are areas that contain ecological resources that are potentially more susceptible to permanent or long term environmental damage.

We are proposing four resource categories as ecological areas of primary concern. These categories are susceptible to permanent or long term ecological damage due to inherent characteristics of rarity, imperilment, or the potential for loss of large segments of an abundant population during periods of migratory concentration.

A. *Areas Containing Critically Imperiled and Imperiled Species and Subtaxa:* These areas contain known occurrences of animal and plant species that have such limited distribution that a hazardous liquid pipeline release could affect a significant percentage of the species population. There are a number of species that are at risk of extinction due to their extremely restricted distribution or limited numbers. These resources are identified, ranked, and inventoried by Natural Heritage Programs and Conservation Data Centers in conjunction with The Nature Conservancy (TNC). Under the TNC approach, each species is assigned a Global (or range-wide) Conservation Status Rank. This rank is based on several specific factors, including the number of known occurrences or populations, number of individuals, health of the population, its extinction potential, whether it is experiencing an increasing or decreasing trend, and if there are known threats to the species. Ecological areas of primary concern include occurrences of species and subtaxa with the following Global Ranks:

1. *Critically imperiled:* These species demonstrate extreme rarity (5 or fewer occurrences or fewer than 1,000 individuals) or extreme vulnerability to extinction due to some natural or man-made factor. There are approximately 1,300 species in the United States which are ranked as critically imperiled globally. Rare or extremely vulnerable subtaxa which are critically imperiled are included in this category, despite the conservation status of the species as a whole.

2. *Imperiled:* These species demonstrate rarity (6 to 20 occurrences or 1,000 to 3,000 individuals) or vulnerability to extinction due to some natural or man-made factor. There are approximately 1,800 species in the United States ranked as imperiled. Rare or vulnerable subtaxa which are imperiled are included in this category, despite the conservation status of the species as a whole.

B. *Areas Containing Federally Listed Threatened and Endangered (T&E) Species:* These areas contain known occurrences of animal and plant species that have been listed and are protected under the Endangered Species Act of 1973, as amended (ESA73) (16 U.S.C. 1531 *et seq.*). A summary of these listed species is published annually as the ''List of Endangered and Threatened Wildlife and Plants'' (50 CFR 17.11 and 17.12). There are currently more than 1,000 listed T&E species in the United States.

The term ''endangered species'' is defined as ''any species which is in danger of extinction throughout all or a significant portion of its range'' (16 U.S.C. 1532). The term ''threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range'' (16 U.S.C. 1532). The term species includes species, subspecies, and distinct vertebrate populations.

In addition, a species that has been proposed or is a candidate to become a T&E species will become an ecological area of primary concern upon its final listing as a T&E species in the **Federal Register**.

C. *Areas Containing Depleted Marine Mammal Species:* These areas contain known occurrences of depleted species identified and protected under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 *et seq.*). The term ''depleted'' refers to marine mammal species that are listed

as T&E or are below their optimum sustainable populations (16 U.S.C. 1362). The term ''species'' includes species, subspecies, or population stocks. There are currently 18 species listed as ''depleted'' under the MMPA. Eleven of these species are also listed as endangered and three of these species are listed as threatened under the ESA73.

The term ''marine mammal'' is defined as ''any mammal which is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea), or primarily inhabits the marine environment (such as the polar bear)'' (16 U.S.C. 1362). The order Sirenia includes manatees, the order Pinnipedia includes seals, sea lions, and walruses, and the order Cetacea includes dolphins, porpoises, and whales.

D. *Areas Containing a Large Percentage of the World's Population of a Migratory Waterbird Species:* These areas contain very high concentrations of the world's population of a species for a short time. An example would be those areas of the Delaware Bay where a major portion of the world population of red knot (a shorebird species) stop-over to feed during migration.

Two programs of international significance are responsible for identifying and delimiting areas where significant populations of migratory waterbirds congregate during critical periods. The first program, the Western Hemisphere Shorebird Reserve Network (WHSRN), ranks migratory shorebird concentration areas into four different categories on the basis of biological criteria. These four categories are:

1. Hemispheric reserves—these areas host at least 500,000 shorebirds annually or 30% of a species flyway population;

2. International reserves—these areas host 100,000 shorebirds annually or 15% of a species flyway population;

3. Regional reserves—these areas host 20,000 shorebirds annually or 5% of a species flyway population; and

4. Endangered species reserves—these areas are critical to the survival of endangered species and no minimum number of birds is required.

Eighteen WHSRN sites have been established in the United States (Table 1).

A second program, The Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar), is dedicated to identifying globally critical wetland areas supporting migratory waterfowl. The establishment of a Ramsar site (Ramsar Articles, 1996) includes the following specific criteria for waterfowl:

1. A wetland area that regularly supports 20,000 waterfowl, or

2. A wetland area that regularly supports substantial numbers of individuals from particular groups of waterfowl, indicative of wetland values, productivity, or diversity, or

3. Where data on populations are available, a wetland area that regularly supports 1% of the individuals in a population of one species or subspecies of waterfowl.

There are a total of 17 Ramsar sites in the United States. See table 1 in the appendix to this document.

Additional information on the Ramsar and WHSRN sites is available on the internet or from the U.S. Fish and Wildlife Service, Office of International Affairs.

Ecological Resources: Filter Criteria

Filter criteria would be applied to the ecological resource areas of primary concern to determine which are most susceptible to permanent or long term environmental damage from a hazardous liquid pipeline spill. These resources would be ecological USAs.

We are proposing three ecological filter criteria that are consistent with current trends in conservation ecology to identify areas with critically imperiled species, multi-species protection sites, and migratory waterbird concentrations. The three criteria would be applied in a multi-tiered process where all ecological areas of primary concern receive repetitive consideration for USA status. For example, an ecological area of primary concern is first subjected to filter criterion 1, areas with critically imperiled species, and may be designated an USA at this point. If the ecological area of primary concern does not meet filter criterion 1, it then receives consideration under filter criterion 2, multi-species protection areas, and may be designated an USA at this point. If the ecological area of primary concern does not meet filter criterion 2, it receives consideration under filter criterion 3, migratory waterbird concentration areas, and may be designated an USA at this point. If the ecological area of primary concern does not meet filter criterion 3, it remains an ecological area of primary concern. All ecological areas of primary concern must be periodically reviewed to consider changes in resource information or status. An ecological area of primary concern would become a USA once it meets one of the filtering criteria.

A. Filter Criterion 1: Areas With Critically Imperiled Species

Filter criterion 1 selects those ecological areas of primary concern that contain viable occurrences of species or subtaxa designated as critically imperiled globally to be USAs. These species or subtaxa demonstrate extreme rarity or extreme vulnerability to extinction due to some natural or man-made factor. They typically have five or fewer occurrences or fewer than 1,000 individuals globally. In some cases, species or subtaxa may be identified as critically imperiled because they are subject to an extreme threat of extinction due to factors other than low number of occurrences or individuals.

The critically imperiled designation includes a wide variety of plant and animal species and subtaxa. It includes approximately 64% of the listed threatened and endangered species and 53% of those species currently designated by the Departments of Interior and Commerce as proposed or as candidates for listing under ESA73. This filter criterion also selects an additional number of plant and animal species and subtaxa not designated under ESA73. All ecological areas of primary concern meeting this criterion would be considered USAs. Ecological areas of primary concern that do not meet filter criterion 1 would then be considered under filter criteria 2 and 3.

B. Filter Criterion 2: Multi-species Protection Areas

Filter criterion 2 selects the ecological areas of primary concern that form multi-species assemblages. Multi-species assemblages are defined as areas where three or more different critically imperiled or imperiled species, threatened or endangered species, depleted marine mammals, or migratory waterbird concentrations co-occur. These areas are valuable since they often represent unique ecosystems. Multi-species protection areas also protect a greater number of sensitive resources per site location.

C. Filter Criterion 3: Migratory Waterbird Concentration Areas

Filter criterion 3 selects the ecological areas of primary concern that are designated Ramsar sites. Filter criterion 3 also selects the ecological areas of primary concern that are WHSRN sites ranked as hemispheric, international, or endangered species reserves. These areas are valuable since significant populations of migratory waterbirds congregate in these areas during critical periods. Relatively common species may be at risk at such sites. In some

cases, as much as 80% of the entire North American population of a particular species may occur at one of these sites during critical concentration periods.

Pilot Test

RSPA published a Notice of Intent to Pilot Test (64 FR 38173) on July 15, 1999. This notice announced the commencement of a pilot test to determine if the definition described in this NPRM could be used to identify and locate unusually sensitive drinking water and ecological resources using available data from government agencies and environmental organizations. RSPA is conducting the pilot test using the States of Texas, California, and Louisiana to test this proposed USA definition due to the large number of hazardous liquid pipelines in these states and the considerable drinking water and ecological resources that exist in these states. RSPA and others will use the results to evaluate whether the proposed definition identifies the majority of unusually sensitive areas and whether environmental data is accessible and appropriate to support the proposed definition. The results of this pilot test will be used to create an industry guidance document on unusually sensitive areas.

In this pilot test RSPA is:

- Identifying pertinent drinking water data that have been created and maintained by Federal or state government agencies, environmental groups, or private organizations. This includes data on public drinking water systems, aquifers, sole source aquifers, wellhead protection areas, alternative drinking water resources, and aquifer vulnerabilities.
- Identifying pertinent ecological data that have been created and maintained by Federal or state government agencies, environmental groups, or private organizations. This includes data on threatened and endangered species, critically imperilled and imperilled species, depleted marine mammal species, and areas containing a large percentage of the world's population of a migratory waterbird species.
- Identifying data on land features, such as the location of wetlands, rivers, transportation networks, and water routes (including flow direction).
- Obtaining, where possible, all pertinent drinking water, ecological, and land feature data. All problems encountered in gathering the data are being documented.
- Determining if the obtained data can be used with the proposed USA definition to identify and locate USAs. This includes reviewing the data for accuracy, attributes, format, restrictions on use, and determining if the resources and features were mapped with sufficient precision.
- Processing the data, using a geographic information system (GIS), according to the proposed USA definition. Identifying all problems encountered in processing the data.
- Comparing the USA pilot results to other preservation area identification efforts, where possible, and to all threatened and endangered specie areas.

RSPA will publish a Notice of Availability in the **Federal Register** and put the results of this pilot test on the OPS's Web Page: http://ops.dot.gov for review and comment as soon as the results are available. We currently expect to have the results in April 2000.

Technical Review

Drinking water and ecological resource experts will review the pilot test to determine whether the results identify the majority of unusually sensitive areas within the three pilot states. These experts will come from the Departments of Interior, Agriculture, and Commerce, the Environmental Protection Agency, state Nature Conservancies and Heritage Programs. We will also use experts on drinking water and ecological resources from state agencies, including the Texas Railroad Commission, Texas Parks and Wildlife, the Louisiana Department of Environmental Quality, the Louisiana Department of Wildlife and Fisheries, the California Department of Fish and Game, and the California State Fire Marshals Office.

These peer reviewers will help to identify other data sets that might be utilized and other resources that might be considered, and to improve the capability of the proposed USA definition to identify the majority of USAs within the three states. RSPA will publish a Notice of Availability in the **Federal Register** and the results of this peer review on OPS's Web Page: http://ops.dot.gov as soon as the results are available.

RSPA will also present this NPRM and the USA pilot results to the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). The THLPSSC is responsible for reviewing proposed federal hazardous liquid pipeline safety standards and reporting on their feasibility, reasonableness, and practicability. Representatives on the THLPSSC include the Minerals Management Service, City of Fredericksburg Virginia, U.S. Department of Agriculture, U.S. Department of Commerce, Virginia State Corporation Commission, Environmental Defense Fund, The Nature Conservancy, Kenai Peninsula, Atlantic Consultants, Southwest Research Institute, Buckeye Pipe Line, Lakehead Pipe Line, Kinder Morgan Energy Partners, and Mobil Pipe Line.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Policies and Procedures

The Office of Management and Budget (OMB) does not consider this proposed rulemaking to be a significant regulatory action under Section 3(f) of Executive Order 12866 (58 FR 51735; October 4, 1993). Therefore, OMB has not reviewed this rulemaking document. DOT does not consider this proposed rulemaking significant under its regulatory policies and procedures (44 FR 11034; February 26, 1979).

This proposed definition will have no cost impact on the pipeline industry or the public because it is only a definition. It requires no immediate action on the part of pipeline operators. Potentially, it could impact current or future regulations but this would require specific rulemaking action. Because there is no accompanying action requiring anything of pipeline operators, there is no need to examine the cost impact. If future rulemakings require that operators take any specific actions on pipelines that are in unusually sensitive areas, then RSPA will perform a cost-benefit analysis to determine any potential impact. Because operators are taking no actions there are also no specific benefits attributable to this proposed definition.

B. Regulatory Flexibility Act

The proposed rule would not impose additional requirements on pipeline operators, including small entities that operate regulated pipelines. Based on the above information showing that there is no economic impact of this proposed rulemaking, I certify, pursuant to Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this proposed rulemaking would not have a significant economic impact on a substantial number of small entities.

C. Executive Order 13084

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084, ''Consultation and Coordination with Indian Tribal Governments.'' Because the proposed rules would not significantly or uniquely affect the Indian tribal governments, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Paperwork Reduction Act

This proposed rulemaking contains no information collection that is subject to review by OMB under the Paperwork Reduction Act of 1995.

E. Unfunded Mandates Reform Act of 1995

This proposed rulemaking would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million or more to either State local, or tribal governments, in the aggregate, or to the private sector, and would be the least burdensome alternative that achieves the objective of the rule.

F. National Environmental Policy Act

We have analyzed the proposed rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) The information and analysis provided in the Environmental Assessment demonstrate that the proposed action to define USAs in Part 195.2 and 195.6 will not have any significant environmental impact. However, as discussed in the Environmental Assessment, RSPA is considering several rulemakings that will provide additional protection for the USAs that will be identified using this definition. At the time these rulemakings are proposed, RSPA will perform Environmental Assessments to determine the impacts on the environment of these new requirements. The Environmental Assessment document is available for review in the docket.

G. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize ''double zero'' not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 Problem. This notice of proposed rulemaking does not propose business process changes or require modifications to computer systems. Because this notice apparently does not affect the ability of organizations to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the regulatory definition proposed in this notice.

H. Executive Order 12612

This action would not have substantial direct effects on states, on the relationship between the Federal 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 (52 FR 41685; October 30, 1987), RSPA has determined that the proposed regulation does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 195

Anhydrous Ammonia, Carbon dioxide, Hazardous liquids, Petroleum, Pipeline Safety.

In consideration of the foregoing, RSPA hearby proposes to amend 49 CFR Part 195 as follows:

PART 195—[AMENDED]

1. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118, and 49 CFR 1.53.

2. Section 195.2 would be revised by adding the following definition in alphabetical order to read as follows:

§ 195.2 Definitions.

* * * * *

Unusually sensitive area (USA) means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release, as identified under § 195.6.

3. Section 195.6 would be added to read as follows:

§ 195.6 Unusually Sensitive Areas (USAs).

As used in this part, an USA means a drinking water or ecological resource area that is unusually sensitive to environmental damage from a hazardous liquid pipeline release.

(a) For drinking water resources: (1) The water intake for a Community Water System (CWS), as defined under § 195.6(c), or a Non-transient Non-community Water System (NTNCWS), as defined under § 195.6(c), that obtains its water supply primarily from a surface water source and does not have an adequate alternative source of water,

(2) The Wellhead Protection Area (WHPA) for a CWS, as defined under § 195.6(c), or a NTNCWS that obtains its water supply from a Class I or Class IIA aquifer, as defined under § 195.6(c), and does not have an adequate alternative source of water, or

(3) An area twice the WHPA for a CWS or a NTNCWS that obtains its water supply primarily from a sole source Class I or Class IIa aquifer and does not have an alternative source of water.

(b) For ecological resources: (1) An area containing critically imperiled species, as defined under § 195.6(c),

(2) A multi-species protection area, as defined under § 195.6(c), or

(3) A migratory waterbird concentration area, as defined under § 195.6(c).

(c) As used in this part—*Class I Aquifer* means an aquifer that is surficial or shallow, permeable, and is highly vulnerable to contamination. A Class I aquifer may be a:

(1) Unconsolidated Aquifer (Class Ia) that consists of surficial, unconsolidated, and permeable alluvial, terrace, outwash, beach, dune and other similar deposits. These aquifers generally contain layers of sand and gravel that, commonly, are interbedded to some degree with silt and clay. Not all Class Ia aquifers are important water-bearing units, but they are likely to be both permeable and vulnerable. The only natural protection of these aquifers is the thickness of the unsaturated zone and the presence of fine-grained material.

(2) Soluble and Fractured Bedrock Aquifer (Class Ib). Lithologies in this class include limestone, dolomite, and, locally, evaporitic units that contain documented karst features or solution channels, regardless of size. Generally these aquifers have a wide range of permeability. Also included in this class are sedimentary strata, and metamorphic and igneous (intrusive and extrusive) rocks that are significantly faulted, fractured, or jointed. In all cases groundwater movement is largely controlled by secondary openings. Well yields range widely, but the important feature is the potential for rapid vertical and lateral ground water movement along preferred pathways, which result in a high degree of vulnerability.

(3) Semiconsolidated Aquifer (Class Ic) that generally contains poorly to moderately indurated sand and gravel that is interbedded with clay and silt. This group is intermediate to the unconsolidated and consolidated end members. These systems are common in the Tertiary age rocks that are exposed throughout the Gulf and Atlantic coastal states. Semiconsolidated conditions also arise from the presence of intercalated clay and caliche within primarily unconsolidated to poorly consolidated

units, such as occurs in parts of the High Plains Aquifer.

(4) Covered Aquifer (Class Id) that is any Class I aquifer overlain by less than 50 feet of low permeability, unconsolidated material, such as glacial till, lacustrian, and loess deposits.

Class IIa aquifer means a Higher Yield Bedrock Aquifer that is consolidated and is moderately vulnerable to contamination. These aquifers generally consist of fairly permeable sandstone or conglomerate that contain lesser amounts of interbedded fine grained clastics (shale, siltstone, mudstone) and occasionally carbonate units. In general, well yields must exceed 50 gallons per minute to be included in this class. Local fracturing may contribute to the dominant primary porosity and permeability of these systems.

Community Water System (CWS) means a public water system that provides water to the same population year round.

Critically imperiled species means a species of extreme rarity, based on The Nature Conservancy's Global Conservation Status Rank. These species have 5 or fewer occurrences or fewer than 1,000 individuals, or are extremely vulnerable to extinction due to some natural or man-made factor.

Depleted Marine Mammal species means a species that has been identified and is protected under the Marine Mammal Protection Act of 1972, as amended (MMPA) (16 U.S.C. 1361 *et seq.*). The term ''depleted'' refers to marine mammal species that are listed as threatened or endangered, or are below their optimum sustainable populations (16 U.S.C. 1362). The term ''marine mammal'' means ''any mammal which is morphologically adapted to the marine environment (including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea), or primarily inhabits the marine environment (such as the polar bear)'' (16 U.S.C. 1362). The order Sirenia includes manatees, the order Pinnipedia includes seals, sea lions, and walruses, and the order Cetacea includes dolphins, porposes, and whales.

Imperiled species means a rare species, based on The Nature Conservancy's Global Conservation Status Rank. These species have 6 to 20 occurrences or 1,000 to 3,000 individuals, or are vulnerable to extinction due to some natural or man-made factor.

Migratory waterbird concentration area means a designated Ramsar site or Western Hemisphere Shoreline Reserve Network site ranked as hemispheric, international, or endangered species reserve.

Multi-species protection area means an area where three or more different critically imperiled or imperiled species, threatened or endangered species, depleted marine mammals, or migratory waterbird concentrations co-occur.

Non-transient Non-community Water System (NTNCWS) means a public water system that regularly serves at least 25 of the same people at least six months of the year. Examples of these systems include schools, factories, and hospitals that have their own water supplies.

Public Water System (PWS) means a system that provides piped water for human consumption to at least 15 service connections or serves an average of at least 25 people for at least 60 days each year. These systems include the sources of the water supplies—i.e., surface or ground. PWS can be community, non-transient non-community, or transient non-community systems.

Ramsar site means a site that has been designated under The Convention on Wetlands of International Importance Especially as Waterfowl Habitat program. Ramsar sites are globally critical wetland areas that support migratory waterfowl. These include wetland areas that regularly support 20,000 waterfowl; wetland areas that regularly support substantial numbers of individuals from particular groups of waterfowl, indicative of wetland values, productivity, or diversity; or wetland areas that regularly support 1% of the individuals in a population of one species or subspecies of waterfowl.

Sole Source Aquifer (SSA) means an area designated by the U.S. Environmental Protection Agency under the Sole Source Aquifer program as the ''sole or principal'' source of drinking water for an area. Such designations are made if the aquifer's ground water supplies 50% or more of the drinking water for an area, and if that aquifer were to become contaminated, it would pose a public health hazard.

Species means species, subspecies, population stocks, or distinct vertebrate populations.

Threatened and Endangered Species (T&E) means an animal or plant species that has been listed and is protected under the Endangered Species Act of 1973, as amended (ESA73) (16 U.S.C. 1531 *et seq.*). ''Endangered species'' is defined as ''any species which is in danger of extinction throughout all or a significant portion of its range'' (16 U.S.C. 1532). ''Threatened species'' is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range'' (16 U.S.C. 1532).

Transient Non-Community Water System (TNCWS) means a public water system that caters to transitory customers in nonresidential areas. Examples of these systems include campgrounds, motels, rest stops, and gas stations.

Wellhead Protection Area (WHPA) means the surface and subsurface area surrounding a well or well field that supplies a public water system through which contaminants are likely to pass and eventually reach the water well or well field.

Western Hemisphere Shorebird Reserve Network (WHSRN) site means an area that contains migratory shorebird concentrations and has been designated as a hemispheric reserve, international reserve, regional reserve, or endangered species reserve. Hemispheric reserves host at least 500,000 shorebirds annually or 30% of a species flyway population. International reserves host 100,000 shorebirds annually or 15% of a species flyway population. Regional reserves host 20,000 shorebirds annually or 5% of a species flyway population. Endangered species reserves are critical to the survival of endangered species and no minimum number of birds is required.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

Appendix

Note: This appendix will not appear in the Code of Federal Regulations.

TABLE 1.—CURRENTLY RECOGNIZED MIGRATORY WATERBIRD PROTECTION AREAS IN THE U.S.

Site name	State	Size (ha)	Location coordinates
Ramsar Sites:			
Ash Meadows National Wildlife Refuge	Nevada	9,509	36°25′N 116°20′W
Bolinas Lagoon	California	445	37°55′N 112°41′W

TABLE 1.—CURRENTLY RECOGNIZED MIGRATORY WATERBIRD PROTECTION AREAS IN THE U.S.—Continued

Site name	State	Size (ha)	Location coordinates
Cache-Lower White Rivers	Arkansas	81,376	34°40′N 091°11′W
Cache River-Cypress Creek Wetlands	Illinois	24,281	37°13′N 089°08′W
Caddo Lake	Texas	8,382	32°45′N 094°08′W
Catahoula Lake	Louisiana	12,150	31°30′N 092°06′W
Chesapeake Bay Estuarine Complex	Virginia	45,000	38°00′N 076°20′W
Cheyenne Bottoms State Game Area	Kansas	8,036	38°29′N 098°40′W
Connecticut River Estuary & Tidal Wetland Complex	Connecticut	6,484	41°15′N 072°18′W
Delaware Bay Estuary	Delaware and New Jersey	51,252	39°11′N 075°14′W
Edwin B Forsythe National Wildlife Refuge	New Jersey	13,080	39°36′N 074°17′W
Everglades National Park MR	Florida	566,143	25°00′N 080°55′W
Horicon Marsh	Wisconsin	12,911	43°30′N 088°38′W
Izembek Lagoon National Wildlife Refuge	Alaska	168,433	55°45′N 162°41′W
Okefenokee National Wildlife Refuge	Georgia, Florida	159,889	30°49′N 082°20′W
Pelican Island National Wildlife Refuge	Florida	1,908	27°48′N 080°25′W
Sand Lake National Wildlife Refuge	South Dakota	8,700	45°45′N 098°15′W
WHSRN Sites:			
Copper River Delta	Alaska.		
Kachemak Bay	Alaska.		
Mono Lake	California.		
Grasslands	California.		
San Francisco Bay	California.		
Delaware Bay	Delaware, New Jersey.		
American Falls	Idaho.		
Cheyenne Bottoms	Kansas.		
Quivira	Kansas.		
Barrier Islands	Maryland, Virginia.		
Benton Lake	Montana.		
Stillwater	Nevada.		
Salt Plains	Oklahoma.		
Cape Roman	South Carolina.		
Bolivar Flats	Texas.		
Brazoria Refuge Complex	Texas.		
Great Salt Lake	Utah.		
Gray's Harbor	Washington.		

Attachment A

Recommended Data Source: EPA Report 600/2–91/043. Regional Assessment of Aquifer Vulnerability and Sensitivity in the Conterminous United States. Office of Research and Development. Washington, DC. 319pp.

The following information was obtained from pages 6–8 of the above report:

Class I Aquifers (Surficial or Shallow, Permeable Units; Highly Vulnerable to Contamination)

Unconsolidated Aquifers (Class Ia)

Class Ia aquifers consist of surficial, unconsolidated, and permeable alluvial, terrace, outwash, beach, dune and other similar deposits. These units generally contain layers of sand and gravel that, commonly, are interbedded to some degree with silt and clay. Not all deposits mapped as Class Ia are important water-bearing units, but they are likely to be both permeable and vulnerable. The only natural protection of aquifers of this class is the thickness of the unsaturated zone and the presence of fine-grained material.

Soluble and Fractured Bedrock Aquifers (Class Ib)

Lithologies in this class include limestone, dolomite, and, locally, evaporitic units that contain documented karst features or solution channels, regardless of size. Generally these systems have a wide range in permeability. Also included in this class are sedimentary strata, and metamorphic and igneous (intrusive and extrusive) rocks that are significantly faulted, fractured, or jointed. In all cases groundwater movement is largely controlled by secondary openings. Well yields range widely, but the important feature is the potential for rapid vertical and lateral ground water movement along preferred pathways, which result in a high degree of vulnerability.

Semiconsolidated Aquifers (Class Ic)

Semiconsolidated systems generally contain poorly to moderately indurated sand and gravel that is interbedded with clay and silt. This group is intermediate to the unconsolidated and consolidated end members. These systems are common in the Tertiary age rocks that are exposed throughout the Gulf and Atlantic coastal states. Semiconsolidated conditions also arise from the presence of intercalated clay and caliche within primarily unconsolidated to poorly consolidated units, such as occurs in parts of the High Plains Aquifer.

Covered Aquifers (Class Id)

This class consists of any Class I aquifer that is overlain by less than 50 feet of low permeability, unconsolidated material, such as glacial till, lacustrian, and loess deposits.

Class II Aquifers (Consolidated Bedrock Aquifers; Moderately Vulnerable)

Higher Yield Bedrock Aquifers (Class IIa)

These aquifers generally consist of fairly permeable sandstone or conglomerate that contain lesser amounts of interbedded fine grained clastics (shale, siltstone, mudstone) and occasionally carbonate units. In general, well yields must exceed 50 gpm to be included in this class. Locally fracturing may contribute to the dominant primary porosity and permeability of these systems.

Lower Yield Bedrock Aquifers (Class IIb)

In most cases, these aquifers consist of sedimentary or crystalline rocks. Most commonly, lower yield systems consist of the same clastic rock types present in the higher yield systems, but in the former case grain size is generally smaller and the degree of cementation or induration is greater, both of which lead to a lower permeability. In many existing and ancient mountain regions, such as the Appalachians (Blue Ridge and Piedmont), the core consists of crystalline rocks that are fractured to some degree. Well yields are commonly less than 50 gpm, although they may be larger in valleys than on interstream divides.

Covered Bedrock Aquifers (Class IIc)

This group consists of Class IIa and IIb aquifers that are overlain by less than 50 feet of unconsolidated material of low

permeability, such as glacial till, lacustrian, or loess deposits. It is assumed that most Class V wells are relatively shallow and, therefore, 50 feet or less of fine grained cover could reduce but not necessarily eliminate the vulnerability of underlying Class II systems.

Class III (Consolidated or Unconsolidated Aquifers That Are Overlain by More Than 50 Feet of Low Permeability Material; Low Vulnerability)

Aquifers of this type are the least vulnerable of all the classes because they are naturally protected by a thick layer of fine grained material, such as glacial till or shale. Examples include parts of the Northern Great Plains where the Pierre Shale of Cretaceous age crops out over thousands of square miles and is hundreds of feet thick. In many of the glaciated states, till forms an effective cover over bedrock or buried outwash aquifers, and elsewhere alternating layers of shale, siltstone, and fine grained sandstone insulate and protect the deeper major water bearing zones * * *

Class U (Undifferentiated Aquifers)

This classification is used where several lithologic and hydrologic conditions are present within a mappable area. Units are assigned to this class because of constraints of mapping scale, the presence of undelineated members within a formation or group, or the presence of nonuniformly occurring features, such as fracturing. This class is intended to convey a wider range of vulnerability than is usually contained within any other single class.

Subclass V (Variable Covered Aquifers)

The modifier ''v'', such as Class IIa-v, is used to describe areas where an undetermined or highly variable thickness of low permeability sediments overlie the major water bearing zone. To provide the largest amount of information, the underlying aquifer was mapped as if the cover were absent, and the ''v'' designation was added to the classification. The ''v'' indicates that a variable thickness of low permeability material covers the aquifer and, since the thickness of the cover, to a large degree, controls vulnerability, this aspect is undefined.

[FR Doc. 99–33614 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[NHTSA–99–6676]

Passenger Automobile Average Fuel Economy Standards; Proposed Decision to Grant Exemption

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Proposed decision.

SUMMARY: This proposed decision responds to a petition filed by DeTomaso Automobiles, Ltd. (DeTomaso) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years 2000 and 2001, and that, for DeTomaso, lower alternative standards be established. In this document, NHTSA proposes that the requested exemption be granted to DeTomaso and that alternative standards of 22.0 mpg be established for MY's 2000 and 2001.

DATES: Comments on this proposed decision must be received on or before January 31, 2000.

ADDRESSES: Comments on this proposal must refer to the docket number and notice number in the heading of this notice and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Sanjay Patel, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, S.W., Washington, DC 20590. Mr. Patel's telephone number is: (202) 366–0307.

SUPPLEMENTARY INFORMATION:

Statutory Background

Pursuant to 49 U.S.C. section 32902(d), NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

(1) Technological feasibility.

(2) Economic practicability.

(3) The effect of other Federal motor vehicle standards on fuel economy, and

(4) The need of the United States to conserve energy.

The statute permits NHTSA to establish alternative average fuel economy standards applicable to exempted low volume manufacturers in one of three ways: (1) a separate standard for each exempted manufacturer; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

Background Information on DeTomaso

DeTomaso Automobiles, Ltd. is a Delaware Corporation under common ownership with DeT. Auto Srl., an Italian corporation that produces DeTomaso automobiles in Italy and distributes them worldwide. These DeTomaso automobiles are produced under a license granted by DeTomaso Modena SpA., an Italian corporation owned by Alejandro DeTomaso. DeT Auto Srl. and DeTomaso Automobiles Ltd. produce fewer than 10,000 cars worldwide each year and are not owned by, or under common control with, any other auto company.

The DeTomaso marque has always provided high performance through technology and weight reduction. DeTomaso vehicles were last exported to the United States in the late 1970's. The number of vehicles imported annually at that time was quite small. DeTomaso traditionally produces fewer than 2000 vehicles each year.

For the 2000 and 2001 model years, DeTomaso's product-line for the U.S. market consists of the DeTomaso Mangusta, a two-seat convertible sports car powered by a 4.6 liter Ford V–8. This model will be the only vehicle imported by DeTomaso and the company projects that it will import 300 vehicles for MY 2000 and 500 vehicles for MY 2001. These projected sales volumes are consistent with its status as a low volume importer.

The DeTomaso Petition

NHTSA's regulations on low volume exemptions from CAFE standards state that petitions for exemption are submitted ''not later than 24 months before the beginning of the affected model year, unless good cause for later submission is shown.'' (49 CFR 525.6(b).)

NHTSA received a joint petition from DeTomaso Automobiles Ltd. (DeTomaso) on June 20, 1998, seeking exemption from the passenger automobile fuel economy standards for MYs 2000–2001. This joint petition was filed less than 24 months before the beginning of MYs 2000 and 2001 and was therefore untimely under 49 C.F.R. 526.6(b). DeTomaso indicates that its decision to enter the U.S. market for MY

2000 was not made until early 1999 after it reached an agreement with Ford that allowed DeTomaso to use a U.S. built and certified powerplant and drivetrain in the Mangusta.

Under the circumstances, NHTSA concludes that DeTomaso took reasonable measures to submit a petition in as timely a manner as possible. The agency notes that DeTomaso's ability to enter the U.S. market apparently hinged on obtaining a U.S. powerplant for the Mangusta. This, according to DeTomaso, was not possible or feasible until it reached an agreement with Ford to provide the required engine. Therefore, the agency has determined that good cause exists for the late submission of the petition.

Methodology Used to Project Maximum Feasible Average Fuel Economy Level for DeTomaso

Baseline Fuel Economy

To project the level of fuel economy which could be achieved by DeTomaso in the 2000 and 2001 model years, NHTSA considered whether there were technical or other improvements that would be feasible for these vehicles, and whether the company currently plans to incorporate such improvements in the vehicles. The agency reviewed the technological feasibility of any changes and their economic practicability.

NHTSA interprets ''technological feasibility'' as meaning that technology which would be available to DeTomaso for use on its 2000 and 2001 model year automobiles, and which would improve the fuel economy of those automobiles. The areas examined for technologically feasible improvements were weight reduction, aerodynamic improvements, engine improvements, drive line improvements, and reduced rolling resistance.

The agency interprets ''economic practicability'' as meaning the financial capability of the manufacturer to improve its average fuel economy by incorporating technologically feasible changes to its 2000 and 2001 model year automobiles. In assuming that capability, the agency has always considered market demand as an implicit part of the concept of economic practicability. Consumers need not purchase what they do not want.

In accordance with the concerns of economic practicability, NHTSA has considered only those improvements which would be compatible with the basic design concepts of DeTomaso automobiles. Since NHTSA assumes that DeTomaso will continue to build high performance cars, design changes that would remove items traditionally offered on these cars were not considered. Such changes to the basic design would be economically impracticable since they might well significantly reduce the demand for these automobiles, thereby reducing sales and causing significant economic injury to the low volume manufacturer.

Technology for Fuel Economy Improvement

The nature of DeTomaso vehicles generally do not result in high fuel economy values. Also, DeTomaso lags in having the latest developments in fuel efficiency technology because suppliers generally provide components and technology to small manufacturers only after supplying large manufacturers.

DeTomaso states that the requested alternative fuel economy values represent the best possible CAFE that DeTomaso can achieve for the 2000 and 2001 model years. For MYs 2000 and 2001, DeTomaso stated that the fuel economy value of 22.0 mpg represents the best possible CAFE that it can achieve. DeTomaso has produced small lightweight innovative sports vehicles for more than 40 years. Performance is achieved through obtaining maximum output per unit of engine displacement and the use of lightweight aerodynamic body designs. The vehicle's compact dimensions provide efficient performance coupled with a strong and relatively light-weight aerodynamic body construction.

The current DeTomaso Mangusta engine, the Ford Cobra 4.6 litre V–8 is a relatively new design. The engine uses four valves per cylinder to obtain both maximum output and efficiency and relies on a sophisticated engine management system and fuel injection to increase efficiency and reduce emissions. The engine provides a high power/torque package that is a very efficient balance of fuel economy versus engine power.

Because of DeTomaso's financial constraints and its limited resources, the manufacturer must use an engine and transmission that is produced by Ford. Therefore, DeTomaso's ability to obtain further fuel economy improvements from engine and drivetrain modifications is quite limited. The Mangusta chassis/body configuration is small, aerodynamic and lightweight, so further fuel economy improvements through changes to the chassis and body also appear to be limited.

Model Mix

DeTomaso is a small vehicle manufacturer that produces a modest range of high performance exotic sport vehicles. There is little opportunity to improve fuel economy by changing model mix since DeTomaso will make only one basic model in each model year.

Effect of Other Federal Motor Vehicle Standards

The new, stringent California emission standards and the similarly stringent Federal Clean Air Act Amendments will apply to DeTomaso in MYs 2000 and 2001. DeTomaso will likely achieve lower fuel economy due to compliance with these standards. In addition, a portion of its limited engineering resources will have to be expended to comply with these more stringent emissions standards including, but not limited to, evaporative emission standards.

Federal motor vehicle safety standards (FMVSS) and regulations also have an adverse effect on the fuel economy of DeTomaso vehicles. These standards include 49 CFR Part 581 (energy absorbing bumpers), FMVSS 202 (head restraints), FMVSS 207(seating systems), FMVSS 208 (occupant crash protection), FMVSS 214 (side door strength), and FMVSS 216 (roof crush resistance). These standards tend to reduce achievable fuel economy values, since they result in increased vehicle weight.

DeTomaso is a small company and engineering resources are limited. Priority must be given to meeting mandatory standards to remain in the marketplace.

The Need of the United States to Conserve Energy

The agency recognizes there is a need to conserve energy, to promote energy security, and to improve balance of payments. However, as stated above, NHTSA has tentatively determined that it is not technologically feasible or economically practicable for DeTomaso to achieve an average fuel economy in MYs 2000 and 2001 above the levels set forth in this proposed decision. Granting an exemption to DeTomaso and setting an alternative standard at that level would result in only a negligible increase in fuel consumption and would not affect the need of the United States to conserve energy. In fact, there would not be any increase since DeTomaso cannot attain those generally applicable standards. Nevertheless, the agency estimates that the additional fuel consumed by operating the MYs 2000 and 2001 fleets of DeTomaso vehicles at the CAFE of 22.0 mpg (compared to an hypothetical 27.5 mpg fleet) is 25,803 barrels of fuel. This value averages about 3.54 barrels/

day over the 20-year period that these vehicles will be an active part of the fleet. Obviously, this is insignificant compared to the fuel used daily by the entire motor vehicle fleet which amounts to 4.81 million barrels per day for passenger cars in the United States in 1994.

Maximum Feasible Average Fuel Economy for DeTomaso

The agency has tentatively concluded that it would not be technologically feasible and economically practicable for DeTomaso to improve the fuel economy of its MY 2000 and 2001 fleet above an average of 22.0 mpg for MY 2000 and MY 2001. Federal automobile standards would not adversely affect achievable fuel economy beyond the amount already factored into DeTomaso' projections, and that the national effort to conserve energy would not be affected by granting the requested exemption and establishing an alternative standard.

Consequently, the agency tentatively concludes that the maximum feasible average fuel economy for DeTomaso is 22.0 for MYs 2000 and 2001.

Chapter 329 permits NHTSA to establish an alternative average fuel economy standard applicable to exempted manufacturers in one of three ways:(1) A separate standard may be established for each exempted manufacturer; (2) classes, based on design, size, price or other factors, may be established for the automobiles of exempted manufacturers, with a separate fuel economy standard applicable to each class; or (3) a single standard may be established for all exempted manufacturers. The agency tentatively concludes that it would be appropriate to establish a separate standard for DeTomaso.

While the agency has the option of establishing a single standard for all exempted manufacturers, we note that previous exemptions have been granted to manufacturers of high-performance cars, luxury cars and specialized vehicles for the transportation of persons with physical impairments. The agency's experience in establishing exemptions indicates that selection of a single standard would be inappropriate. Such a standard would have little impact on energy conservation while doing little to ease the burdens faced by small manufacturers who cannot meet the fuel economy standards applicable to larger manufacturers. Similarly, the agency is not proposing to establish alternative standards based on different classes of vehicles. Again, the agency's experience has been that vehicles manufactured by low volume manufacturers may differ widely in size, price, design or other factors. Based on the information available at this time, we do not believe it would be appropriate to establish class-based alternative standards.

Regulatory Impact Analyses

NHTSA has analyzed this proposal and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply. Under Executive Order 12866, the proposal would not establish a ''rule,'' which is defined in the Executive Order as ''an agency statement of general applicability and future effect.'' The proposed exemption is not generally applicable, since it would apply only to DeTomaso Automobiles Ltd., as discussed in this notice. Under DOT regulatory policies and procedures, the proposed exemption would not be a ''significant regulation.'' If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this proposed action is neither major nor significant. The principal impact of this proposal is that the exempted company would not be required to pay civil penalties if its maximum feasible average fuel economy were achieved, and purchasers of those vehicles would not have to bear the burden of those civil penalties in the form of higher prices. Since this proposal sets an alternative standard at the level determined to be the maximum feasible levels for DeTomaso for MYs 2000 and 2001, no fuel would be saved by establishing a higher alternative standard. NHTSA finds in the Section on ''The Need of the United States to Conserve Energy'' that because of the small size of the DeTomaso fleet, that incremental usage of gasoline by DeTomaso's customers would not affect the United States's need to conserve gasoline. There would not be any impacts for the public at large.

The agency has also considered the environmental implications of this proposed exemption in accordance with the Environmental Policy Act and determined that this proposed exemption if adopted, would not significantly affect the human environment. Regardless of the fuel economy of the exempted vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the proposed exemptions and alternative standards. Further, since the exempted passenger automobiles cannot achieve better fuel economy than is proposed herein, granting these proposed exemptions would not affect the amount of fuel used.

Interested persons are invited to submit comments on the proposed decision. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential business information has been deleted, should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed under the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 would be amended to read as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 would be revised to read as follows:

Authority: 49 U.S.C. 32902, delegation of authority at 49 CFR 1.50.

2. In section 531.5, the introductory test of paragraph (b) is republished for the convenience of the reader and paragraph (b)(13) would be revised to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(13) DeTomaso Cars Ltd.

AVERAGE FUEL ECONOMY STANDARD

Model year	(Miles per gallon)
2000	22.0
2001	22.0

Issued on: December 23, 1999.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 99–33803 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 991207324–9324–01; I.D. No 081699C]

RIN 0648–AK94

Endangered and Threatened Species; Proposed Rule Governing Take of Threatened Snake River, Central California Coast, South/Central California Coast, Lower Columbia River, Central Valley California, Middle Columbia River, and Upper Willamette River Evolutionarily Significant Units (ESUs) of West Coast Steelhead

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

ACTION: Proposed rule; request for comments and notice of public hearings.

SUMMARY: Under section 4(d) of the Endangered Species Act (ESA), the Secretary of Commerce (Secretary) is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. This proposed ESA 4(d) rule represents the regulations NMFS believes necessary and advisable to conserve the seven listed threatened steelhead ESUs. Note that this rules applies only to the identified steelhead species. Effects resulting from implementation of activities on other listed species (e.g., bull trout) must be addressed through ESA section 7 and section 10 processes as appropriate. The rule would apply the take prohibitions enumerated in section 9(a)(1) of the ESA in most circumstances to seven threatened steelhead ESUs. NMFS does not find it necessary or advisable to apply the take prohibitions to specified categories of activities that contribute to conserving listed salmonids or are governed by a program that adequately limits impacts on listed salmonids. The proposed rule describes 13 such limits on the application of the take prohibitions.

DATES: Comments on this rule must be received at the appropriate address (see **ADDRESSES**), no later than 5:00 p.m., eastern standard time, on February 22, 2000. Public hearings on this proposed action have been scheduled. See **SUPPLEMENTARY INFORMATION** for dates and times of public hearings.

ADDRESSES: Comments on this proposed rule or requests for information should be sent to Branch Chief, Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737. Comments will not be accepted if submitted via e-mail or Internet. See **SUPPLEMENTARY INFORMATION** for locations of public hearings. Parties interested in receiving notification of the availability of new or amended Fishery Management and Evaluation Plans (FMEPs) or Hatchery and Genetic Management Plans (HGMPs) should contact Chief, Hatchery/Inland Fisheries Branch, NMFS, Northwest Region, 525 NE Oregon Street, Suite 510, Portland, OR 97232–2737, or Assistant Regional Administrator, Sustainable Fisheries Division, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Parties interested in receiving notification of the availability of draft Watershed Conservation Plan Guidelines or draft changes to Oregon Department of Transportation's (ODOTs) 1999 Maintenance of Water Quality and Habitat Guide should contact Branch Chief, Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232-2737.

FOR FURTHER INFORMATION CONTACT: Garth Griffin at 503–231–2005; Craig Wingert at 562–980–4021.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 1997, NMFS published a final rule listing the Snake River Basin (SRB), Central California Coast (CCC), and South/Central California Coast (SCCC) steelhead ESUs as threatened species under the ESA (62 FR 43937). On March 19, 1998, NMFS published a final rule listing the Lower Columbia River (LCR) and Central Valley, California (CVC) steelhead ESUs as threatened species under the ESA (63 FR 13347). On March 25, 1999, NMFS published a rule listing the Middle Columbia River (MCR) and Upper Willamette River (UWR) steelhead ESUs as threatened (64 FR 14517). Those final listing documents describe the background of the steelhead listing actions and provide summaries of NMFS' conclusions regarding the status of the listed steelhead ESUs.

Section 4(d) of the ESA provides that whenever a species is listed as threatened, the Secretary shall issue such regulations as he deems necessary and advisable to provide for the conservation of the species. Such protective regulations may include any or all of the prohibitions that apply automatically to protect endangered species under ESA section 9(a). Those section 9(a) prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as endangered, unless with written authorization for incidental take. It is also illegal under ESA section 9 to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Section 11 of the ESA provides for civil and criminal penalties for violation of section 9 or of regulations issued under the ESA.

Whether take prohibitions or other protective regulations are necessary and advisable is in large part dependent upon the biological status of the species and potential impacts of various activities on the species. These species have survived for thousands of years through cycles in ocean conditions and weather. NMFS concludes that threatened steelhead are at risk of extinction primarily because their populations have been reduced by human ''take.'' West Coast steelhead populations have been depleted by take resulting from harvest, past and ongoing destruction of freshwater and estuarine habitat, poor hatchery practices,

hydropower development, and other causes. ''Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead'' (NMFS, 1996) concludes that all of the factors identified in section 4(a)(1) of the ESA have played some role in the decline of the species. The report identifies destruction and modification of habitat, overutilization for recreational purposes, and natural and human-made factors as being the primary reasons for the decline. Therefore it is necessary and advisable in most circumstances to apply the section 9 take prohibitions to these threatened ESUs, in order to provide for their conservation.

Several other populations of West Coast salmonids that are impacted by similar risks associated with human-caused take, including chinook, coho, chum and sockeye salmon ESUs, have also recently been listed as threatened, and section 4(d) regulations are to be proposed for them in a separate **Federal Register** document. These listings have created a great deal of interest among states, counties and others in adjusting their programs that may affect the listed species to ensure they are consistent with salmonid conservation (see e.g., *Strahan v. Coxe*, 127 F.3d 155 (1st Cir. 1997), *cert. denied*, 119 S.Ct 81 (1998)). These entities have asked NMFS to provide clarity and guidance on what activities may adversely affect salmonids and how to avoid or limit those adverse effects, and to apply take prohibitions only where other governmental programs and efforts are inadequate to conserve threatened salmonids.

Although the primary purpose of state, local and other programs is generally to further some activity other than conserving salmon, such as maintaining roads, controlling development, ensuring clean water or harvesting trees, some entities have adjusted one or more of those programs to protect and conserve listed salmonids. NMFS believes that with appropriate safeguards, many such activities can be specifically tailored to minimize impacts on listed salmonids to an extent that makes additional Federal protections unnecessary for conservation of the listed ESU.

NMFS, therefore, proposes a mechanism whereby entities can be assured that an activity they are conducting or permitting is consistent with ESA requirements and avoids or minimizes the risk of take of listed salmonids. When such a program provides sufficient conservation for listed salmonids, NMFS does not find it necessary and advisable to apply take prohibitions to activities governed by those programs. In those circumstances, described in greater detail here, additional Federal ESA regulation through the take prohibitions is not necessary and advisable because it would not meaningfully enhance the conservation of the listed ESUs. In fact, declining to apply take prohibitions to such programs likely will result in greater conservation gains for a listed ESU than would blanket application of take prohibitions, through the program itself and by demonstrating to similarly situated entities that practical and realistic salmonid protection measures exist. An additional benefit of this approach is that NMFS can focus its enforcement efforts on activities and programs that have not yet adequately addressed the conservation needs of listed ESUs.

Substantive Content of Proposed Regulation

NMFS has not previously proposed any protective regulations for five of the steelhead ESUs subject to this proposed rule. When NMFS first proposed the LCR and SRB ESUs for listing (61 FR 41541, August 9, 1996), it also proposed to apply the prohibitions of ESA section 9(a) to those ESUs. NMFS received very little comment or response on that issue. However, because NMFS now proposes to limit the application of section 9(a) prohibitions for several additional programs, NMFS is issuing a revised proposal for them in order to have the benefit of public comment before enacting final protective regulations.

NMFS concludes at this time that the take prohibitions generally applicable for endangered species are necessary and advisable for conservation of these threatened steelhead ESUs, but believes that take of the SRB, CCC, SCCC, LCR, CVC, MCR and UWR steelhead need not be prohibited when it results from a specified subset of activities described here. These are activities that are conducted in a way that contributes to conserving the listed steelhead, or are governed by a program that limits impacts on listed steelhead to an extent that makes added protection through Federal regulation not necessary and advisable for conservation of an ESU. Therefore, NMFS now proposes to apply ESA section 9 prohibitions to the seven threatened steelhead ESUs, but not to apply the take prohibitions to the 13 programs described here as meeting that level of protection. Of course, the entity responsible for any habitat-related programs might equally choose to seek an ESA section 10 permit.

Working with state and local jurisdictions and other resource managers, NMFS has identified several programs for which it is not necessary and advisable to impose take prohibitions, because they contribute to conserving the ESU or are governed by a program that adequately limits impacts on listed salmonids. Under specified conditions and in appropriate geographic areas, these include: (1) activities conducted in accord with ESA incidental take authorization through ESA sections 7 or 10; (2) ongoing scientific research activities, for a period of 6 months; (3) emergency actions related to injured, stranded, or dead salmonids; (4) fishery management activities; (5) hatchery and genetic management program activities; (6) activities in compliance with joint tribal/state plans developed within *United States* v. *Oregon*. (7) scientific research activities permitted or conducted by the states; (8) state, local, and private habitat restoration activities; (9) properly screened water diversion devices; (10) road maintenance activities in Oregon; (11) certain park maintenance activities in the City of Portland, Oregon; (12) certain development activities within urban areas; and (13) forest management activities within the State of Washington. Following is a summary of each of those programs, or potential limits on the take prohibitions. Some limits apply within all seven ESUs, and some to a subset thereof.

NMFS emphasizes that these limits are not prescriptive regulations. The fact of not being within a limit would not mean that a particular action necessarily violates the ESA or this regulation. The limits describe circumstances in which an entity or actor can be certain it is not at risk of violating the take prohibition or of consequent enforcement actions, because the take prohibition would not apply to programs within those limits.

The limits on the take prohibitions do not relieve Federal agencies of their duty under section 7 of the ESA to consult with NMFS if actions they fund, authorize, or carry out may affect listed species. Of course, to the extent that actions subject to section 7 consultation are consistent with a circumstance for which NMFS has limited the take prohibitions, the consultation will be greatly simplified because of the analysis earlier done with respect to that circumstance.

NMFS wishes to continue to work collaboratively with all affected governmental entities to recognize existing management programs that conserve and meet the biological requirements of salmonids, and to strengthen other programs toward conservation of listed salmonids. For

programs that meet those needs, NMFS can provide ESA coverage through 4(d) rules, section 10 research and enhancement permits or incidental take permits, or through section 7 consultations with Federal agencies. A 4(d) rule may be amended to add new limits on the take prohibitions, or to amend or delete limits as circumstances warrant. For example, California has been working on revisions to its Forest Practice Rules (CFPRs) in order to improve the conservation of salmonids.

Concurrent with this proposed rule, NMFS proposes a limit on the take prohibitions for actions in accord with any tribal resource management plan that the Secretary has determined will not appreciably reduce the likelihood of survival and recovery of threatened salmonid ESUs. NMFS will issue a similar ESA 4(d) rule for seven other threatened salmonid ESUs and a proposed limit on the take prohibitions for actions in accord with any tribal resource management plan that the Secretary has determined will not appreciably reduce the likelihood and survival and recovery of threatened ESUs. Because this proposal and the ESA 4(d) rule for seven other threatened salmonid ESUs are similar, commenters wishing to comment on both need not submit separate comments but may indicate that NMFS should consider their comments as applying to both proposals.

Electronic Access

The Oregon Aquatic Restoration Guidelines is accessible via the Internet at *www.oregon-plan.org/hab*_guide. The Washington Fish Passage Design at Road Culverts is accessible via the Internet at *www.wa.gov:80/wdfw/hab/engineer/cm/culvertm.htm*. To the extent possible NMFS will post other documents referenced in these rules on its Northwest region's website at *www.nwr.noaa.gov*.

Take Guidance

On July 1, 1994, (59 FR 34272) NMFS and the U.S. Fish and Wildlife Service published a policy committing the Services to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of a listing on proposed and on-going activities within the species' range.

As a matter of law, impacts on listed salmonids due to actions in compliance with a permit issued by NMFS pursuant to section 10 of the ESA are not violations of this rule. Section 10 permits may be issued for research activities, enhancement of the species' survival, or to authorize incidental take occurring in the course of an otherwise lawful activity. Likewise federally-funded or approved activities for which section 7 consultations have been completed for listed salmonids, and which are conducted in accord with all reasonable and prudent measures, terms, and conditions provided by NMFS in a biological opinion and accompanying incidental take statement pursuant to section 7 of the ESA will not constitute violations of this rule. NMFS consults on a broad range of activities conducted, funded or authorized by Federal agencies, including fisheries harvest, hatchery operations, silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion.

With respect to other activities:

1. Based on available information, NMFS believes the following activities are very likely to injure or kill salmonids, and result in a violation of this rule unless within a limit on the take prohibitions provided in this rule. These are the categories of activity upon which NMFS enforcement resources are likely to concentrate.

A. Except as provided in this rule, collecting, handling, or harassing listed salmonids, including illegal harvest activities.

B. Diverting water through an unscreened or inadequately screened diversion at times when juvenile salmonids are present.

C. Physical disturbance or blockage of the streambed where spawners or redds are present concurrent with the disturbance. The disturbance could be mechanical disruption from creating push-up dams, gravel removal, mining, or other work within a stream channel, trampling or smothering of redds by livestock in the streambed, driving vehicles or equipment across or down the streambed, and similar physical disruptions.

D. Discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into waters or riparian areas supporting the listed salmonids, particularly when done outside of a valid permit for the discharge.

E. Blocking fish passage through fills, dams, or impassable culverts.

F. Interstate and foreign commerce of listed salmonids and import/export of listed salmonids without an ESA permit, unless the fish were harvested pursuant to this rule.

2. Based upon available information, NMFS believes that the category of activities which may injure or kill listed salmonids and result in a violation of this rule (unless within an ''exception'' provided in the rule) includes, but is not limited to:

A. Water withdrawals that impact spawning or rearing habitat.

B. Diversion or discharge of flows that results in excessive, or excessive fluctuation of, stream temperatures.

C. Aside from the habitat restoration activities to which this rule does not apply take prohibitions, destruction or alteration of salmonid habitat, such as through removal of large woody debris, ''sinker logs,'' riparian canopy or other riparian functional elements; dredging; discharge of fill material; or through alteration of surface or ground water flow by draining, ditching, gating, diverting, blocking, or altering stream or tidal channels (including side channels wetted only during high flows and connected ponds).

D. Land-use activities that adversely affect salmonid habitat (e.g., logging, grazing, farming, urban development, or road construction in riparian areas) (see, e.g., 64 FR 60727, November 8, 1999, definition of ''harm'' contained in the ESA).

E. Physical disturbance or blockage of the streambed in places where spawning gravels are present.

F. Violation of Federal or state Clean Water Act (CWA) discharge permits through actions that actually impact water quality, and thus may harm listed salmonids. Likelihood of harm is increased where the receiving waters are not currently meeting water quality standards for one or more components of the discharge.

G. Pesticide and herbicide applications that adversely affect the biological requirements of the species.

H. Introduction of non-native species likely to prey on listed salmonids or displace them from their habitat.

I. Altering habitat of listed salmonids in a way that promotes the development of predator populations or makes listed salmonids more susceptible to predation.

Enforcement activity may be initiated regarding these or any other activities that harm protected salmonids. NMFS' clear preference, however, is for persons or entities who believe their activity presents significant risk given the above guidance to immediately modify that activity to avoid take and actively pursue an incidental take statement or permit through negotiations with NMFS, or shape those activities to come within one of the limits on the take prohibitions described in this proposed rule. Numerous local watershed councils, the Lower Columbia Fish

Recovery Board, the Willamette Restoration Initiative, and many local and regional governmental efforts are already actively working to solve habitat problems that limit salmonid health and productivity. An entity that is moving forward in coordination with NMFS to promptly implement credible and reliable conservation measures will gain a good understanding of any actions that may be creating an emergency situation for listed fish or otherwise demand enforcement action. For example, if water availability is a limiting factor and local water users and the state are working toward solutions with NMFS through any of a variety of mechanisms (such as conservation, supplementing instream flows, development of an ESA section 10 habitat conservation plan, etc.), the users will quickly gain a pretty clear picture of any immediate adjustments that must be made in order not to create a high risk of harming salmonid eggs, juveniles or adults.

3. There is also a category of activities which, while individually are unlikely to injure or kill listed salmonids, may collectively cause significant detrimental impact on salmonids through water quality changes; climate change that affects ocean conditions; or cumulative pollution due to storm runoff carrying lawn fertilizers, pesticides, or road and driveway pollutants. Therefore, it is important that individuals alter their daily behaviors to reduce these impacts as much as possible, and for governmental entities to seek programmatic incentives, public education, regulatory changes, or other approaches to accomplish that reduction. These activities include, but are not limited to:

A. Discharges to streams that are not listed under section 303(d) of the CWA as water quality limited, when the discharge is in full compliance with current National Pollutant Discharge Elimination System permits.

B. Individual decisions about energy consumption for heating, travel, and other purposes.

C. Individual maintenance of residences or gardens.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be pursued by NMFS as constituting a take of listed salmonids under the ESA and its regulations. Questions regarding whether specific activities constitute a violation of this rule, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

Aids for Understanding the Limits on the Take Prohibitions

Issue 1: 50 CFR 222.307(c)(2)

Included here are several references to 50 CFR 222.307(c)(2) (see 64 FR 14051, March 23, 1999, final rule consolidating NMFS' ESA regulations), which are criteria for issuance of an incidental take permit. For convenience of those commenting on this proposed rule, the criteria listed in 50 CFR 222.307(c) are:

(1) The taking will be incidental; (2) The applicant will, to the maximum extent practicable, monitor, minimize and mitigate the impacts of such taking; (3) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; (4) The applicant has amended the conservation plan to include any measures (not originally proposed by the applicant) that the Assistant Administrator determines are necessary or appropriate; and (5) There are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

Issue 2: Population and Habitat Concepts

This proposed rule references scientific concepts that NMFS proposes to use in determining whether particular programs need not fall within the scope of the section 9 take prohibitions. One of these concepts allows for identifying populations that may warrant individual management within established ESUs on some issues. The second involves identifying relevant biological parameters to evaluate the status of these populations and identifying ''critical thresholds'' and ''viable thresholds.'' NMFS is developing a scientific and policy paper entitled ''Viable Salmonid Populations'' (NMFS, December 1999) that addresses the biological concepts surrounding viable salmonid populations in more detail, and invites comment on that draft (see **ADDRESSEE**S). Once fully developed (including public and peer review), this paper will provide additional guidance in evaluating programs for eligibility under this 4(d) rule.

A third concept describes the freshwater habitat biological requirements of salmonids in terms of whether habitat is functioning properly.

Identifying Populations within ESUs

NMFS proposes to define populations following Ricker's (1972) definition of ''stock'': a population is a group of fish of the same species spawning in a particular lake or stream (or portion thereof) at a particular season which to a substantial degree do not interbreed with fish from any other group spawning in a different place or in the same place at a different season. This definition is widely accepted and applied in the field of fishery management. An independent population is an aggregation of one or more local breeding units that are closely linked by exchange of individuals among themselves, but are sufficiently isolated from other independent populations that exchanges of individuals among populations do not appreciably affect the population dynamics or extinction risk of the populations over a 100-year time frame. Such populations will generally be smaller than the whole ESU, and will generally inhabit geographic ranges on the scale of whole river basins or major sub-basins that are relatively isolated from outside migration. Using this definition, it is biologically meaningful to evaluate and discuss the extinction risk of one population independently of other populations within the same ESU.

Several types of information may be used to identify independent salmonid populations within existing ESUs, including (1) geographic indicators; (2) estimates of adult dispersal; (3) abundance correlations; (4) habitat characteristics; (5) genetic markers; and (6) quantitative traits. States and other groups involved in salmonid management have defined groups of fish for management purposes based on some or all of this information, and many of the definitions already used by managers are similar to the population definition proposed above. Further, while the types of information identified here may be useful in defining independent populations within ESUs, other methods may exist for identifying biologically meaningful population units consistent with the adopted definitions. Therefore, NMFS will evaluate proposed population boundaries on a case-by-case basis to determine if such boundaries are biologically supportable and consistent with the population definition in this rule.

NMFS believes it important to identify population units within established ESUs for several reasons. Identifying and assessing impacts on such units will enable greater consideration of the important biological diversity contained within each ESU, a factor considered in NMFS' ESU policy (Waples, 1991). Further, assessing impacts on a population level is typically a more practical undertaking given the scale and complexity of ESUs. Finally, assessing impacts on a

population level will help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range.

Assessing Population Status

NMFS proposes to evaluate population status through four primary biological parameters: (1) abundance; (2) productivity; (3) population substructure; and (4) genetic diversity. A discussion of the relevance of these parameters to salmonid population status may be found in a variety of scientific documents (e.g., Nehlsen et al., 1991; Burgman et al., 1993; Huntington et al., 1996; Caughley and Gunn, 1996; Myers et al., 1998).

Population abundance is important to evaluate due to potential impacts associated with genetic and demographic risks. Genetic risks associated with low population size include inbreeding depression and loss of genetic diversity. Demographic risks associated with low population size include random effects associated with stochastic environmental events. Population size may be assessed and estimated from dam and weir counts, redd counts, spawner surveys, and other methods. Viable abundance levels may be determined, based on historic abundance levels or habitat capacity for the population.

Population productivity may be thought of as the population's ability to increase or maintain its abundance. It is important to assess productivity since negative trends in productivity over sustained periods may lead to genetic and demographic impacts associated with small population sizes. However, trends in other parameters such as survival between life stages, age structure, and fecundity may also be useful in assessing productivity. In general, viable population trends should be positive unless the population is already at or above viable abundance levels. In that case, neutral or negative population trends may be acceptable so long as such declines will not lead the population to decline below viable abundance levels in the foreseeable future.

Population structure reflects the number, size and distribution of remaining habitat patches and the condition of migration corridors that provide linkages among these habitat types. Population structure affects evolutionary processes and may impact the ability of populations to respond to environmental changes or stochastic events. Habitat deficiencies, such as loss of migration corridors between habitat types, can lead to a high risk of extinction and may not become readily apparent through evaluating population sizes or productivity. Determining whether viable population structure exists may require comparison of existing and historic habitat conditions.

Population diversity is important because variation among populations is likely to buffer them against short term environmental change and stochastic events. Population diversity may be assessed by examining life history traits such as age, and run and spawn timing distributions. Further, more direct analysis of genetic diversity through DNA analysis may provide an indication of diversity. Viable population diversity will likely be determined through comparisons to historic information or comparisons to other populations existing in relatively undisturbed conditions. Ultimately, population diversity must be sufficient to buffer the population against normal environmental variation.

Establishing Population Thresholds

In applying the concepts discussed here to harvest and artificial propagation actions, NMFS relies on two functional thresholds of population status: (1) Critical population threshold, and (2) viable population threshold. The critical population threshold refers to a minimal functional level below which a population's risk of extinction increases exponentially in response to any additional genetic or demographic risks.

The viable population threshold refers to a condition where the population is self sustaining, and not at risk of becoming endangered in the foreseeable future. This threshold reflects the desired condition of individual populations and of their contribution to recovery of the ESU as a whole. Proposed actions must not preclude populations from attaining this condition.

Evaluating Habitat Conditions

This proposed rule restricts application of the take prohibitions when land and water management activities are conducted in a way that will help attain or protect properly functioning habitat. Properly functioning habitat conditions create and sustain the physical and biological features that are essential to conservation of the species, whether important for spawning, breeding, rearing, feeding, migration, sheltering, or other functions. Such features include water quantity; water quality attributes such as temperature, pH, oxygen content, etc; suitability of substrate for spawning; freedom from passage impediments; and availability of pools and other shelter. These features are not static; the concept of proper function recognizes that natural patterns of habitat disturbance, such as through floods, landslides and wildfires, will continue. Properly functioning habitat conditions are conditions that sustain a watershed's natural habitat-affecting processes (bedload transport, riparian community succession, precipitation runoff patterns, channel migration, etc.) over the full range of environmental variation, and that support salmonid productivity at a viable population level. Specific criteria associated with achieving these conditions are listed with each habitat-related limit on take prohibitions.

Issue 3: Direct and Incidental Take

Section 4(d) of the ESA requires that such regulations be adopted as are ''necessary and advisable to provide for the conservation of'' the listed species. In discussing the limits on the take prohibitions, NMFS does not generally distinguish ''incidental'' from ''direct'' take because that distinction is not required or helpful under section 4(d). The biological impact of take on the ESU is the same, whether a particular number of listed fish are lost as a result of incidental impacts or directed impacts. Hence the descriptions below of harvest and artificial propagation programs for which NMFS does not find it necessary and advisable to impose take prohibitions do not, as a general rule, make that distinction. Rather, those descriptions and criteria focus on the impacts of all take associated with a particular activity of the biological status of the listed ESU. (The distinction is retained in the discussion of scientific research targeted on listed fish, because the limit on take prohibitions applies in that situation only to research by agency personnel or agency contractors.)

Issue 4: Applicability to Specific ESUs

In the regulatory language in this proposed rule, the limit on applicability of the take prohibitions to a given ESU is accomplished through citation to the CFR enumeration of threatened marine and anadromous species, 50 CFR 223.102. For the convenience of readers of this document, 50 CFR 223.102 refers to threatened salmonid ESUs through the following designations:

(a)(1) Snake River spring/summer chinook

(a)(2) Snake River fall chinook

(a)(3) Central California Coast coho

(a)(4) Southern Oregon/Northern California Coast coho

(a)(5) Central California Coast steelhead

(a)(6) South-Central California Coast steelhead

(a)(7) Snake River Basin steelhead
(a)(8) Lower Columbia River steelhead
(a)(9) Central Valley, California steelhead
(a)(10) Oregon Coast coho
(a)(12) Hood Canal summer-run chum
(a)(13) Columbia River chum
(a)(14) Upper Willamette River steelhead
(a)(15) Middle Columbia River steelhead
(a)(16) Puget Sound chinook
(a)(17) Lower Columbia River chinook
(a)(18) Upper Willamette River chinook
(a)(19) Ozette Lake sockeye

Issue 5: Regular Evaluation of Limits on the Take Prohibitions

In determining that it is not necessary and advisable to impose take prohibitions on certain programs or activities described here, NMFS is mindful that new information may require a reevaluation of that conclusion at any time. For any of the limits on the take prohibitions described, NMFS will evaluate on a regular basis the effectiveness of the program in protecting and achieving a level salmonid productivity and/or of habitat function consistent with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. For habitat-related limits on the take prohibitions, changes may be required if the program is not achieving desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU.

If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to extend all ESA section 9 take prohibitions to the activities.

Issue 6: Coordination with United States Fish and Wildlife Service (FWS)

By its terms, this rule applies only to listed salmonids under NMFS' jurisdiction. However, as it evaluates any program against the criteria in this rule to determine whether the program warrants a limitation on take prohibitions, NMFS will coordinate closely with FWS regional staffs.

Permit/ESA Limit on the Take Prohibitions

This limit on the ESA section 9 take prohibitions recognizes that those holding permits under section 10 of the ESA or coming within other exceptions under the ESA are free of the take prohibition so long as they are acting in accord with the permit or applicable law. Examples of activities for which a section 10 permit may be issued are research or land management activities associated with a habitat conservation plan.

Continuity of Scientific Research

This proposed rule would not restrict ongoing scientific research activities affecting listed CCC, SCCC, SRB, LCR, CV, UWR and MCR steelhead ESUs for up to 6 months after its effective date, provided that an application for a permit for scientific purposes or to enhance the conservation or survival of the species is received by the Assistant Administrator for Fisheries (AA), NOAA, within 30 days from after the effective date of a final rule. The section 9 take prohibitions would extend to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of a permit, or 6 months after the effective date of the final rule, whichever occurs earliest. It is in the interests of salmonid conservation not to disrupt ongoing research, some of which are of long term duration. This limit on the take prohibitions assures there will be no unnecessary disruption of those activities, yet provides NMFS with tools to halt the activity through denial if it is judged to have unacceptable impacts on a listed ESU. Therefore, NMFS does not find imposition of additional Federal protections in the form of take prohibitions necessary and advisable.

Take Prohibition Limit for Rescue and Salvage Actions

This limit on the take prohibitions relieves certain agency and official personnel or their designees from the take prohibition when they are acting to aid an injured or stranded salmonid, or salvage a dead individual for scientific study. Each agency acting under this ''exception'' is to report the numbers of fish handled and their status, on an annual basis. This limit on the take prohibitions will result in conservation of the listed species by preserving life or furthering our understanding of the species. By the very nature of the circumstances that trigger these actions (the listed fish is injured or stranded and in need of immediate help, or is already dead and may benefit the species if available for scientific study), NMFS concludes that imposition of Federal protections through a take prohibition is not necessary and advisable.

Fishery Management Limit on the Take Prohibitions

NMFS believes that in many cases, recreational fisheries for non-listed steelhead and resident game fish species will have acceptably small impacts on listed steelhead and will allow for the conservation of those listed salmonids, as long as state recreational fishery management programs are specifically tailored to meet certain criteria. This proposed rule provides a mechanism whereby NMFS may limit application of the take prohibitions to non-listed (hatchery) steelhead and resident species fisheries when a state develops an adequate Fishery Management and Evaluation Plan (FMEP). If NMFS finds that the FMEP contains specific management measures that adequately limits take of listed steelhead and otherwise protects the ESU, NMFS may enter into a Memorandum of Agreement (MOA) with the state for implementation of the plan. Where an FMEP and MOA that meet the following criteria are in place, NMFS concludes that problems associated with fishery impacts on listed steelhead will be addressed and that additional Federal protections through imposition of take prohibitions on harvest activities is not necessary and advisable. Therefore this rule proposes not to apply take prohibitions to actions in accord with FMEPs being implemented through an MOA. This proposed limit on the take prohibitions thus encourages states to move quickly to make needed changes in fishery management so that listed ESUs benefit from those improvements and protections as soon as possible.

Process for Developing FMEPs

Prior to determining that any state's new or amended FMEP is sufficient to eliminate the need for added Federal protection, NMFS must find that the plan is effective in addressing the criteria here. If NMFS finds that an FMEP meets those criteria, it will then enter into an MOA with the state which will set forth the terms of the FMEP's implementation and the duties of the parties pursuant to the FMEP. A state must confer annually with NMFS on its fishing regulation changes to ensure consistency with an approved FMEP.

NMFS recognizes the importance of providing meaningful opportunities for public review of FMEPs. Therefore, prior to approving new or amended FMEPs, NMFS will make such plans

available for public review and comment for a period of not less than 30 days. Notice of the availability of these plans will be published in the **Federal Register**.

Criteria for Evaluating FMEPs

NMFS will approve an FMEP only if it meets the following criteria, which are designed to minimize and adequately limit take and promote the conservation of all life stages of listed steelhead. The FMEP must:

(1) Provide a clear statement of the scope of the proposed action. The statement must include a description of the proposed action, a description of the area of impact, a statement of the management objectives and performance indicators for the proposed action, and anticipated effects of the proposed action on management objectives (including recovery goals) for affected populations. This information will provide objectives and indicators by which to assess management strategies, design monitoring and evaluation programs, measure management performance, and coordinate with other resource management actions in the ESU.

(2) Identify populations within affected ESUs, taking into account (A) spatial and temporal distribution; (B) genetic and phenotypic diversity; and (C) other appropriate identifiable unique biological and life history traits, as discussed earlier under Issue 2. Where available data or technology are inadequate to determine the effects of the proposed action on individual populations, plans may identify management units consisting of two or more population units, when the use of such management units is consistent with survival and recovery of the species. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units and describe how such units are defined such that they are consistent with the principles discussed under Issue 2.

(3) Describe the functional status of each ESU or of any population or management unit intended to be managed separately within the ESU, and determine and apply two thresholds, based on natural production: (A) one that describes the level of abundance and function at which the population is considered viable; and (B) a critical threshold, where because of very low population size and/or function, any additional demographic and genetic risks increases the extinction risk exponentially.

Thresholds may be described differently depending on the parameter for which thresholds are being established. Abundance and productivity thresholds may consist of a single value or a range of values whereas spatial and temporal distribution and genetic diversity thresholds may consist of multiple values, or describe a pattern or distribution of values. For example, a hypothetical abundance threshold might be defined either as 5,000 spawners per year or a range of 4,000-6,000 spawners per year, whereas a temporal distribution threshold might be defined as a pattern of spawning timing occurring from mid-June through August with random variation about that time, and with approximately 30 percent of the spawners entering in June, 50 percent in July and the remaining 20 percent throughout August.

Proposed management actions must recognize the significant differences in risk associated with these two thresholds and respond accordingly in order to minimize the risks to the long-term sustainability of the population(s). Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet viable, harvest management must not appreciably slow the population's achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not appreciably increase the genetic and demographic risks facing the population and must be designed to permit the population's achievement of viable function, unless the plan demonstrates that such an action will not appreciably reduce the likelihood of survival and recovery of the ESU as a whole, despite any increased risks to the individual population.

Thresholds represent a band of functions reflecting the reality that populations fluctuate from year to year because of natural events and variability. The biological analysis required to arrive at viable and critical thresholds will be more or less intensive depending on data availability and changes. After initial management strategies are developed, annual abundance data will be an extremely important indicator of what adjustments need be made. Then, as monitoring adds to and refines the data regarding functioning of other parameters, these must also be reviewed on a regular basis so that if significant changes have occurred in run timing, phenotypic diversity or other characteristics, the harvest strategy, (and if appropriate, other strategies) will be adjusted to respond to those changes.

(4) Set escapement objectives or maximum exploitation rates for each management unit or population based on its status, and a harvest program that assures not exceeding those rates or objectives. While the term ''exploitation'' may suggest a purposeful intent to use the resource, it is used here as a term of art in fishery management indicating that all fishery-related mortality across all fisheries must be accounted for. In total, the combined exploitation across all fisheries and management units must not appreciably reduce the likelihood of recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations (those supported primarily by natural production) by reducing the likelihood that those populations will maintain or attain viable functional status, or by appreciably slowing attainment of viable function.

All unlisted hatchery-produced steelhead that are intended to be targeted for recreational harvest must be clearly, externally marked so anglers may identify the origin of steelhead. This differential marking will enable anglers to release naturally spawned fish, or fish intended for recovery. Only externally marked fish of hatchery origin may be retained in fisheries and all unmarked steelhead must be released unharmed back to the water. Research conducted in the Northwest United States and British Columbia indicates that adult steelhead can be hooked, landed, and released using recreational fishing equipment with an average mortality rate of less than 5 percent (Hooton, 1987). For example, in the Snake River, about 50 percent of the adult steelhead that return are caught in recreational fisheries. Since 50 percent of the listed population is subjected to a 5– percent mortality, the entire listed steelhead population is estimated to suffer about a 2.5–percent mortality due to the recreational fishery. Acceptable mortality rates may vary for different ESUs given differences in species status or differences in the overall FMEP.

These measures will allow recreational anglers to fish for, and harvest, non-listed, hatchery-produced steelhead, while providing protection for listed fish. Any fishery where the number of listed fish may exceed the number of unlisted fish in a given water must be strictly controlled.

Steelhead fishing seasons should be open only in areas, and during time periods, where and when non-listed, hatchery-produced fish are expected to occur. Hatchery-produced steelhead smolts are released from hatcheries and acclimation ponds or directly trucked to release points. Most adults return to areas near the point at which they were released. In many cases, hatchery programs have been adjusted to return non-listed hatchery fish to river sections where they are accessible to anglers and where they do not interfere with listed fish. Further refinement of hatchery releases will occur through hatchery plans and adaptive management based on evaluations of hatchery programs, fisheries and regulation strategies.

Sanctuaries must be provided for listed steelhead, in which fishing is not allowed and no hatchery-produced, non-listed steelhead are present. Hatchery-produced steelhead smolts are typically released in main stems of rivers, where fishing for returning non-listed hatchery fish is generally permitted. Important tributaries and headwater areas should be reserved as sanctuaries to provide adequate spawning and rearing areas for listed species. Under some circumstances, it may be an appropriate conservation strategy to utilize limited fisheries to selectively remove stray hatchery fish from sanctuary areas to reduce the proportion of hatchery fish that spawn naturally.

(5) Display a biologically based rationale demonstrating that the harvest management strategy does not appreciably reduce the likelihood of survival and recovery of the species in the wild. The effects must be assessed over the entire period of time the proposed harvest management strategy would affect the population, including effects reasonably certain to occur after the proposed action ceases.

(6) Include effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics such as age, fecundity, size and sex data, and migration timing. The complexity and frequency of the monitoring program should be appropriate to the scale and likely effects of the action. Angling effort and harvest rates may be monitored with check stations, creel censuses, random surveys, and catch-card returns. Spawning ground surveys can track trends in spawning success of listed fish and proportion of hatchery-produced fish spawning naturally. Adult fish counts at dams and weirs can provide estimated total numbers of returns, the proportion of listed to non-listed fish, and abundance trends. Surveys of rearing areas and downstream migrant traps can provide estimates of production and juvenile abundance trends. Estimates of the number of hatchery-produced steelhead and mortality of listed fish should be monitored during the season and summarized at the end of the season in an annual report available to NMFS and the public.

(7) Provide for evaluating monitoring data and making any needed revisions of assumptions, management strategies, or objectives. The FMEP must describe the conditions under which revision will be made and the processes for accomplishing those revisions.

(8) Provide for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(9) Include restrictions on resident species fisheries that minimize and adequately limit any take of listed species, including time, size, gear, and area restrictions; and elimination of put-and-take fisheries in waters with listed anadromous salmonids. Recreational fisheries for resident trout or other resident species may result in take of juvenile and adult listed steelhead, but selective or catch-and-release fisheries for resident species, with appropriate restrictions on season, minimum length limits and fishing tackle may be conducted with little or no measurable impact on listed species.

Season dates must be adjusted to avoid fishing on concentrations of adult or juvenile listed steelhead. Steelhead smolts generally leave rearing streams during spring freshets between March and June, with peak outmigration in April and May. Delaying the opening of fishing season until late May or June will provide protection for this life stage. If monitoring of fisheries detects other times or areas where listed juvenile steelhead are vulnerable, seasons may need to be closed or shortened.

Minimum size limits for rainbow trout are necessary to protect steelhead parr and smolts. Most listed steelhead smolts are less than 8 inches (3.1 cm) in length in northern areas (i.e., Idaho, Washington, and Oregon) when they begin their migration. In some areas of California, steelhead smolts often exceed 10 inches (3.9 cm) in length. Fishing regulations should require rainbow trout retained by anglers to be larger than the maximum size attained by wild steelhead smolts rearing in those waters, to protect listed juvenile steelhead. In some cases, minimum size limits of up to 14 inches (5.5 cm) have been determined to be locally appropriate to avoid any chance of retention of juvenile listed steelhead.

Regulations must not allow retention of listed steelhead. A substantial amount of research indicates recreational fisheries for resident fish species can be conducted so as to limit take of listed steelhead. A review of over 70 studies of hooking mortality on trout indicates that trout caught on artificial flies and lures generally suffer less than 5 percent post-release mortality while trout caught on bait average 30 to 50 percent (Mongillo, 1984)(steelhead post-release mortality rates may be higher under warm water conditions). Many of these studies used trout that are similar in size to juvenile steelhead and results should be directly applicable. Therefore, use of bait in angling should be prohibited in waters where take of listed steelhead may occur. Barbless hooks should be required when necessary to minimize potential impacts to listed steelhead. Locally appropriate regulations that prohibit any retention of listed steelhead should likewise be developed.

Put-and-take fisheries for hatchery-produced resident trout should be eliminated in steelhead-producing streams since such fisheries can concentrate anglers and increase the harvest or post-release mortality of listed juvenile steelhead. In some cases, there may be cause for concern that hatchery-produced fish may compete with or prey upon listed juvenile steelhead. Release of hatchery-produced resident trout in streams that support listed steelhead must be severely curtailed; and

(10) Be consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

Artificial Propagation Limit on the Take Prohibitions

NMFS believes that in some cases it may not be necessary and advisable to prohibit take with respect to artificial production programs, including use of listed steelhead as hatchery broodstock, under specific circumstances. This limit on the take prohibitions proposes a mechanism whereby state or Federal hatchery managers may obtain assurance that a hatchery and genetic management program is adequate for protection and conservation of listed steelhead. The state or Federal agency would develop a Hatchery and Genetic Management Plan (HGMP) containing

specific management measures that will minimize and adequately limit impacts on listed steelhead and promote the conservation of the listed ESU, and then enter into an MOA with NMFS to ensure adequate implementation of the HGMP. NMFS believes that with an adequate HGMP and an MOA in place, additional Federal protection through imposition of take prohibitions on artificial propagation activities would not be necessary and advisable for conservation of the listed steelhead.

Process for Developing Hatchery and Genetic Management Plans

NMFS will evaluate the effectiveness of state or Federal HGMPs in addressing the following criteria. If the HGMP does so adequately, NMFS will then enter into an MOA with the state or complete an ESA section 7 consultation with a Federal entity, which will set forth the duties of the parties pursuant to the plan.

This proposed rule provides a mechanism whereby NMFS may limit application of take prohibitions that would otherwise apply to broodstock collection and other hatchery operations in compliance with an approved HGMP.

NMFS recognizes the importance of providing meaningful opportunities for public review of draft HGMPs. Therefore, prior to approving new or amended HGMPs, NMFS will make such plans available for public review and comment for a period of not less than 30 days. Notice of the availability of such draft plans will be published in the **Federal Register**.

Criteria for Evaluating Hatchery and Genetic Management Plans

NMFS will evaluate salmonid HGMPs on the basis of criteria that are designed to minimize and adequately limit take and promote the conservation of the listed species. The criteria by which draft HGMPs will be evaluated include the following:

(1) *Goals and Objectives for the Propagation Program*. Each hatchery program must have clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals should address whether the program is intended to meet conservation objectives, contributing to the ultimate sustainability of natural spawning populations, and/or intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program against which its success or failure can be monitored.

(2) *Maintenance of Viable Populations*. Listed salmonids may be intentionally used for broodstock purposes only if (A) the donor population is currently at or above viable thresholds and the collection will not reduce the likelihood that the population remains viable; (B) the donor population is not currently viable but the sole objective of the current collection program is to enhance the propagation or survival of the listed ESU; or (C) the donor population is shown with a high degree of confidence to be above critical threshold although not yet viable, and the collection will not appreciably slow the attainment of viable population status.

(3) *Prioritization of Broodstock Collection Programs*. Broodstock collection programs of listed salmonids shall be prioritized on the following basis depending on health, abundance and trends in the donor population: (A) for captive brood or supplementation of the local indigenous population; (B) for supplementation and restoration of similar, at-risk, natural populations within the same ESU, or for reintroduction to underseeded habitat; and (C) production to sustain tribal and recreational fisheries consistent with recovery and maintenance of naturally spawned salmonid populations. The primary purpose of broodstock collection programs must first be to reestablish local indigenous salmonid populations and to supplement and restore existing populations. After the species' conservation needs are met, and when consistent with survival and recovery of the species, broodstock collection programs may be authorized by NMFS for secondary purposes, such as to sustain tribal, recreational and commercial fisheries.

(4) *Operational Protocols*. An HGMP must include comprehensive protocols pertaining to fish health; broodstock collection; broodstock mating; incubation, rearing and release of juveniles; disposition of hatchery adults; and catastrophic risk management.

(5) *Genetic and Ecological Effects*. An HGMP will be evaluated based on best available information to assure the program avoids or minimizes any deleterious genetic or ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by straying of hatchery fish.

(6) *Adequacy of Existing Fishery Management Programs and Regulations*. An HGMP shall describe interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. HGMPs for programs whose purpose is to sustain fisheries must not compromise the ability of FMEPs or other management plans to achieve management objectives for associated listed populations.

(7) *Adequacy of Hatchery Facilities*. Adequate artificial propagation facilities must exist to properly rear progeny of listed broodstock to maintain population health, maintain population diversity, and to avoid hatchery-influenced selection or domestication.

(8) *Availability of Effective Monitoring Efforts*. Adequate monitoring and evaluation must exist to detect and evaluate the success of the hatchery program and any risks to or impairment of recovery of the listed ESU, including monitoring of stray rates.

(9) *Consistency with Court Mandates*. An HGMP must be consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

Take of Progeny Resulting from Hatchery/Naturally Spawned Crosses

NMFS' ''Interim Policy on Artificial Propagation of Pacific Salmon Under the Endangered Species Act,'' (58 FR 17573, April 5, 1993) provides guidance on the treatment of hatchery stocks in the event of a listing. Under this policy, ''progeny of fish from listed species that are propagated artificially are considered part of the listed species and are protected under the ESA.'' According to the interim policy, the progeny of such hatchery-naturally spawned crosses or naturally spawned-naturally spawned crosses would also be listed.

NMFS believes it is desirable to incorporate enough naturally spawned fish into the hatchery populations to ensure that their genetic and life history characteristics do not diverge significantly from the naturally spawned population. Prior to any intentional use of listed fish for hatchery broodstock, an approved HGMP must be in place to ensure that native, naturally spawned populations are conserved. With such plans in place and where population status characteristics warrant it, NMFS will proceed through rulemaking to delist hatchery progeny of naturally spawned-naturally spawned or naturally spawned-hatchery crosses. A proposed rule setting forth the scientific basis for such a determination and providing the public with notification and an

opportunity to comment would be published in the **Federal Register**.

Limits on the Take Prohibitions for Joint Tribal/State Plans Developed within United States v. Oregon.

Non-tribal salmonid management in the Columbia River basin is profoundly influenced by the treaty rights of numerous Indian tribes in the basin and must be responsive to the court proceedings interpreting and/or defining those tribal interests. NMFS, therefore, proposes this limit on the take prohibitions to accommodate any resource management plan developed jointly by the States and the Tribes (joint plan) within the continuing jurisdiction of *United States* v. *Oregon*, the on-going Federal court proceedings to enforce and implement reserved treaty fishing rights. Such a plan would be developed and reviewed under the government-to-government processes of the general tribal limit (including technical assistance from NMFS in evaluating impacts on listed salmonids). Before the take prohibitions would be determined not to apply to a joint plan, the Secretary must determine that implementation and enforcement of the plan will not appreciably reduce the likelihood of survival and recovery of the species. Before making that determination for joint fishery management or hatchery and genetic management plans the Secretary must solicit and consider public comment on how any fishery management plan addresses the criteria in § 223.208(b)(4) of this proposed rule, or how any hatchery and genetic management plan addresses the criteria in § 223.208(b)(5) of this proposed rule. The Secretary shall publish notice of any determination regarding a joint plan, with a discussion of the biological analysis underlying that determination, in the **Federal Register**.

Limits on the Take Prohibitions for Scientific Research

In carrying out their responsibilities, state fishery management agencies in Idaho, Washington, Oregon and California conduct or permit a wide range of scientific research activities on various fisheries, including monitoring and other studies on steelhead which occur in the SR, CCC, SCCC, LCR, CVC, MCR and UWR steelhead ESUs. NMFS finds these activities vital for improving our understanding of the status and risks facing steelhead and other listed species of anadromous fish that occur in overlapping habitat, and provide critical information for assessing the effectiveness of current and future management practices. In general, NMFS concludes such activities will help to conserve the listed species by furthering our understanding of the species' life history and biological requirements, and that state biologists and cooperating agencies carefully consider the benefits and risks of proposed research before approving or undertaking such projects. NMFS concludes that it is not necessary or advisable to impose additional protections on such research through imposition of Federal take prohibitions. Therefore, in this notice, NMFS proposes not to apply take prohibitions to scientific research activities under the following circumstances.

Research activities that involve planned sacrifice or manipulation of, or will necessarily result in injury to or death of, listed steelhead come within this exception only if the state submits an annual report listing all scientific research activities involving such activities planned for the coming year, for NMFS' review and approval. Such reports shall contain (1) an estimate of the total take anticipated from such research; (2) a description of study designs, including a justification for taking the species; (3) a description of the techniques to be used; and (4) a point of contact. Research involving planned sacrifice or manipulation of, or which will necessarily result in injury to or death of listed salmonids must be conducted by employees or contractors of the state fishery management agency, or as part of a coordinated monitoring and research program overseen by that agency. Any research using electrofishing gear in waters known, or expected to contain, listed salmonids, is within this exception only if it complies with ''Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act'' (NMFS, 1998). Otherwise, electrofishing research requires a section 10 research permit from NMFS prior to commencing operations. NMFS welcomes comment on these guidelines, which are available (see **ADDRESSES**), during the comment period for this proposed rule.

The state must annually provide NMFS with the results of scientific research activities that involve directed take of listed salmonids, including a report of the amount of direct take resulting from the studies and a summary of the results of such studies.

A state may conduct and may authorize non-state parties to conduct research activities that may result in incidental take of listed salmonids under the following conditions. The state shall submit to NMFS annually, for its review and approval, a report listing all scientific research activities permitted that may incidentally take listed salmonids during the coming year. In that annual report, the state must also report the amount of incidental take of listed salmonids occurring in the previous year's scientific research activities, and provide a summary of the results of such research. Interested parties may request a copy of these annual reports from NMFS (see **ADDRESSES**).

Habitat Restoration Limits on the Take Prohibitions

NMFS considers a ''habitat restoration activity'' to be an activity whose primary purpose is to restore natural aquatic or riparian habitat processes or conditions; it is an activity which would not be undertaken but for its restoration purpose. NMFS does not consider herbicide applications or artificial bank stabilization to be restoration activity.

Certain habitat restoration activities are likely to contribute to conserving listed salmonids without significant risks, and NMFS concludes that it is not necessary and advisable to impose take prohibitions on those activities when conducted in accordance with appropriate standards and guidelines. Projects planned and carried out based on at least a watershed-scale analysis and conservation plan, and, where practicable, a sub-basin or basin-scale analysis and plan, are likely to be the most beneficial. NMFS strongly encourages local efforts to conduct watershed assessments to identify what problems are impairing watershed function, and to plan for watershed restoration or conservation in reliance on that assessment. Without the overview a watershed-level approach provides, habitat efforts are likely to focus on ''fixes'' that may prove short-lived, or even detrimental, because the underlying processes that are causing a particular problem have not been addressed.

This proposed rule, therefore, provides that ESA section 9(a) take prohibitions will not apply to habitat restoration activities found to be part of, and conducted pursuant to, a state-approved watershed conservation plan with which NMFS concurs. The state in which the activity occurs must determine in writing whether a watershed plan has been formulated in accordance with NMFS-approved state watershed conservation plan guidelines, and forward any positive finding for NMFS' concurrence. NMFS will work with interested states in developing guidelines that meet the criteria and standards set forth here. If NMFS finds they meet those criteria and standards, NMFS will then certify this

determination in writing to the state. Such a plan will contain adequate safeguards such that no additional Federal protections through imposition of take prohibitions on actions in accord with the plan, is necessary and advisable for conservation of the listed salmonids.

While criteria and plans are being developed, this proposed rule would not apply the take prohibitions to several habitat restoration activities if carried out in accord with the conditions described here, and with any required state or Federal reviews or permits. Until watershed conservation plans formulated in accord with NMFS-approved state watershed conservation plan guidelines are in place, but for no longer than 2 years, ESA section 9 take prohibitions will not apply to the following restoration activities when conducted in accord with the listed conditions and guidance. More complex restoration activities, such as habitat construction projects or channel alterations, require project by project technical review at least until watershed planning is complete.

Applicable state guidance includes the *Oregon Road/Stream Crossing Restoration Guide: Spring 1999*, selected portions (cited here) of the *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999); the Washington Department of Fish and Wildlife, (WDFW) Habitat and Lands Environmental Engineering Division's *Fish Passage Design at Road Culverts*, March 3, 1999; Washington Administrative Code rules for Hydraulic Project Approval; and *Washington's Integrated Streambank Protection Guidelines*, June, 1998. Applicable state guidance for California includes the *Stream Corridor Restoration, Principles, Processes and Practices* by the Federal Interagency Stream Restoration Working Group (October 1998) and the *California Salmonid Stream Habitat Restoration Manual*, January, 1998. Under those conditions and where consistent with any other state or Federal laws and regulations, NMFS proposes not to apply take prohibitions to the following habitat restoration activities:

1. *Riparian zone planting or fencing.* Conditions: No in-water work; no sediment runoff to stream; native vegetation only; fence placement consistent with standards in the *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999).

2. *Livestock water development off-channel.* Conditions: No modification of bed or banks; no in-water structures except minimum necessary to provide source for off-channel watering; no sediment runoff to stream; diversion adequately screened; diversion in accord with state law and has no more than de minimus impacts on flows that are critical to fish; diversion quantity shall never exceed 10 percent of current flow at any moment, nor reduce any established instream flows.

3. *Large wood (LW) or boulder placement.* Conditions: Does not apply to LW placement associated with basal area credit in Oregon. No heavy equipment allowed in stream; work limited to any state in-water work season guidelines established for fish protection, or if there are none, limited to summer low-flow season with no work from the start of adult migration through the end of juvenile outmigration. Wood placement projects should rely on the size of wood for stability and may not use permanent anchoring including rebar or cabling (these would require ESA section 7 consultation or an ESA section 10 permit)(biodegradable manila/sisal rope may be used for temporary stabilization). Wood length should be at least two times the bankfull stream width (1.5 times the bankfull width for wood with rootwad attached) and meet diameter requirements and stream size and slope requirements outlined in *A Guide to Placing Large Wood in Streams*, Oregon Department of Forestry and Department of Fish and Wildlife (May, 1995). LW placement must be either associated with an intact, well-vegetated riparian area which is not yet mature enough to provide LW; or accompanied by a riparian revegetation project adjacent or upstream that will provide LW when mature. Placement of boulders only where human activity has created a bedrock stream situation not natural to that stream system, where the stream segment would normally be expected to have boulders, and where lack of boulder structure is a major contributing factor to the decline of the stream fisheries in the reach. Boulder placement projects within this exception must rely on size of boulder for stability, not on any artificial cabling or other devices. See applicable guidance in *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999).

4. *Correcting road/stream crossings, including culverts, to allow or improve fish passage* (See WDFW's *Fish Passage Design at Road Culverts*, March 3, 1999; *Oregon Road/Stream Crossing Restoration Guide: Spring 1999*; NMFS Southwest Region *Culvert Policy* (1999).

5. *Repair, maintenance, upgrade or decommissioning of roads in danger of failure.* All work to be done in dry season; prevent any sediment input into streams. In California, follow applicable guidance in Weaver, W.E. and D.K. Hagens *Handbook for Forest and Ranch Roads, A guide for planning, designing, constructing, reconstructing, maintaining, and closing wildland roads*, June, 1994.

6. *Salmonid carcass placement.* Carcass placement should be considered only where numbers of spawners are substantially below historic levels. Follow applicable guidelines in *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999), including assuring that the proposed source of hatchery carcasses is from the same watershed or river basin as the proposed placement location. To prevent introduction of diseases from hatcheries, such as Bacterial Kidney Disease, carcasses must be approved for placement by a state fisheries fish pathologist.

These short term ''exceptions'' describe habitat restoration activities that are likely to promote conservation of listed salmonids with relatively small risk negative impacts. If conducted in accord with the limitations described above, NMFS concludes it is not necessary and advisable to provide additional Federal protections through imposition of take prohibitions on these restoration actions. Thus, these habitat restoration activities can proceed over the next 2 years without the need for ESA section 10 permit coverage. Before undertaking other habitat restoration activities the project coordinator should contact NMFS to determine whether the project can be conducted in such a way as to avoid take. If not, NMFS will recommend that an ESA section 10 incidental take permit be obtained before proceeding. If the project involves action, permitting or funding by a Federal agency, ESA coverage would occur through ESA section 7 consultation.

After a watershed conservation plan has been approved, only activities conducted pursuant to the plan fall outside the scope of the ESA section 9 take prohibitions. If no watershed conservation plan has been approved by two years after publication of the final rule in the **Federal Register**, then section 9 take prohibitions will apply to individual habitat restoration activities just as to all other habitat-affecting activities.

Criteria for Evaluating Watershed Conservation Plan Guidelines

NMFS will evaluate state watershed conservation plan guidelines based upon the standards here, which include criteria derived from those used for evaluating applications for incidental take permits, found at § 222.307(c) of

this chapter. Guidelines must result in plans that:

(1) Consider the status of the affected species and populations.

(2) Design and sequence restoration activities based upon information obtained from an overall watershed assessment.

(3) Prioritize restoration activities based on information from watershed assessment.

(4) Evaluate the potential severity of direct, indirect and cumulative impacts on the species and habitat as a result of the activities the plan would allow.

(5) Provide for effective monitoring. This criterion requires that the effectiveness of activities designed to improve natural watershed function will be evaluated through appropriate monitoring and that monitoring data will be analyzed to help develop adaptive management strategies. Successful monitoring requires identification of the problem, identification of the appropriate solution to the problem, and determination of the effectiveness of the solution over a period of time in increasing productivity of the listed salmonids.

(6) Use best available technology. Since the language of part 222 of this chapter contemplates activities unrelated to habitat restoration, it applies ''best available technology'' only to minimizing and mitigating incidental effects. For this application, NMFS makes the logical extension of also applying ''best available technology'' to the restoration activities per se. Guidelines must ensure that plans will represent the most recent developments in the science and technology of habitat restoration, and use adaptive management to incorporate new science and technology into plans as they develop, and where appropriate, provide for project specific review by disciplines such as hydrology, geomorphology, etc.

(7) Assure that any taking resulting from implementation will be incidental.

(8) Require the state, local government, or other responsible entity to monitor, minimize and mitigate the impacts of any such taking to the maximum extent practicable.

(9) Will not result in long-term adverse impacts. Implementation may cause some short-term adverse impacts, and plans must evaluate the ability of affected ESUs to withstand those impacts. Guidelines and plans must assure that habitat restoration activities will be consistent with the restoration and persistence of natural habitat forming processes.

(10) Assure that the safeguards required in watershed conservation plans will be funded and implemented.

NMFS recognizes the importance of providing meaningful opportunities for public review of watershed conservation plan guidelines. Therefore, prior to certifying such guidelines, NMFS will make the guidelines available for public review and comment for a period of not less than 30 days. Notice of the availability of such draft guidelines will be published in the **Federal Register**. Notice will also be sent to parties expressing an interest in these guidelines. Parties interested in receiving notification should contact NMFS (see **ADDRESSES**).

Water Diversion Screening Limit on the Take Prohibitions

A widely recognized cause of mortality among anadromous fish is operation of water diversions without adequate screening. Juveniles may be sucked or attracted into diversion ditches where they later die from a variety of causes, including stranding. Adult and juvenile migration may be impaired by diversion structures, including push-up dams. Juveniles are often injured and killed through entrainment in pumping facilities or impingement on inadequate screens, where water pressure and mechanical forces are often lethal.

State laws and Federal programs have long recognized these problems in varying ways, and encouraged or required adequate screening of diversion ditches, structures, and pumps to prevent much of the anadromous fish loss attributable to this cause. Nonetheless, large numbers of diversions are not adequately screened and remain a threat, particularly to juvenile salmonids, and elimination of that source of injury or death is vital to conservation of listed salmonids.

Therefore, this proposed rule should prompt all diverters to move quickly to provide adequate screening or other protections for their diversions, by not applying take prohibitions to any diversion screened in accord with NMFS' Juvenile Fish Screening Criteria, Northwest Region, Revised February 16, 1995, with Addendum of May 9, 1996, or in California with NMFS' Southwest Region ''Fish Screening Criteria for Anadromous Salmonids, January 1997'' or any subsequent revision (available by contacting **ADDRESSES**). Compliance with these criteria will address the problems associated with water diversions lacking adequate screening. If a diversion is screened, operated and maintained consistent with those NMFS criteria, NMFS concludes that adequate safeguards will be in place such that no additional Federal protection (with respect to method of diversion) through imposition of take prohibitions is necessary and advisable for conservation of listed salmonids. Written acknowledgment from NMFS engineering staff is needed to establish that screens are in compliance with the above criteria.

The proposed take prohibitions would not apply to physical impacts on listed fish due to entrainment or similar impacts of the act of diverting so long as the diversion has been screened according to NMFS criteria and is being properly maintained. The take prohibitions would apply to take that may be caused by instream flow reductions associated with operation of the water diversion facility, and impacts caused by installation of the water diversion facility, such as dewatering/bypass of the stream or in-water work. Such take remains subject to the prohibitions of § 223.208(a) of this proposed rule.

Routine Road Maintenance Limit on the Take Prohibitions

The Oregon Department of Transportation (ODOT) is responsible for the extensive existing transportation infrastructure represented by the Oregon's state highway system. ODOT maintenance and environmental staff have worked with NMFS for more than a year toward performing routine road maintenance activities within the constraints of the ESA and the Clean Water Act, while carrying out the agency's fundamental mission to provide a safe and effective transportation system. That work has resulted in a program that greatly improves protections for listed salmonids with respect to the range of routine maintenance activities, minimizing their impacts on receiving streams. The Association of Oregon Counties and the City of Portland participated in some of the later discussions of needed measures and processes. ODOT's program includes its Maintenance of Water Quality and Habitat Guide dated June, 1999 (Guide) and a number of supporting policies and practices, including a strong training program, accountability mechanisms, close regional working relationships with Oregon Department of Fish and Wildlife (ODFW) biologists, two ODFW staff whose time is fully dedicated to work with ODOT, a biologist dedicated full time to work with NMFS on transportation issues, and several ongoing research projects.

The Director of ODOT has committed that ODOT will implement the Guide,

including training, documentation and accountability features that are described in the introduction to the document (Letter from Grace Crunican to William Stelle, dated June 30, 1999). The guide governs the manner in which crews should proceed on a wide variety of routine maintenance activities, including surface and shoulder work, ditch, bridge, and culvert maintenance, snow and ice removal, emergency maintenance, mowing, brush control and other vegetation management. The program directs activity toward favorable weather conditions, increases attention to erosion control, prescribes appropriate equipment use, governs disposal of vegetation or sediment removed from roadsides or ditches, and includes other improved protections for listed salmonids, as well as improving habitat conditions generally. Routine road maintenance conducted in compliance with the ODOT program will adequately address the problems potentially associated with such activity. In other words, the Guide provides adequate safeguards for listed salmonids. Furthermore, extension of the take prohibitions to these activities would not provide meaningful, increased protection for listed salmonids. In sum, NMFS does not find it necessary and advisable to apply take prohibitions to routine road maintenance work performed consistent with the Guide. The Guide governs only routine maintenance activities of ODOT staff. Other activities, including new construction, major replacements, or activity for which a U.S. Army Corps of Engineers (COE) permit is required, are not covered by the routine maintenance program and, therefore, would be subject to the take prohibitions.

NMFS realizes that in many circumstances the Guide includes language that could compromise the protections otherwise offered, through phrases such as ''where possible'', ''where feasible'' or ''where practicable.'' Although as a general rule such language creates an unacceptable level of ambiguity or uncertainty for a program being recognized within the ESA, a variety of circumstances constrain and limit that uncertainty in the case of ODOT's routine maintenance program. Foremost is that ODOT intends these discretionary phrases to be exercised only where physical, safety, weather, equipment or other hard constraint make it impossible to follow a Best Management Practice (BMP) to the letter. ODOT has explained this in the Guide, making clear that the discretionary language is not included to create flexibility for the convenience of the crew or for ease of operation. ODOT is striving in its training program to have all crews understand that point, and to provide examples of appropriate and inappropriate application of those discretionary phrases. As an example of appropriate use, the Guide states that ODOT will ''where feasible, schedule sweeping during damp weather, to minimize dust production.'' ODOT crews strive to follow that. However, debris on the road at other times may require that ODOT sweep a road regardless of road moisture, to ensure a safe surface. ODOT would then proceed with sweeping as necessary, using other applicable minimization and avoidance practices.

Further, ODOT crews undergo extensive and regular training, and are increasingly focused on environmental considerations and compliance as a core agency value and consideration. ODOT is testing new ideas for enhancing feedback from crews to managers and policy staff. One proposal establishes environmental leaders on each crew who then meet regularly to address successes and failures. Information from that group would then be fed into a monthly regional meeting for identification of needed adjustments, and then on to quarterly management reviews. While this system is not in place, it demonstrates ODOT's determination to find and use practical feedback mechanisms to enhance the routine maintenance program as well as other ODOT programs.

In sensitive resource areas, the possibilities of exercising discretionary flexibility are further constrained by a new tool that has been implemented in southern Oregon, will shortly be in place in the north coast region, and completed throughout Oregon in 2002. The agency is working to prepare detailed maps identifying any known sensitive resource sites that occur within ODOT rights of way. ODOT is mapping dominant land cover, functional overstory values, late successional stage, riparian management areas, presence of contiguous riparian areas, salmonid presence, spawning, rearing, offchannel areas, tributaries, wetlands, and other resource issues. This mapping does not delineate boundaries or provide presence or absence of species, but rather inventories known resources within ODOT'S rights of way.

A resource map and a restricted activity map are being produced for each road, by mile point and global position system coordinate. The restricted activity maps are coordinated with ODOT maintenance staff and will allow ODOT staff the knowledge to adjust their activities based on resource information. 'No restriction' areas indicate that no known resource of concern has been identified in the area, and routine maintenance can occur using the Guide. A 'Caution' value indicates the known presence of one or more resources in the general work area, and maintenance crews should increase their awareness of their activities, perhaps contacting region environmental staff. The district Integrated Pest/Vegetation Management Plan and the Guide will direct activities. The 'Restricted value' indicates that a resource of concern is known to be present within the right of way and consultation with technical staff needs to occur prior to any work or ground disturbing activity.

With a full-time staff person at NMFS dedicated to coordination and communication with ODOT staff on a regular basis and participation in monthly and quarterly review meetings, NMFS is assured of regular feedback on how the program is operating. That feedback will provide a picture of the frequency and nature of any deviations from the practices specified in the Guide. If at some time in the future that dedicated staff position is no longer available, then NMFS and ODOT will have to find another means of assuring that feedback or amend the program appropriately to keep it within the exception.

Finally, through annual reporting of external complaints and their outcomes, ODOT will identify needed ''modifications of, or improvements to'' any of the minimization/avoidance measures and has committed to making changes to the measures as necessary. Likewise, ODOT will incorporate changes reflecting new scientific information and new techniques and materials.

ODOT will notify NMFS of any changes to the ODOT guidance, and before NMFS determines that the take prohibitions should not be extended to these activities, NMFS will publish notification in the **Federal Register** providing a comment period of not less than 30 days for public review and comment on the proposed changes. If at any time NMFS determines that compliance problems or new information cause the ODOT program to no longer provide sufficient protection for threatened salmonids, NMFS shall notify ODOT. If ODOT does not effectively correct the matter within a mutually determined time period, NMFS shall notify ODOT that its routine road maintenance program is subject to the take prohibitions.

While ODOT implements an integrated vegetation management program which assures that herbicide or pesticide spraying will not occur in areas of sensitive natural resources, including streams, NMFS is unable to conclude at this time that the measures in ODOTs Guide governing herbicide or pesticide spraying (MMS #131) are sufficiently protective of listed salmonids to warrant not applying the take prohibitions of this rule to that activity. This is in part because of the large number of herbicide and pesticide formulations ODOT may employ, and the legitimate concerns about effects of many of these chemicals on aquatic species, and specifically on anadromous fish at various life stages. The fact that NMFS does propose to apply take prohibitions to spraying at this time does not indicate that NMFS has determined that any particular ODOT pesticide spraying activities constitute harm to salmonids; rather, that there is not sufficient evidence at this time to be sure the risk of harm is low. NMFS intends to continue working with ODOT on the issues surrounding herbicide and pesticide use. ODOT is currently conducting research on whether chemicals it applies reach streams under worst-case scenarios.

For similar reasons, the take prohibitions would apply to dust abatement measures in the Guide. ODOT routine maintenance seldom engages in dust abatement, and when it does uses only water and hence is not risk of harming salmonids. There is insufficient precision in the Guide as to chemical makeup of palliatives, specific areas of use, rates of application, and possible contaminants for NMFS to be sure the risk of harm would be acceptably low should any county or city that does significant dust abatement seek to come within this exception. Therefore, a county or city would have to provide those additional details and commit to appropriate limits in an MOA before dust abatement could be considered as within the limit on take prohibitions. NMFS believes that other than for herbicide and pesticide spraying and dust control, activity in compliance with the ODOT guidance and program would not further degrade or otherwise restrict attainment of properly functioning conditions. With respect to routine road maintenance activities in Oregon, the program limits impacts on listed salmonids and their habitat to an extent that makes additional Federal protections unnecessary for the conservation of listed salmonids. Therefore, in this proposed rule NMFS does not apply take prohibitions on routine road maintenance activities (other than herbicide and pesticide spraying, or dust abatement) so long as the activity is covered by and conducted in accord with ODOT's *Maintenance Management System Water Quality and Habitat Guide* (June, 1999). ODOT will continue to obtain permits from the COE and/or Oregon Division of State Lands for any in-stream work normally requiring those permits, and COE section 7 consultation requirements on permit issuance is not affected by this limit on the take prohibitions. ODOT has committed to review the Guide and revise as necessary at least every 5 years. ODOT is actively reviewing potential impacts or new technologies related to many issues. For instance, results from an earlier technical team evaluation of impacts of de-icing mechanisms on aquatic resources is included as an appendix to the Guide. That group has been reconvened (with NMFS as a member) and is revisiting adherence to the specifications, as well as evaluating extensive research on CMA (calcium-magnesium acetate). Initial research indicates that CMA is not getting to the water column, but the team will be following up. ODOT has also been doing roadside snow sampling to determine whether any typical road-side pollutant is present on road sand, and thus far has not identified any measurable concentrations.

ODOT has several other interagency teams working toward improving practices or further defining specific issues related to ditches, culverts, or emergency circumstances. It is also continuing research on how to best recycle or otherwise appropriately dispose of maintenance decant, sediment, or sweepings. Any of the above may result in improved practices and, where necessary, in revision of the Guide.

At any time ODOT revises part of the 1999 Guide, ODOT will need to provide the desired revision to NMFS for review and approval. NMFS will make draft changes available for public review and comment for a period of not less than 30 days. Notice of the availability of such draft changes will be published in the **Federal Register**. Notice will also be sent to parties expressing an interest in the Guide. Parties interested in receiving notification should contact NMFS (see **ADDRESSES**).

Some Oregon city and county governments have indicated interest in using the ODOT guidance to be sure that their routine road maintenance activities are protective of salmonids. The fact that ODOT has an extensive and ongoing training program for all maintenance employees and has committed to report on an annual basis details of program implementation is fundamental to NMFS' belief that the program is adequate. Hence, any Oregon city or county desiring that its routine road maintenance activities come under this ''exception'' must not only commit in writing to apply the measures in the Guide, but also must first enter into a MOA with NMFS detailing how it will assure adequate training, tracking, and reporting, including how it will control and narrow the circumstances in which a practice will not be followed because it is not ''feasible,'' ''practical,'' or ''possible.''

Portland Parks Integrated Pest Management Limit on the Take Prohibitions

The City of Portland, Oregon, Parks and Recreation Department (PP&R) operates a diverse system of city parks representing a full spectrum from intensively managed recreation, sport, golf, or garden sites to largely natural, unmanaged parks, including the several thousand acre, wooded, Forest Park. PP&R has been operating and refining an integrated pest management program for 10 years, with a goal of reducing the extent of its use of herbicides and pesticides in park maintenance. The program's ''decision tree'' place first priority on prevention of pests (weeds, insects, disease) through policy, planning, and avoidance measures (design and plant selection). Second priority is on cultural and mechanical practices, trapping, and biological controls. Use of biological products, and finally, of chemical products, is to be considered last. PP&R's overall program affects only a small proportion of the land base and waterways within Portland, and serves to minimize any impacts on listed salmonids from chemical applications associated with that specific, limited land base. NMFS believes it would contribute to conservation of listed salmonids if jurisdictions would broadly adopt a similar approach to eliminating and limiting chemical use in their parks and in other governmental functions.

As a result of this program, the City has phased out regularly scheduled treatments such as turf spraying to control broadleaf weeds. This has reduced total use of chemical to control broadleaf weeds to less than 15 percent of its former level.

Decisions to use pesticides are not made lightly and require attention to public notification, mixing, cleaning and record keeping. Use of pesticides is no longer a ''least hassle'' kind of option. City personnel report that

pesticide use is avoided by maintenance crews unless there are no other workable options.

Crews cease application when winds will cause spray drift beyond the target site. Spot spraying or brushing of herbicides is frequently chosen.

The PP&R has recently developed special policies to provide extra protections near waterways and wetlands, including a 25– foot (7.5m) buffer zone in which pesticide use is limited to Glyphosphate products, Garlon 3A, Surfactant R–11, Napropamide, Cutrine Plus, and Aquashade. Within this buffer applications are spot applied with a hand wand from a backpack sprayer, which utilizes low pressure spray to minimize drift. Under certain circumstances broadcast spraying, which also uses the low pressure hand-wand spraying will be conducted. Application rates of chemicals used range from 9 percent to 100 percent of label allowances, depending on the identified task.

After careful analysis of PP&R's integrated program for pest management, NMFS concludes that it addresses potential impacts and provides adequate protection for listed salmonids with respect to the limited use the program may make of the above listed chemicals. Therefore, NMFS does not find it necessary and advisable to apply additional Federal protections in the form of take prohibitions to PP&R activities conducted under City of Portland, Oregon's Parks and Recreation Department's (PP&R) Pest Management Program (March 1997), including its Waterways Pest Management Policy dated April 4, 1999. In addition, NMFS concludes that take prohibitions would not meaningfully increase the level of protection provided for listed salmonids. NMFS, therefore, does not propose to apply the take prohibitions of this proposed rule to activities within the PP&R program.

Confining the take prohibition limit to a specified list of chemicals does not indicate that NMFS has determined that other chemicals PP&R may employ necessarily will cause harm to salmonids in the manner used. NMFS intends to continue working with PP&R on the issues surrounding use of any other herbicide or pesticide.

PP&R's program includes a variety of monitoring commitments and a yearly assessment with NMFS of results, progress, and any problems. If at any time monitoring information, new scientific studies, or new techniques cause PP&R to amend its program or to cause PP&R and NMFS to wish to change the list of chemicals falling outside the scope of the take prohibitions, NMFS will publish notification in the **Federal Register** announcing the availability of the proposed changes for public review and comment. Such a notification will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether the changes will conserve listed salmonids. PP&R has been seeking to decrease the extent of its intensively managed riparian areas. NMFS commends that effort, while recognizing that PP&R is constrained by recreational, aesthetic, safety and other responsibilities. This limit on the take prohibitions does not include PP&R's initial planning determinations about the extent of riparian vegetative buffer provided; that question is separable from the integrated pest management approach taken to achieve the conditions planned. This limit focuses on the methods PP&R employs to assure that once it has identified a particular plant or animal as a pest, its control methods are as protective of natural processes, water quality, and listed species as possible.

Limit on Take Prohibitions for New Urban Density Development

As a general matter, significant new urban scale developments have the potential to degrade salmonid habitat and to injure or kill salmonids through a variety of impacts. NMFS believes that with appropriate safeguards, new development can be specifically tailored to minimize impacts on listed salmonids to an extent that makes additional Federal protections unnecessary for conservation of the listed ESU. Through this proposed rule, NMFS proposes a mechanism whereby jurisdictions can be assured that development authorized within those areas is consistent with ESA requirements and avoids or minimizes the risk of take of listed salmonids. Both potential developers and the jurisdictions controlling new development would benefit by assurance that their approvals and development actions conserve listed salmonids.

For example, urban density development in the Portland, Oregon metropolitan area may not occur outside of an adopted urban growth boundary (UGB). Metro, the regional governing body, is in the process of bringing some large areas currently designated as urban reserve areas into the UGB. Before development may commence within such newly included areas, the jurisdiction within which the area lies must prepare and adopt comprehensive plan amendments for urban reserve areas consistent with all provisions of the Metro Urban Growth management Functional Plan, outlining what development will be allowed and the conditions to be placed upon development.

Similarly, cities both within and outside the Metro region and in other states affected by this rule may be approving new urban development on tracts of a size that allows integrated planning for placement of buildings, transportation, storm water management, and other functions. Several areas under consideration for Metro boundary expansions, and several undeveloped tracts within currently urbanized areas, include streams that support listed salmonids.

This proposed rule further proposes that NMFS will not apply take prohibitions to new developments governed by and conducted in accord with adequate city or county ordinances that NMFS has determined are adequate to help conserve anadromous salmonids. Similarly, within the jurisdiction of the Metro regional government in Oregon, if NMFS finds that Metro's Urban Growth Management Functional Plan (Functional Plan) is adequate, take prohibitions will not be applied to development governed by ordinances that Metro has found consistent with that Functional Plan. NMFS must agree in writing that the city or county ordinances or Metro's Functional Plan are sufficient to assure that plans and development complying with them will result in development patterns and actions that conserve listed salmonids.

In determining whether Metro's Functional Plan or local ordinances are adequate NMFS will focus on 12 issues, discussed here. Many of these principles are derived from Spence, An Ecosystem Approach to Salmonid Conservation (NMFS, 1996) and citations therein. NMFS recognizes that some of these principles require integrated planning for placement of buildings, transportation or storm water management and that those 12 principles will have to be applied in the context within which the development is to occur, which will differ among major new developments and for small, single lot developments or redevelopments. Ordinances or Metro's Functional Plan must assure that urban reserve plans or developments will:

(1) Be sited in appropriate areas, avoiding unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(2) Avoid stormwater discharge impacts to water quality and quantity, and preserve, or move stream flow patterns (hydrograph) closer to, the

historic peak flow and other hydrograph characteristics of the watershed. Through a combination of reduction of impervious surfaces, runoff detention, and other techniques development can achieve that purpose within its portion of the watershed. Other development design characteristics, stormwater management practices and buffer requirements will prevent sediment and other pollutants from reaching any watercourse.

(3) Require adequate riparian buffers along all perennial and intermittent streams. Because of the intensity of disturbance in surrounding uplands, riparian buffers are at least as critical in urban areas as in rural areas. Without adequately vegetated riparian set-backs, properly functioning conditions including temperature control, bank stability, stream complexity and pollutant filtering cannot be achieved.

Retain all existing native vegetation because of its importance in maintaining bank stability, stream temperature, and other characteristics important to water quality and fish habitat. Prevent destruction of existing native vegetation prior to land use conversions. Where the area contains non-native vegetation, maintained lawn, or is cropped, add or substitute native vegetation within the riparian set-back to achieve a mix of conifer, deciduous trees, understory and ground covers must be planted. To the extent allowed by ownership patterns, the development set-back should be equivalent to greater than one site potential tree height (approximately 200 ft (60 m) or at least to the break in slope for steep slopes) from the outer edge of the channel migration zone on either side of all perennial and intermittent streams, in order to protect off-channel high flow rearing habitat and allow full stream function. Within that set-back the first 50 ft (15 m) should be protected from any mechanical entry or disturbance, structures, or utility installations, and should be dominated by maturing or mature conifers, together with some hardwoods and a vigorous, dense understory of native plants. This inner buffer should also be protected from high-impact recreational use and any trails should be of permeable, natural materials. The inner buffer provides multiple values, including root systems for bank stability. The outer 100–plus ft (30.5 m) of set-back should be entirely in native vegetation (not in maintained lawn) with a mix of conifer, deciduous trees, understory and groundcovers. Disturbances should be minimized.

(4) Avoid stream crossings by roads wherever possible, and where one must be provided, minimize impacts through choice of mode, sizing, placement. One method of minimizing stream crossings and disturbances is to optimize transit opportunities to and within newly developing urban areas. Consider whether potential stream crossings can be avoided by access redesign. Where crossings are necessary, minimize their impacts by preferring bridges over culverts; sizing bridges to a minimum width; designing bridges and culverts to pass at least the 100– year flood and associated debris, and meet ODFW or WDFW criteria; assuring regular monitoring and maintenance over the long term; and prohibiting closing over of any intermittent or perennial stream. The Washington Department of Fish and Wildlife, (WDFW) Habitat and Lands Environmental Engineering Division's ''Fish Passage Design at Road Culverts'', March 3, 1999, or ''Oregon Road/Stream Crossing Restoration Guide: Spring 1999'' provide excellent frameworks for action.

(5) Protect historic stream meander patterns, flood plains and channel migration zones; do not allow hardening of stream banks. All development should be designed to allow streams to meander in historic patterns of channel migration. Adequate riparian buffers linked to the channel migration zone should avoid need for bank erosion control in all but the most unusual situations. If required by unusual circumstances, bank erosion should be controlled through vegetation or carefully bioengineered solutions. Rip-rap blankets or similar hardening techniques are not allowed, unless bioengineered solutions are impossible because of particular site constraints. Habitat elements such as wood, rock, or other naturally occurring material must not be removed from streams. WDFW's ''Integrated Streambank Protection Guidelines, June, 1998'' provide sound guidance, particularly regarding mitigation for gravel recruitment and channel complexity lost through streambank hardening.

(6) Protect wetlands and the vegetation surrounding them to maintain wetland functions. Design around wetlands for their positive habitat, water quality, flood control, and groundwater connection values, providing adequate buffers. Retain all existing natural wetlands.

(7) Preserve the hydrologic capacity of all intermittent and perennial streams to pass peak flows. Assure that at minimum the Flood Management Performance Standards of Title 3 of Metro's Urban Growth Management Functional Plan are applied to all development in urban expansion areas, together with any other steps needed to protect hydrologic capacity. In combination with the buffer or set-back provisions above, this means that for new, large developments, fill or dredging should never occur unless in conjunction with a necessary stream crossing.

(8) Landscape to reduce need for watering and application of herbicides, pesticides and fertilizer. Plans must include techniques local governments will use to encourage planting with native vegetation, reduction of lawn area, and reduced water use. These steps will contribute to water conservation and ultimate reduction of flow demands that compete with fish needs, as well as reduce applications of fertilizers, pesticides, herbicides that may contribute to water pollution.

(9) Prevent erosion and sediment run-off during and after construction to prevent discharge of sediments by assuring that at a minimum the requirements of Title 3 of Metro's Urban Growth Management Functional Plan are applied to all development in Metro-area urban expansion areas, and that an equivalent level of protection is provided in other large scale urban developments.

(10) Assure that water supply demands for the new development can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals. Assure that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(11) Identify a commitment to and the responsibility to regularly monitor and maintain any detention basins and other management tools over the long term, and to adapt practices as needed based on monitoring results.

(12) Provide all enforcement, funding, monitoring, reporting, and implementation mechanisms needed to assure that ultimate development will comply with the ordinances or the Metro Urban Growth Management Functional Plan.

To fall outside of the take prohibitions the development must comply with other state and Federal laws and permit requirements. NMFS concludes that development governed by ordinances or Metro guidelines that meet the preceding principles will address the potential negative impacts on salmonids associated with new development. In such circumstances adequate safeguards will be in place that NMFS does not find imposition of additional Federal protections through take prohibitions necessary and advisable for conservation of listed salmonids.

Forest Management Limit on Take Prohibitions

In the State of Washington, NMFS has been participating in discussions among timber industry, tribes, state and Federal agencies, and interest groups for many months. The purpose of these discussions was to develop modules of forest practices for inclusion in Washington Governor Locke's salmon recovery plan, and consequent implementation through the Department of Natural Resources. The product of those discussions, an April 29, 1999 Forests and Fish Report (FFR) to Governor Locke, provides important improvements in forest practice regulation which, if implemented by the Washington Forest Practices Board in a form at least as protective as laid out in the FFR, will provide a significant level of protection to listed salmonids and contribute to their conservation. It also mandates that all existing forest roads be inventoried for potential impacts on salmonids through culvert inadequacies, erosion, slope failures, and the like, and all needed improvements be completed within 15 years. Because of the substantial detrimental impacts of inadequately sited, constructed or maintained forest roads on salmonid habitat, this feature of the overall FFR provides a significant conservation benefit for listed ESUs in Washington. Because of these features, described in greater detail here, NMFS does not propose to apply ESA section 9 take prohibitions to non-federal forest management activity conducted in the State of Washington in compliance with the April 29, 1999 FFR and forest practice regulations implemented by the Washington Forest Practices Board that are at least as protective of habitat functions as are the regulatory elements of the FFR. Compliance with the provisions of FFR will address problems historically associated with forest management activity. NMFS concludes that in general the FFR package creates adequate safeguards that no additional Federal protections through imposition of take prohibitions to forest management activity is necessary and advisable for conservation of threatened salmonids.

NMFS believes rapid adoption and implementation of such improved forest practice regulations important to conservation of listed salmonids. Before making a judgement on the adequacy of regulations developed to implement the FFR, NMFS will provide an opportunity for public review and comment.

This restriction of the take prohibitions is limited to the State of Washington. Environmental factors such as current habitat conditions, climate and geology, landscape conditions, and functioning habitat elements vary between ecoregions. In addition, procedural and regulatory differences between Washington and other states containing steelhead ESUs limit the applicability of the FFR or similar provisions to watersheds outside of the State of Washington. Therefore, the take prohibitions applied generally by this proposed rule would apply to forest management activities in other states.

Although NMFS will continue working with Washington and others toward broadening this ''exception'', at this time information limitations prevent NMFS from determining that pesticide use or actions under an alternative forest management plan, as contemplated in the total FFR package, are sufficiently protective. Therefore, take prohibitions applied generally by this proposal would apply to those activities.

Elements of the FFR that provide protections or conservation benefits for listed salmonids are summarized here; anyone wishing to review the actual text of or details of those measures should request a copy of the FFR document (see **ADDRESSES**).

(1) It is based on adequate classification of water bodies and broad availability of stream typing information. Effective maintenance and recovery of fish habitats and populations requires specific geographic knowledge of existing and potential fish habitats as well as the higher elevation, non-fishbearing stream systems that create and influence them. Forest practices should be tailored to protect and reinforce the functions and roles of different stream classes in the continuum of the aquatic ecosystem, such as (A) fishbearing streams which are within the bankfull width of defined stream channels that are currently or potentially capable of supporting fish of any species, perennially or seasonally; (B) perennial, non-fishbearing streams, which include spatially intermittent streams; and (C) seasonal, non-fishbearing streams (intermittent or non-perennial), which have a defined channel that flows water, of any flow volume, some time during the water year. Landowners, regulatory agencies, and the public should have reasonable access to this information, preferably through Geographic Information Systems, or some other accessible repository of stream typing information.

(2) It provides for proper design and maintenance and upgrade of existing and new forest roads, which is necessary to maintain and improve water quality and instream habitats. Impacts associated with forest roads include changes in hydrology (basin capture, interception of groundwater, increased peak flows); generation and routing of coarse and fine sediments; physical impediments to fish passage; altered riparian function; altered fluvial processes and floodplain interaction; and direct loss of off-channel habitats. The FFR provisions include: (A) avoiding road construction or reconstruction in riparian areas unless alternative options for road construction would likely cause greater damage to aquatic habitats or riparian functions; (B) prohibits road construction or reconstruction on unstable slopes unless an analysis involving qualified geotechnical personnel and an opportunity for public environmental input shows that road construction can proceed without creating activity-related landslides, sediment delivery or other impacts to stream channels or water bodies; (C) new and reconstructed roads must not impair hydrologic connections between stream channels, ground water, and wetlands; must not increase sedimentation to aquatic systems; must use only clean fill materials; and must have adequate drainage and surfacing. Stream crossings must provide adequate fish passage and be designed to accommodate a 100-year flood as well as adequate large woody debris passage; (D) requires of each landowner/operator an inventory of the condition of all roads within that management ownership, and a plan for repair, reconstruction, maintenance, access control, and where needed abandonment and/or obliteration of all roads in any land ownership. Inventory showing priorities for all needed work should be completed within 5 years, and work identified as needed completed within 15 years. Road maintenance plans for all new or reconstructed roads must address routine operations (grading, ditch cleaning, etc.), placement of spoil or graded sediments, retention of coarse and large woody debris at stream crossings, placement of large woody debris recruited in proximity to riparian roads, and emergency repairs; (E) requires BMPs in all other aspects of forest road operations, including log haul use, recreational use, and seasonal closure as needed to maintain and improve stream habitats and water quality to meet seasonal life history requirements for fishes.

(3) It protects unstable slopes from increased rates and volume of failure delivering coarse and fine sediments to aquatic systems, which can significantly

impair fish species life stages. The goal for management of unstable slopes is to avoid an increase or acceleration of the naturally occurring rate and volume of landslides within forested watersheds subject to forest practices, while recognizing that mass-wasting of slopes is an essential element in watershed processes that route large woody debris through the stream system. The program provides a process through which the Washington Department of Natural Resources (DNR) attempts to identify potentially unstable slopes in areas subject to forest operations through interpretation of slope gradient, landform, surficial and parent geologies, current and historic aerial photography, landslide inventories, and computer models of slope stability. These will include inner gorges of streams, convergent headwalls and bedrock hollows with slopes greater than 70 percent, toes of deep-seated landslides with slopes greater than 65 percent, groundwater recharge areas for glacial, or other, deep-seated landslides, soil covered slopes steeper than 70 percent, and slopes along the outer bend of stream channels that have the potential to fail with continued fluvial erosion at the channel toe slope interface.

If a management activity on a potentially unstable slopes is found by the DNR to increase the probability of slope failure, deliver sediment to public resources, and is likely to cause significant adverse impacts, then DNR may approve, approve with conditions, or disapprove the application;

(4) It provides for achieving properly functioning riparian conditions along fishbearing waters. Proper function refers to the suite of riparian functions that includes stream bank stability, shade, litterfall and nutrient input, large woody debris recruitment, and such microclimate factors as air and soil temperature, windspeed, and relative humidity that affect both instream habitat conditions and the vigor and succession of riparian forest ecosystems. Assessing the adequacy of riparian conservation measures requires a synthesis of judgements about individual functions. For example, NMFS judgements about large woody debris function will be based on the proposed management widths, the probability of tree fall with distance from the stream and site potential tree heights of dominant and subdominant species in a mature riparian forest.

Two possible strategies may be followed to achieve properly functioning riparian ecosystems.

A natural succession and growth strategy establishes riparian management zone widths within which no silvicultural treatments occurs. These widths must be at least 2/3 or 3/4 of a site potential tree height for typical dominant conifers, depending on stream width. Disturbance for activities such as road crossings and cable yarding corridors should be avoided. Where ground and vegetation disturbance is unavoidable, it must be limited to a small percentage of the riparian area. Riparian stand development must be allowed to proceed under natural rates of growth and succession to mature conditions, undisturbed by future harvest or silvicultural activities. This strategy is expected to be employed when an evaluation of the riparian zone shows that all available trees need to be retained and allowed to grow and succeed to achieve the desired future conditions and the landowner does not choose to apply silvicultural treatments to accelerate these processes.

A managed succession and growth strategy achieves properly functioning conditions by providing potentially variable width management zones within which silvicultural treatments are allowed. These treatments are prescribed through silvicultural guidelines that assure NMFS that the riparian forest stand is on a growth and succession pathway toward a desired future condition of a mature riparian forest. Once the trajectory of growth toward the desired future condition is achieved the riparian forest must remain on that trajectory without further harvest or silvicultural treatment. Both strategies are expected to provide high levels of riparian function when implemented.

Characteristics of both the natural succession and managed growth strategies include:

(1) Continuous riparian management zones along all fish-bearing streams.

(2) A core zone at least 50 ft (15.24 m) wide west of the Cascades and 30 ft (9.15 m) on the east side, within which no harvest or salvage occurs. This width is measured horizontally from edge of the bankfull channel or where channel migration occurs, from the edge of the channel migration zone.

(3) An inner zone that varies in width by strategy.

(4) An outer zone extending to a site potential tree height (100-year base) that provides a minimum of 20 conifer trees per acre greater than 12 inches (.30 m) diameter at breast height. These trees will not be counted as trees retained to satisfy DFC silvicultural guidelines; and

(5) Disturbance limits do not exceed 20 percent of the overstory canopy along the stream length for yarding corridors and 10 percent ground disturbance. Ground disturbance includes, but is not limited to, yarding corridors, soil compaction and exposure, stream crossings and other effects that are a product of log yarding and equipment use. Tree retention to satisfy silvicultural guidelines must be achieved regardless of the area modified for yarding corridors.

The managed succession and growth strategy will achieve desired future conditions for riparian forest ecosystems through:

(6) Selecting a stand composition and age that represents a mature riparian forest as the desired future condition. Generally, mature riparian forest conditions are achieved at between 80 and 200 years, or more, together with a detailed description of basal area, stocking levels, average tree diameters and range of tree diameters of desired species, and any other characteristics needed to describe the desired future condition. The strategy then sets out a comprehensive set of prescriptions that describe the basal area, stocking, tree diameters, and other metrics that must be retained in a stand of any particular age or composition, to allow forest stand growth and succession to proceed toward DFC. These prescriptions vary with site productivity (100-year base), dominant species, and likely successional pathways and take into account natural disturbance processes, agents and patterns that affect pathways toward the desired future condition. Silvicultural treatments must be conservative and be limited to only those actions that assure achievement of DFC. Dominant and co-dominant trees will be retained. Once this DFC trajectory has been achieved the riparian stand will be allowed to grow and succeed without further harvest or treatment.

(7) A methodology for field application of riparian prescriptions that provides assurances that desired future conditions will be achieved.

(8) Requiring riparian conservation zone widths that provide bank stability, litterfall and nutrients, shade, large woody debris, sediment filtering, and microclimate functions in the near and long-term. Widths of the inner riparian zone may vary depending on site productivity, silvicultural guidelines and expected trajectories toward the DFC but must be 80 ft (24.5 m) or greater for the poorest productivity class. As site productivity increases so must the inner/core zone minimum widths. These minimum widths are necessary to provide riparian functions such as microclimate and shade that may be compromised when, for example,

mature, conifer-dominated riparian stands are managed.

(9) Providing for mitigation for disturbance of riparian function, water quality, and fluvial (floodplain) processes from permanent road systems near stream channels through such techniques as replacement of basal area and number of stems lost to the road prism, and placement of trees that have fallen across or onto the fill or cutslopes of riparian roads to the streamward side of the road as part of routine or emergency road maintenance activities.

(10) Treatment guidelines by tree species and region that address stocking levels, tree selection, spacing, and other common forest metrics for a given stand age and condition necessary to achieve the DFC; requires protection and release of residual or understory tree species that would form a desirable component of a future mature riparian forest; requires retention of structural diversity in the stand, including openings (spatial diversity), species diversity, and emphasis on tree retention on topographic features that increase the probability of tree fall toward stream channels; and guidelines for maintaining shade necessary to meet fish life history requirements. Shade retention along fish-bearing streams, sensitive sites such as seeps and springs, and other groundwater source areas must be 100 percent of the available shade unless local and/or regional water temperature models and/or standards can be shown to meet fish life history requirements.

(11) Guidelines for conversion of hardwood-dominated riparian areas that cannot achieve the stand requirements of forest stands on a successional pathway toward a desired future condition. They include a 50–ft (15 m) core zone that is not managed and is disturbed only for road crossings and yarding corridors. All overstory conifers must be retained and damage to understory conifers in the inner zone minimized. It also includes a minimum tree retention standard for the outer zone.

(12) A strategy for the conservation of fluvial processes and fish habitats that occur within the channel migration zone. Channel migration zones include those potential and standing riparian forests that occur on floodplains and low terraces along channels that migrate rapidly (on a geologic time-scale) over their valley floors. The area within the channel migration zone is susceptible to flooding and catastrophic events that often rapidly recruits standing and deposited woody material. Secondary channels provide summer and winter habitats for fishes. Therefore, core riparian management zones are measured from the channel migration zone boundary, when present.

(13) Guidelines for salvage of dead or downed timber in the inner and outer riparian zones that retain coarse woody debris on the riparian forest floor at levels seen in mature forests, retain live or standing dead trees in the inner zone that have value as future large woody debris and that can add structural and species diversity to the future riparian forest, retain all dead or downed timber within the channel, any channel migration zone, and the core zone, and minimize site preparation necessary for replanting.

(14) Evaluating the effects of multiple forest practices on the watershed scale through a standardized, repeatable methodology based on the best available science, considering the cumulative effects of forest practices over time, and providing a regulatory basis for precluding or delaying forest practices to prevent actual or potential damage to aquatic habitats that directly or indirectly support anadromous salmonids.

(15) It sets up riparian management zones along perennial and seasonal non-fish bearing streams that:

(A) Manage heat energy input to surface waters by retaining all existing overstory canopy along at least 50 percent of the length of perennial non-fish bearing streams. Shade retention around sensitive sites such as seeps and springs, and other groundwater source areas is 100 percent of the available shade unless local and/or regional water temperature models and/or standards can be shown to meet fish life history requirements.

(B) Limit the maximum percent of the riparian management area that may be subject to soil disturbance, soil compaction and the mortality alteration of vegetation from equipment, cable movements, log yarding, and road crossings.

(C) Limit equipment use within 30 ft (10 m) of perennial and seasonal non-fishbearing streams.

(D) Ensure partial recruitment and routing of woody material through defined channels to fishbearing waters downstream by retaining an unmanaged riparian zone in excess of one-half of a crown diameter of a mature dominant riparian tree along at least 50 percent of the length of perennial waters.

(E) Provide a continuous riparian buffer in excess of one-half of a crown diameter of a mature dominant riparian tree for a distance of 300 to 500 ft (91.5 to 152.5 m) upstream of confluences with fishbearing waters. This continuous buffer serves as a run-out zone for channelized landslides, an opportunity for groundwater interaction with surface waters and as an important source area for large woody debris recruited to fishbearing streams downstream.

(16) It includes monitoring and adaptive management to assess implementation compliance with, and effectiveness of, current regulations, measured against a baseline data set. Over time, some forest practices will require replacement or adjustment to respond to additions to our current body of knowledge. Whenever monitoring information or new scientific knowledge lead the state forest practice agency to amend a program that has been brought within this ''exception'', NMFS will publish notification in the **Federal Register** announcing the availability of those changes for review and comment. Such a notice will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether the changes conserve listed salmonids and, therefore, are included within this limit on the take prohibitions.

NMFS finds that, except with respect to pesticide applications and actions under alternative plans, with these safeguards in place, imposition of take prohibitions on forest management activities in Washington is not necessary and advisable because it would not provide meaningful additional conservation benefits for listed salmonids.

This limit on the take prohibitions will be applicable only within the State of Washington, because an adequate program for any other state would have to take into account interregional and interstate differences in land conditions, current function of various habitat elements, and other differences in situation that affect the biological status of salmonids.

Public Comments Solicited; Public Hearings

NMFS is soliciting comments, information, and/or recommendations on any aspect of this proposed rule from all concerned parties. (see **DATES** and **ADDRESSES**). Public hearings provide an additional opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS Northwest Region has, therefore, scheduled 15 public hearings throughout the Northwest to receive public comment on this rule and other ESA 4(d) rules proposed concurrently. Similarly, NMFS' Southwest Region will hold 7 hearings in California. The agency will consider all information,

comments, and recommendations received before reaching a final decision on 4(d) protections for these ESUs.

Public Hearings in Washington, Idaho, and Oregon

(1) January 10, 2000, 6:00 - 9:00 p.m., Metro Regional Center, Council Chamber, 600 NE Grand Ave, Portland, Oregon;

(2) January 11, 2000, 6:00 - 9:00 p.m., Quality Inn, 3301 Market St NE, Salem, Oregon;

(3) January 12, 2000, 6:00 - 9:00 p.m., Lewiston Community Center, 1424 Main Street, Lewiston Idaho;

(4) January 13, 2000, 6:00 - 9:00 p.m., Natural Resource Center, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho;

(5) January 18, 2000, 6:00 - 9:00 p.m., City Library, 525 Anderson Ave., Coos Bay, Oregon;

(6) January 19, 2000, 6:00 - 9:00 p.m., Hatfield Science Center, 2030 SE Marine Science Drive, Newport, Oregon;

(7) January 20, 2000, 6:00 - 9:00 p.m., Columbia River Maritime Museum, 1792 Marine Drive, Astoria, Oregon;

(8) January 24, 2000, 6:00 - 9:00 p.m., Eugene Water & Electric Board Training Room, 500 East 4TH Ave. Eugene, Oregon;

(9) January 25, 2000, 6:00 - 9:00 p.m., City Hall, 2nd Floor Council Chamber, 500 SW Dorian Ave., Pendleton, Oregon;

(10) January 26, 2000, 6:00 - 9:00 p.m., Yakima County Courthouse, Room 420, 128 North 2nd St., Yakima, Washington

(11) January 27, 2000, 6:00 - 9:00 p.m., Mid Columbia Senior Center, John Day Room, 1112 West 9th, The Dalles, Oregon;

(12) January 31, 2000, 6:00 - 9:00 p.m., City Hall, Dining Room (Basement), 904 6th St., Anacortes, Washington;

(13) February 1, 2000, 6:00 - 9:00 p.m., Northwest Fisheries Science Center Auditorium, 2725 Montlake Blvd. East, Seattle, Washington;

(14) February 2, 2000, 6:00 - 9:00 p.m., City Hall, Council Chamber, 321 E. 5th, Port Angeles Washington;

(15) February 3, 2000, 6:00 - 9:00 p.m., Sawyer Hall, 510 Desmond Drive, Lacey, Washington;

Public Hearings in California

(1) January 25, 2000, 6:30 - 9:00 p.m., Double Tree (now Red Lion), 1830 Hilltop Drive, Redding, California;

(2) January 26, 2000, 6:30 - 9:00 p.m., Heritage Hotel, 1780 Tribute Rd., Sacramento, California

(3) January 27, 2000, 6:30 - 9:00 p.m., Modesto Irrigation District, 1231 11th St., Modesto, California;

(4) January 31, 2000, 6:30 - 9:00 p.m., Eureka Inn, 518 Seventh St., Eureka, California;

(5) February 1, 2000, 6:30 - 9:00 p.m., Double Tree, One Double Tree Drive, Rohnert Park, California;

(6) February 2, 2000, 6:30 - 9:00 p.m., Best Western, 2600 Sand Dunes Drive, Monterey, California;

(7) February 3, 2000, 7:00 - 9:30 p.m., Embassy Suites, 333 Madonna Rd., San Luis Obispo, California. 7:00-9:30P

Special Accomodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other aids should be directed to Garth Griffin or Craig Wingert (see **ADDRESSES**) by 7 days prior to each meeting date.

References

A list of references cited in this proposed rule is available upon request (see **ADDRESSES**).

Classification

Regulatory Flexibility Act

When an agency proposes regulations, the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires the agency to prepare and make available for public comment an initial regulatory flexibility analysis (IRFA) that describes the impact of the proposed rule on small businesses, nonprofit enterprises, local governments, and other small entities, unless the agency is able to certify that the action will not have a significant impact on a substantial number of small entities. The IRFA is to aid the agency in considering all reasonable regulatory alternatives that would minimize the economic impact on affected small entities.

The RFA was designed to ensure that agencies carefully assess whether aspects of a proposed regulatory scheme (record keeping, safety requirements, etc.) can be tailored to be less burdensome for small businesses while still achieving the agency's statutory responsibilities. This proposed ESA 4(d) rule has no specific requirements for regulatory compliance; it essentially sets an enforceable performance standard (do not take listed fish) that applies to all entities and individuals within the ESU unless that activity is within a carefully circumscribed set of activities on which NMFS proposes not to impose the take prohibitions. Hence, the universe of entities reasonably expected to be directly or indirectly impacted by the prohibition is broad.

The number of entities potentially affected by imposition of take prohibitions is substantial and the geographic range of these regulations crosses four states. Activities potentially affecting salmonids are those associated with agriculture, forestry, fishing, mining, heavy construction, highway and street construction, logging, wood and paper mills, electric services, water transportation, and other industries. As many of these activities involve local, state, and Federal oversight, including permitting, governmental activities from the smallest towns or planning units to the largest cities will also be impacted. The activities of some nonprofit organizations will also be affected by these regulations.

NMFS examined in as much detail as practical the potential impact of the regulation on a sector by sector basis. Unavailable or inadequate data leaves a high degree of uncertainty surrounding both the numbers of entities likely to be affected, and the characteristics of any impacts on particular entities. The problem is complicated by differences among entities even in the same sector as to the nature and size of their current operations, contiguity to waterways, individual strategies for dealing with the take prohibitions, etc.

There are no record-keeping or reporting requirements associated with the take prohibition and, therefore, it is not possible to simplify or tailor record keeping or reporting to be less burdensome for small entities. Some programs for which NMFS has found it not necessary to prohibit take involve record keeping and/or reporting to support that continuing determination. NMFS has attempted to minimize any burden associated with programs for which the take prohibitions are not enacted.

In formulating this proposed rule, NMFS considered several alternative approaches, described in more detail in the IRFA. These included (1) Enacting a ''global'' protective regulation for threatened species, through which section 9 take prohibitions are applied automatically to all threatened species at the time of listing; (2) ESA 4(d) protective regulations with no limits, or only a few limits, on the application of the take prohibition for relatively uncontroversial activities such as fish rescue/salvage; (3) Take prohibitions in combination with detailed prescriptive requirements applicable to one or more sectors of activity; (4) ESA 4(d) protective regulations similar to the existing interim 4(d) protective regulations for Southern Oregon/ Northern California coast coho, which includes four additional limitations on the extension of the take prohibition, for harvest plans, hatchery plans, scientific research, and habitat restoration projects, when in conformance with specified criteria; (5) A protective

regulation similar to the interim rule, but with recognition of more programs and circumstances in which application of take prohibitions is not necessary and advisable. That is the approach taken in this proposed rule, which limits the take prohibition for the seven items discussed above, but would also limit application of the take prohibition for properly screened water diversions, for routine road maintenance in Oregon, for Portland's Parks and Recreation Department integrated pest management program, for urban density development activities, and for forest management (including timber harvest) in Washington. For several of these categories (harvest, artificial propagation, habitat restoration, and urban development) the regulation is structured so that it allows plans or programs developed after promulgation of the rule to be submitted to NMFS for review under the criteria in the rule; (6) An option earlier advocated by the State of Oregon and others, in which ESA section 9 take prohibitions would not be applied to any activity addressed by the Oregon Plan for Salmon and Watersheds, fundamentally deferring protections to the state. At present, NMFS concludes that doing so would not provide sufficient protections to the listed steelhead; and (7) Enacting no protective regulations for threatened steelhead. That course would leave the ESUs without any protection other than provided by ESA section 7 consultations for actions with some Federal nexus. Since NMFS' decision to list the ESUs as threatened, identifying broad segments of human activity as major factors in the decline of these steelhead ESUs, NMFS could not support that approach at this time as being consistent with the obligation to enact such protective regulations as are ''necessary and advisable to provide for the conservation of'' the listed steelhead.

NMFS concludes that at the present time there are no legally viable alternative rules that would have less impact on small entities and still fulfill the agency's obligations to protect listed salmonids. The first four alternatives may result in unnecessary impacts on economic activity of small entities, given NMFS' judgment that more limited protections would suffice to conserve the species.

If you believe the alternative contained in this proposed rule will impact your economic activity, please comment on whether there is a preferable alternative (including alternatives not described here) that would meet the statutory requirements of ESA section 4(d). Please describe the impact that alternative would have on your economic activity and why the alternative is preferable.

Executive Order 12866

In applying take prohibitions broadly to protect seven ESUs of threatened salmonids, this proposed rule likely constitutes a significant action for purposes of Executive Order 12866. As discussed with respect to the Regulatory Flexibility Act analysis, data are not available to quantify the impacts on small entities in specific sectors of the economy; for the same reasons it is not possible to quantify costs of avoiding take of listed fish for all portions of the economy. However, as discussed earlier, NMFS has a clear statutory responsibility to enact whatever protective regulations are necessart to provide for conservation of threatened species. Abdicating that responsibility is not an option. For several prior listings of threatened salmonids, take prohibitions were imposed in a blanket manner, with no limitations. In the case of these seven salmonid ESUs, NMFS has sought an alternative to blanket imposition of the prohibitions. NMFS has worked with a variety of jurisdictions to identify programs or sectors of activity for which it is not necessary and advisable to impose take prohibitions, and this proposed rule recognizes thirteen such circumstances as limits on take prohibitions. NMFS believes that this approach provides the benefits demanded by the ESA (protection of threatened species) while minimizing uncertainty and costs for sectors of the economy wherever possible.

Executive Order 13084–Consultation and Coordination with Indian Tribal Governments

The United States has a unique legal relationship with tribal governments as set forth in the Constitution, treaties, statutes, and Executive Orders. In keeping with this relationship, with the mandates of the Presidential Memorandum on Government to Government Relations with Native American Tribal Governments (59 FR 22951), and with Executive Order 13084, NMFS has coordinated with tribal governments and organizations in the geographic areas affected by this proposed rule as it was developed over the past year. For instance, NMFS has provided these entities with the opportunity to provide input on the draft rule and the approach taken. In addition, NMFS has met with tribal governments and organizations and had numerous individual staff-to-staff conversations, in an effort to give consideration to the viewpoints of tribes and tribal organizations related to the protection of these species.

NMFS will schedule more formal consultation opportunities with each potentially affected tribe, to be completed during the first two months after publication. NMFS will continue to give careful consideration to all written or oral comments received and will continue its contacts and discussions with interested tribes as the agency moves toward a final rule.

Executive Order 13132–Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with numerous State, local and other governmental entities in the course of preparing this proposed rule. As the process continues, NMFS intends to continue engaging in informal and formal contacts with all affected States, discussing the rule with any interested local or regional entities and giving careful consideration to all written or oral comments received. As one part of that continued process, NMFS has scheduled public hearings to be held throughout the geographic range of the affected ESUs.

NMFS' interim ESA 4(d) rule for Southern Oregon/Northern California Coast coho ESU (62 FR 38479) was the first instance in which the agency defined some reasonably broad categories of activity, both public and private, for which take prohibitions were not necessary and advisable. Since then, NMFS has continued discussions with various Oregon and California governmental agencies and representatives involved with that ESU, and has also sought working relationships with other States and governmental organizations promoting salmonid restoration efforts throughout the geographic range affected by this proposed rule. Some of the limits in this proposed rule reflect the coordination NMFS has had with State and local jurisdictions.

In addition to these efforts, NMFS' staff have given numerous presentations to interagency forums, community groups, and others, and served on a number of interagency advisory groups or task forces considering conservation measures. Many cities, counties and other local governments have sought guidance and consideration of their planning efforts from NMFS, and NMFS' staff have met with them as rapidly as our resources permit. Finally, NMFS' Sustainable Fisheries Division staff have continued close coordination with State fisheries agencies toward

development of artificial propagation and harvest plans and programs that will be protective of listed salmonids and ultimately may be recognized within this rule. NMFS expects to continue to work with all of these entities and others toward the clearest and best possible final rule that protects these affected ESUs, and toward recognizing other conservation efforts in future amendments or through other ESA mechanisms.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the PRA. These requirements have been submitted to OMB for approval. Public reporting burden for this collection-of-information is estimated to average 5 hours per response for water diverters who elect to provide documentation that their diversion structures are screened to NMFS criteria; 20 hours per response for cities or counties that elect to take advantage of the ODOT routine road maintenance program; or 30 hours per response for Metro, cities, or counties that elect to submit guidelines or ordinances for a limit on take prohibitions for urban development. Annual reporting for the limit regarding aiding sick, injured, stranded salmonids is estimated to average 5 hours. Annual reporting for the urban development limit is estimated to average 10 hours. This proposed rule also contains a collection-of-information requirement associated with habitat restoration activities conducted under watershed plans that has received PRA approval from OMB under control number 0648–0230. The public reporting burden for the approval of Watershed Plans is estimated to average 10 hours. These estimates include any time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Also, this proposed rule contains collection-of-information requirements not subject to the PRA because they are not requirements of general applicability, affecting fewer than ten potential respondents.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection-of-information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS (see **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC. 20503 (Attention: NOAA Desk Officer). Comments must be received by February 28, 2000.

National Environmental Policy Act

NMFS has completed an Environmental Assessment (EA) for this action pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. NMFS concludes that this alternative will not result in environmentally significant negative impacts and may have several beneficial effects, and that preparation of an Environmental Impact Statement is not required. Copies of the EA are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: December 15, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 223 is proposed to be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

1. The authority citation for part 223 is revised to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under; 16 U.S.C. 1361 *et seq.*;

2. 223.208 is added to read as follows:

§ 223.208 Steelhead.

(a) *Prohibitions.* The prohibitions of section 9 of the ESA (16 U.S.C. 1538) relating to endangered species apply to the threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15), except as provided in paragraph (b) of this section.

(b) *Limits on the take prohibitions.* (1) The exceptions of section 10 of the ESA (16 U.S.C. 1539) and other exceptions under the Act relating to endangered species, including regulations implementing such exceptions, also apply to the threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15). This section supersedes other restrictions on the applicability of part 222 of this chapter.

(2) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to activities specified in an application for a permit for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than 30 days from date of publication of the final rule in the **Federal Register**. The prohibitions of paragraph (a) of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of a permit, or 6 months after effective date of the final rule, whichever occurs earliest.

(3) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to any employee or designee of NMFS, the United States Fish and Wildlife Service, any Federal land management agency, the Idaho Department of Fish and Game, Washington Department of Fish and Wildlife, the Oregon Department of Fish and Wildlife, the California Department of Fish and Game, or any Tribe, when the employee or designee, acting in the course of their official duties, takes a threatened salmonid without a permit if such action is necessary to:

(i) Aid a sick, injured, or stranded salmonid,

(ii) dispose of a dead salmonid, or

(iii) salvage a dead salmonid which may be useful for scientific study.

(iv) Each agency acting under this limit on the prohibitions of paragraph (a) of this section is to report to NMFS the numbers of fish handled and their status, on an annual basis. A designee of the listed entities is any individual the Federal or state fishery agency, or other co-manager has authorized in writing to perform the listed functions.

(4) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to fishery harvest activities provided that:

(i) Fisheries are managed in accordance with a NMFS-approved

Fishery Management and Evaluation Plan (FMEP) and implemented in accordance with a Memorandum of Agreement (MOA) between the state of Washington, Oregon, Idaho or California (State) and NMFS. NMFS will approve an FMEP only if it clearly defines its intended scope and area of impact, and sets forth management objectives and performance indicators for the plan. The plan must adequately address the following criteria:

(A) Defines populations within affected ESUs, taking into account spatial and temporal distribution; genetic and phenotypic diversity; and other appropriate identifiable unique biological and life history traits. Populations may be aggregated for management purposes when dictated by information scarcity, if consistent with survival and recovery of the ESU. In identifying management units, the plan shall describe the reasons for using such units in lieu of population units and describe how the management units are defined, given biological and life history traits, so as to maximize consideration of the important biological diversity contained within the ESU, respond to the scale and complexity of the ESU, and help ensure consistent treatment of listed salmonids across a diverse geographic and jurisdictional range.

(B) Determines and applies thresholds for viable and critical populations consistent with the concepts contained in a draft technical document titled ''Viable Salmonid Populations'' (NMFS, December 1999). Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the draft paper may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910. The Viable Salmonid Populations paper provides a framework for identifying the biological requirements of listed salmonids, assessing the effects of management and conservation actions, and insuring that such actions provide for the survival and recovery of listed species. Proposed management actions must recognize the significant differences in risk associated with these two threshold states and respond accordingly to minimize the risks to long-term population. Harvest actions impacting populations that are functioning at or above the viable threshold must be designed to maintain the population or management unit at or above that level. For populations shown with a high degree of confidence to be above critical levels but not yet at viable levels, harvest management must not appreciably slow the population's achievement of viable function. Harvest actions impacting populations that are functioning at or below critical threshold must not be allowed to appreciably increase genetic and demographic risks facing the population and must be designed to permit the population's achievement of viable function, unless the plan demonstrates that such an action will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild despite any increased risks to the individual population.

(C) Sets escapement objectives or maximum exploitation rates for each management unit or population based on its status, and a harvest program that assures not exceeding those rates or objectives. Maximum exploitation rates must not appreciably reduce the likelihood of survival and recovery of the ESU. Management of fisheries where artificially propagated fish predominate must not compromise the management objectives for commingled naturally spawned populations.

(D) Displays a biologically based rationale demonstrating the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease.

(E) Includes effective monitoring and evaluation programs to assess compliance, effectiveness and parameter validation. At a minimum, harvest monitoring programs must collect catch and effort data, information on escapements, and information on biological characteristics such as age, fecundity, size and sex data, and migration timing.

(F) Provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data shows are needed.

(G) Provides for effective enforcement and education. Coordination among involved jurisdictions is an important element in ensuring regulatory effectiveness and coverage.

(H) Includes restrictions on resident species fisheries that minimize and adequately limit any take of listed species, including time, size, gear, and area restrictions; and elimination of put-and-take fisheries in waters with listed anadromous salmonids.

(I) Is consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its fisheries and provides to NMFS on an annual basis a report summarizing this information, as well as the implementation and effectiveness of the FMEP. The State shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the FMEP.

(iii) The state confers annually with NMFS on their fishing regulation changes to ensure congruity with the approved FMEP.

(iv) Prior to approving a new or amended FMEP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment. Such an announcement will provide for a comment period on the draft FMEP of not less than 30 days.

(v) NMFS approval of a plan shall be a written approval by NMFS' Northwest or Southwest Regional Administrator, as appropriate.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving a level salmonid productivity commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all ESA section 9 take prohibitions.

(5) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to activity associated with artificial propagation programs provided that:

(i) A state or Federal Hatchery and Genetics Management Plan (HGMP) has been approved by NMFS as meeting the following criteria:

(A) The plan has clearly stated goals, performance objectives, and performance indicators that indicate the purpose of the program, its intended results, and measurements of its performance in meeting those results. Goals shall address whether the program is intended to meet

conservation objectives, contributing to the ultimate sustain ability of natural spawning populations, and/or intended to augment tribal, recreational, or commercial fisheries. Objectives should enumerate the results desired from the program against which its success or failure can be determined.

(B) The plan utilizes the concepts of viable and critical salmonid population threshold, consistent with the concepts contained in a draft technical document titled ''Viable Salmonid Populations'' (NMFS, December 1999). Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910. Listed salmonids may be purposefully taken for broodstock purposes only if the donor population is currently at or above the viable threshold and the collection will not impair its function; if the donor population is not currently viable but the sole objective of the current collection program is to enhance the propagation or survival of the listed ESU; or if the donor population is shown with a high degree of confidence to be above critical threshold although not yet functioning at viable levels, and the collection will not appreciably slow the attainment of viable status for that population.

(C) Taking into account health, abundance and trends in the donor population, broodstock collection programs reflect appropriate priorities. The primary purpose of broodstock collection programs of listed species is to reestablish indigenous salmonid populations for conservation purposes. Such programs include restoration of similar, at-risk populations within the same ESU, and reintroduction of at-risk populations to underseeded habitat. After the species' conservation needs are met, and when consistent with survival and recovery the species, broodstock collection programs may be authorized by NMFS for secondary purposes, such as to sustain tribal, recreational and commercial fisheries.

(D) The HGMP shall include protocols to address fish health, broodstock collection, broodstock spawning, rearing and release of juveniles, deposition of hatchery adults, and catastrophic risk management.

(E) The HGMP shall evaluate, minimize, and account for the propagation program's genetic and ecological effects on natural populations, including disease transfer, competition, predation, and genetic introgression caused by straying of hatchery fish.

(F) The HGMP will describe interrelationships and interdependencies with fisheries management. The combination of artificial propagation programs and harvest management must be designed to provide as many benefits and as few biological risks as possible for the listed species. HGMPs for programs whose purpose is to sustain fisheries must not compromise the ability of FMEPs or other management plans to conserve listed salmonids.

(G) Adequate artificial propagation facilities exist to properly rear progeny of naturally spawned broodstock to maintain population health and diversity, and to avoid hatchery-influenced selection or domestication.

(H) Adequate monitoring and evaluation exist to detect and evaluate the success of the hatchery program and any risks to or impairment of recovery of the listed ESU.

(I) The HGMP provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data shows are needed;

(J) An MOA or some other formal agreement is in place between the state and NMFS, to ensure proper implementation of the HGMPs and reporting of effects and results. For Federally operated or funded hatcheries, the section 7 consultation will achieve this purpose.

(K) The HGMP is consistent with plans and conditions set within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

(ii) The state monitors the amount of take of listed salmonids occurring in its hatchery program and provides to NMFS on an annual basis a report summarizing this information, as well as the implementation and effectiveness of the HGMP. The state shall provide NMFS with access to all data and reports prepared concerning the implementation and effectiveness of the HGMP.

(iii) The state confers with NMFS on an annual basis regarding intended collections of listed broodstock to ensure congruity with the approved HGMP.

(iv) Prior to final approval of an HGMP, NMFS will publish notification in the **Federal Register** announcing its availability for public review and comment for a period of at least 30 days.

(v) NMFS approval of a plan shall be a written approval by NMFS' Northwest or Southwest Region Regional Administrator, as appropriate.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the HGMP in protecting and achieving a level salmonid productivity commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. If the responsible agency does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all ESA section 9 take prohibitions.

(6) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(7), (a)(8), (a)(14), and (a)(15) do not apply to actions undertaken in compliance with a resource management plan developed jointly by the States of Washington and/or Oregon and the Tribes (joint plan) within the continuing jurisdiction of *U.S.* v. *Washington* or *U.S.* v. *Oregon*, the on-going Federal Court proceeding to enforce and implement reserved treaty fishing rights, provided that:

(i) The Secretary has determined pursuant to 50 CFR § 223.209(b) (the limit on take prohibitions for tribal resource management plans) and the government-to-government processes therein that implementing and enforcing the joint tribal/state plan will not appreciably reduce the likelihood of survival and recovery of affected threatened ESUs.

(ii) The joint plan will be implemented and enforced within *U.S.* v. *Washington* or *U.S.* v. *Oregon*.

(iii) In making that determination for a joint plan, the Secretary has taken comment on how any fishery management plan addresses the criteria in 223.208(b)(4), or how any hatchery and genetic management plan addresses the criteria in 223.208(b)(5).

(iv) The Secretary shall publish notice in the **Federal Register** of any determination whether or not a joint plan will appreciably reduce the likelihood of survival and recovery of affected threatened ESUs, together with a discussion of the biological analysis underlying that determination.

(7) The prohibitions of paragraph (a) of this section relating to threatened

species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to activity associated with scientific research provided that:

(i) Scientific research activities involving purposeful take is conducted by employees or contractors of the Oregon Department of Fish and Wildlife (ODFW), Washington Department of Fish and Wildlife (WDFW), Idaho Department of Fish and Game (IDFG), or the California Department of Fish and Game (CDFG)(Agency), or as part of a coordinated monitoring and research program overseen by that Agency.

(ii) The Agency provides NMFS with a list of all scientific research activities involving direct take planned for the coming year for NMFS' review and approval, including an estimate of the total direct take that is anticipated, a description of the study design including a justification for taking the species and a description of the techniques to be used, and a point of contact.

(iii) The Agency annually provides NMFS with the results of scientific research activities directed at threatened salmonids, including a report of the direct take resulting from the studies and a summary of the results of such studies.

(iv) Scientific research activities that may incidentally take threatened salmonids are either conducted by Agency personnel, or are in accord with a permit issued by the Agency.

(v) The Agency provides NMFS annually, for its review and approval, a report listing all scientific research activities they conduct or permit that may incidentally take threatened salmonids during the coming year. Such reports shall also contain the amount of incidental take of threatened salmonids occurring in the previous year's scientific research activities and a summary of the results of such research.

(vi) Electrofishing in any body of water known or suspected to contain threatened salmonids is conducted in accord with ''Guidelines for Electrofishing Waters Containing Salmonids Listed Under the Endangered Species Act''.

(vii) NMFS' approval of a plan shall be a written approval by NMFS' Northwest or Southwest Region Regional Administrator, as appropriate.

(8) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to habitat restoration activities, as defined in paragraph (b)(8)(iii) of this section, provided that:

(i) The States of Washington, Oregon, Idaho or California (State) certify to NMFS in writing the activity is part of a watershed conservation plan, where:

(A) NMFS has certified to the state in writing that the State's watershed conservation plan guidelines meet the following standards. Guidelines must result in plans that:

(*1*) Consider the status of the affected species and populations;

(*2*) Design and sequence restoration activities based upon information obtained from an overall watershed assessment;

(*3*) Prioritize restoration activities based on information from watershed assessment;

(*4*) Evaluate the potential severity of direct, indirect and cumulative impacts on the species and habitat as a result of the activities the plan would allow;

(*5*) Provide for effective monitoring;

(*6*) Use best available science and technology of habitat restoration, use adaptive management to incorporate new science and technology into plans as they develop, and where appropriate, provide for project specific review by disciplines such as hydrology or geomorphology;

(*7*) Assure that any taking resulting from implementation will be incidental;

(*8*) Require the state, local government, or other responsible entity to monitor, minimize and mitigate the impacts of any such taking to the maximum extent practicable;

(*9*) Will not result in long-term adverse impacts;

(*10*) Assure that the safeguards required in watershed conservation plans will be funded and implemented;

(B) The state has made a written finding that the watershed conservation plan, including its provisions for clearing projects with other agencies, is consistent with those state watershed conservation plan guidelines.

(C) NMFS concurs in writing with the state finding.

(ii) Until a watershed conservation plan is approved under paragraph (b)(8)(i) of this section, or until 2 years after publication of the final rule in the **Federal Register**, whichever occurs first, take prohibitions shall not apply to the following habitat restoration activities if any in-water work is consistent with state in-water work season guidelines established for fish protection, or if there are none, limited to summer low-flow season with no work from the start of adult migration through the end of juvenile outmigration. The work must be implemented in compliance with the listed conditions and guidance:

(A) *Riparian zone planting or fencing.* Conditions include no in-water work; no sediment runoff to stream; native vegetation only; fence placement in Oregon consistent with standards in the *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999).

(B) *Livestock water development off-channel.* No modification of bed or banks; no in-water structures except minimum necessary to provide source for off-channel watering; no sediment runoff to stream; diversion adequately screened; diversion in accord with state law and has not more than *de minimus* impacts on flows that are critical to fish; diversion quantity shall never exceed 10 percent of current flow at any moment, nor reduce any established instream flows.

(C) *Large wood (LW) placement.* Conditions: Does not apply to LW placement associated with basal area credit in Oregon. No heavy equipment allowed in stream. Wood placement projects should rely on the size of wood for stability and may not use permanent anchoring including rebar or cabling (these would require section 7 consultation or a section 10 permit)(biodegradable manila/sisal rope may be used for temporary stabilization). Wood should be at least two times the bankfull stream width (1.5 times the bankfull width for wood with rootwad attached) and meet diameter requirements and stream size and slope requirements outlined in *A Guide to Placing Large Wood in Streams*, Oregon Department of Forestry and Department of Fish and Wildlife (1995). LW placement must be either associated with an intact, well-vegetated riparian area which is not yet mature enough to provide LW; or accompanied by a riparian revegetation project adjacent or upstream that will provide LW when mature. Placement of boulders only where human activity has created a bedrock stream situation not natural to that stream system, where the stream segment would normally be expected to have boulders, and where lack of boulder structure is a major contributing factor to the decline of the stream fisheries in the reach. Boulder placement projects within this exception must rely on size of boulder for stability, not on any artificial cabling or other devices. See applicable guidance in *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999).

(D) *Correcting road/stream crossings, including culverts, to allow or improve fish passage.* See WDFW's *Fish Passage Design at Road Culverts*, March 3, 1999; *Oregon Road/Stream Crossing Restoration Guide: Spring 1999*; and NMFS Southwest Region *Culvert Policy* (1999).

(E) *Repair, maintenance, upgrade or decommissioning of roads in danger of failure.* All work to be done in dry season; prevent any sediment input into streams. In California, follow applicable guidance in Weaver. W.E. and D.K. Hagens *Handbook for Forest and Ranch Roads, A guide for planning, designing, constructing, reconstructing, maintaining, and closing wildland roads* (June, 1994).

(F) *Salmonid carcass placement.* Carcass placement should be considered only where numbers of spawners are substantially below historic levels. Follow applicable guidelines in *Oregon Aquatic Habitat Restoration and Enhancement Guide* (1999), including assuring that the proposed source of hatchery carcasses is from the same watershed or river basin as the proposed placement location. To prevent introduction of diseases from hatcheries, such as Bacterial Kidney Disease, carcasses must be approved for placement by a state fisheries fish pathologist.

(iii) ''Habitat restoration activity'' is defined as an activity whose primary purpose is to restore natural aquatic or riparian habitat conditions or processes. ''Primary purpose'' means the activity would not be undertaken but for its restoration purpose.

(iv) Prior to approving watershed conservation plan guidelines under paragraph (7)(i) of this section, NMFS will publish notification in the **Federal Register** announcing the availability of the draft guidelines for public review and comment. Such an announcement will provide for a comment period on the draft guidelines of not less than 30 days.

(v) NMFS approval of a plan shall be a written approval by NMFS' Northwest or Southwest Region Regional Administrator, as appropriate.

(vi) On a regular basis, NMFS will evaluate the effectiveness of a state's watershed plan guidelines in assuring plans that protect a level salmonid productivity commensurate with conservation of the listed salmonids. If insufficient, NMFS will identify ways in which the guidelines or program needs to be altered or strengthened. If the state does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all section 9 take prohibitions.

(vii) Before this regulation becomes final, the Director of the Federal Register must approve the incorporation by reference of each of the state guidance documents listed in this habitat restoration limit on the take prohibitions in accordance with U.S.C.552(a) and 1 CFR part 51. The documents are: Oregon Aquatic Habitat Restoration and Enhancement Guide (1999; A Guide to Placing Large Wood in Streams, Oregon Department of Forestry and Department of Fish and Wildlife (1995); WDFW's Fish Passage Design at Road Culverts, March 3, 1999; and Oregon Road/Stream Crossing Restoration Guide; Spring 1999. Copies of the documents may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(9) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to the physical diversion of water from a stream or lake, provided that:

(i) NMFS' engineering staff has agreed in writing that the diversion facility is screened, maintained and operated in compliance with Juvenile Fish Screen Criteria, National Marine Fisheries Service, Northwest Region, Revised February 16, 1995, with Addendum of May 9, 1996, or in California with NMFS' Southwest Region ''Fish Screening Criteria for Anadromous Salmonids, January 1997'' or any subsequent revision. Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(ii) The owner or manager of the diversion will allow any NMFS engineer, biologist or Authorized officer access to the diversion facility for purposes of inspection and determination of continued compliance with the criteria.

(iii) This limit on the prohibitions of paragraph (a) of this section does not encompass any impacts of reduced flows resulting from the diversion, or caused during installation of the diversion device. These impacts remain subject to the prohibition on take of listed salmonids.

(10) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(7), (a)(8), (a)(14) and (a)(15) do not apply to routine road maintenance activities provided that:

(i) The activity results from routine road maintenance activity by Oregon Department of Transportation, county or city employees that complies with the *Oregon Department of Transportation's Maintenance Management System Water Quality and Habitat Guide* (June, 1999). Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(ii) Neither pesticide and herbicide spraying nor ODOT dust abatement are included within this exception, even if in accord with the state's guidance.

(iii) Prior to implementing any changes to the 1999 Guide the Oregon Department of Transportation will provide NMFS a copy of the proposed change for review and approval as within this exception.

(iv) Prior to approving any change in the 1999 Guide, NMFS will publish notification in the **Federal Register** announcing the availability of the draft changes for public review and comment. Such an announcement will provide for a comment period on the draft changes of not less than 30 days.

(v) Any city or a county in Oregon desiring its routine road maintenance activities to be within this exception first enters a memorandum of agreement with NMFS committing to apply the management practices in the guide, detailing how it will assure adequate training, tracking, and reporting, and describing in detail any dust abatement practices it requests to be covered.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving habitat function commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. Changes may be required if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If ODOT does not make changes to respond adequately to the new information, NMFS will publish

notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all section 9 take prohibitions.

(vii) NMFS' approval of city or county programs following the ODOT program, or of any amendments, shall be a written approval by NMFS' Northwest or Southwest Region Regional Administrator, as appropriate.

(11) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102 (a)(7), (a)(8), (a)(14), and (a)(15) do not apply to activities within the City of Portland, Oregon's Parks and Recreation Department's (PP&R) Pest Management Program (March, 1997), including its Waterways Pest Management Policy dated April 4, 1999 provided that:

(i) Use of only the following chemicals is included within this limit on the take prohibitions: Glyphosphate products, Garlon 3A, Surfactant R–11, Napropamide, Cutrine Plus, and Aquashade.

(ii) Any chemical use is initiated in accord with the priorities and decision processes of the Department's Pest Management policy (March 27, 1997).

(iii) Any chemical use within a 25 ft (7.5 m) buffer complies with the buffer application constraints contained in PP&R' Waterways Pest Management Policy, (April 4, 1999).

(iv) Portland Parks and Recreation Department will regularly assess whether monitoring information, new scientific studies, or new techniques cause it to amend the program or change the list of chemicals covered by this limit on the take prohibitions. Before NMFS approves any change to qualify as within this limit on the take prohibitions, NMFS will publish notification in the **Federal Register** providing a comment period of not less than 30 days for public review and comment on the proposed changes.

(v) On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving habitat function commensurate with conservation of the listed salmonids. If it is not, NMFS will identify ways in which the program needs to be altered or strengthened. Changes may be required if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If PP&R does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all section 9 take prohibitions.

(vi) NMFS' approval of amendments shall be a written approval by NMFS Northwest Regional Administrator. Before this regulation becomes final, the Director of the Federal Register must approve the incorporation by reference of Portland's Parks and Recreation Department's Waterways Pest Management Program (March, 1997), including its Waterways Pest Management Policy dated April 4, 1999, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of those documents may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(12) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(5) through (a)(9), (a)(14), and (a)(15) do not apply to urban development activities provided that:

(i) Such development occurs pursuant to city or county ordinances that NMFS has agreed in writing are adequately protective, or within the jurisdiction of the Metro regional government in Oregon, with ordinances that Metro has found comply with an Urban Growth Management Functional Plan (Functional Plan) that NMFS has agreed in writing are adequately protective. For NMFS to find ordinances or the Functional Plan adequate, they must address the following issues in sufficient detail and in a manner that assures that urban developments will contribute to conserving listed salmonids:

(A) Avoid inappropriate areas such as unstable slopes, wetlands, areas of high habitat value, and similarly constrained sites.

(B) Avoid stormwater discharge impacts to water quality and quantity, or to the hydrograph of the watershed.

(C) Require adequate riparian buffers around all perennial and intermittent streams, lakes or wetlands.

(D) Avoid stream crossings by roads wherever possible, and where one must be provided, minimize impacts through choice of mode, sizing, placement.

(E) Protect historic stream meander patterns and channel migration zones; avoid hardening of stream banks.

(F) Protect wetlands and wetland functions.

(G) Preserve the hydrologic capacity of any intermittent or permanent stream to pass peak flows.

(H) Landscape to reduce need for watering and application of herbicides, pesticides and fertilizer.

(I) Prevent erosion and sediment run-off during construction.

(J) Assure that water supply demands for the new development can be met without impacting flows needed for threatened salmonids either directly or through groundwater withdrawals, and that any new water diversions are positioned and screened in a way that prevents injury or death of salmonids.

(K) Provide all necessary enforcement, funding, reporting, and implementation mechanisms.

(L) The development complies with all other state and Federal environmental or natural resource laws and permits.

(ii) The city, county or Metro will provide NMFS with annual reports regarding implementation and effectiveness of the ordinances, including any water quality monitoring information the jurisdiction has available, an aerial photo (or some other graphic display) of each urban development or urban expansion area at sufficient detail to demonstrate the width and vegetative condition of riparian set-backs, success of stormwater retention and other techniques; and a summary of any flood damage, maintenance problems, or other issues.

(iii) Prior to determining that city or county ordinances or Metro's Functional Plan are adequate, NMFS will publish notification in the **Federal Register** announcing the availability of the ordinances or Functional Plans for public review and comment. The comment period will be not less than 30 days.

(iv) If new information indicates need to modify ordinances or Metro's Functional Plan that NMFS has previously found adequate, the city, county or Metro will work with NMFS to draft appropriate amendments and NMFS will use the processes of paragraph (b)(12)(iii) to determine whether the modified ordinances or Functional Plan are adequate. If at any time NMFS determines that compliance problems or new information show that the ordinances or guidelines are not achieving desired habitat functions, or where even with the habitat characteristics and functions originally

targeted, habitat is not supporting population productivity levels needed to conserve the ESU, NMFS will notify the jurisdiction. If the jurisdiction does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with that program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all section 9 take prohibitions.

(v) NMFS approval of ordinances shall be a written approval by NMFS Northwest or Southwest Region Regional Administrator, as appropriate.

(13) The prohibitions of paragraph (a) of this section relating to threatened salmonids listed in § 223.102 (a)(7) (a)(8), and (a)(15) do not apply to non-federal forest management activities conducted in the State of Washington provided that:

(i) The action is in compliance with forest practice regulations implemented by the Washington Forest Practices Board that NMFS has found are at least as protective of habitat functions as are the regulatory elements of the Forests and Fish Report dated April 29, 1999, and submitted to the Forest Practices Board by a consortium of landowners, tribes, and state and Federal agencies. Before this regulation becomes final, the Director of the Federal Register must approve this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the report may be obtained on request to NMFS, Protected Resources Division, 525 NE Oregon St., Suite 500, Portland, OR 97232-2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910.

(ii) All other elements of the Forests and Fish Report are being implemented.

(iii) Actions involving use of herbicides, pesticides or fungicides are not included within this exception.

(iv) Actions taken under alternate plans are not within this limit on the take prohibitions.

(v) Prior to determining that regulations adopted by the Forest Practice Board are at least as protective as the elements of the Forests and Fish Report, NMFS will publish notification in the **Federal Register** announcing the availability of the report and regulations for public review and comment.

(vi) On a regular basis, NMFS will evaluate the effectiveness of the program in protecting and achieving habitat function commensurate with conservation of the listed salmonids. If it is not adequate, NMFS will identify ways in which the program needs to be altered or strengthened. Changes may be required if the program is not protecting desired habitat functions, or where even with the habitat characteristics and functions originally targeted, habitat is not supporting population productivity levels needed to conserve the ESU. If Washington does not make changes to respond adequately to the new information, NMFS will publish notification in the **Federal Register** announcing its intention to impose take prohibitions on activities associated with the program. Such an announcement will provide for a comment period of not less than 30 days, after which NMFS will make a final determination whether to subject the activities to all ESA section 9 take prohibitions.

(vii) NMFS approval of a regulations shall be a written approval by NMFS Northwest or Southwest Regional Administrator, as appropriate.

[FR Doc. 99–33689 Filed 12–23–99; 2:52 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 122199D]

New England Fishery Management Council; Public Meeting

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

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day public meeting on January 18, 19, and 20, 2000, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, January 18, 2000, at 1:00 p.m., and Wednesday and Thursday, January 19 and 20, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Ferncroft, 50 Ferncroft Road, Danvers, MA 01923; telephone (978) 777–2500. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, The Tannery - Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, January 18, 2000

After introductions, the meeting will begin with reports on recent activities from the Council Chairman, Executive Director, the NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the U.S. Coast Guard and the Atlantic States Marine Fisheries Commission. Following the reports, the Council will receive an Advisory Report on the status of the Northeast region skate complex. The Council will then review and possibly approve a scoping document for an amendment that will consider establishing a controlled access system in the Atlantic herring fishery and consider approval of a Council request that NMFS implement the permit and reporting requirements of the Fishery Management Plan (FMP) for the Atlantic Herring Fishery through an emergency rule.

Wednesday, January 19, 2000

The Chairman of the Groundfish Committee will begin this session of the meeting by considering approval of final action on Framework Adjustment 33, the annual adjustment to the Northeast Multispecies FMP, including setting of target Total Allowable Catch (TAC) and management measures for the 2000–2001 fishing year (May 1, 2000–April 30, 2001), with possible extension into the following fishing year. Options under consideration for the annual adjustment include: Management measures to achieve Northeast Multispecies FMP objectives for Gulf of Maine and Georges Bank cod stocks, including area closures, trip limits, an increase in the minimum fish size and adjustments to days-at-sea (DAS); an adjustment of the Georges Bank haddock trip limit; a decrease in the minimum mesh size for otter trawl vessels in the Large Mesh Permit Category and an allowance for exit from the program after one month; a revision of the definition of exempted midwater trawl gear; an exemption for raised footrope trawl gear in part of the Gulf of Maine closed areas; an exemption for small scallop dredges in the Western Gulf of Maine Closed Area; and an exemption certificate for party/charter vessels to fish in Gulf of Maine closed areas (vessels may not fish on DAS while in possession of the certificate). The discussion of groundfish issues will continue throughout the rest of the afternoon.

Thursday, January 20, 2000

The Chairman of the Scallop Committee will begin this session of the meeting with approval of final action on Framework Adjustment 13 to the Atlantic Sea Scallop FMP. The framework proposes access for scallop vessels to Closed Area I, Closed Area II, and the Nantucket Lightship Area during the 2000–2001 fishing year (March 1, 2000–February 28, 2001). The Council approved some provisions at the previous meeting on Framework Adjustment 13, including scallop TAC, scallop possession limit, initial trip allocations, and DAS tradeoffs. The Council will consider approving TACs for yellowtail flounder, multispecies possession limits, seasons to allow access, access by general category scallop vessels, research TAC administration, and other related measures.

During the afternoon portion of the meeting, the Whiting Committee will ask the Council to approve a scoping document for an upcoming action that may amend the Multispecies FMP by removing whiting, red hake, offshore hake, and possibly ocean pout and establishing a separate Small Mesh FMP for these species. The scoping document for this action may include options for limiting access to small mesh species fisheries, options for applying a TAC to small mesh fisheries, and any other issues that the Council identifies. The Red Crab Committee will seek approval of a scoping document for FMP development and a control date for entry into the fishery. A number of other committee reports will follow this agenda item. The Dogfish Committee will provide a briefing on the fishing year 2000–2001 (May 1, 2000–April 30, 2001) annual specification package to be submitted to the NMFS Regional Administrator. The Research Steering Committee will update the Council on its progress in the development of Regional research priorities. The Capacity, Gear Conflict and Habitat Committees will also report on ongoing activities. The Regional Administrator will consult with the Council regarding an application received by NMFS for an Experimental Fishery Permit to investigate the effects of a modified dredge in the Atlantic Sea Scallop fishery to reduce yellowtail flounder and barndoor skates bycatch will also be discussed. The application is unusual because it requests a scallop days-at-sea exemption while commercially harvesting scallops prior to the implementation of a proposed program to allow quota set-aside for research. There will be a discussion and opportunity for public comment. The meeting will adjourn after the Council addresses any other outstanding issues.

Although other non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Documents pertaining to framework adjustment actions are available for public review 7 days prior to a final vote by the Council. Copies of the documents may be obtained form the Council (see **ADDRESSES**).

Special Accommodations

This meeting is 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 date.

Dated: December 27, 1999

George H. Darcy,

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

[FR Doc. 99–33999 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 250
Thursday, December 30, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Higher Education Challenge Grants Program for Fiscal Year 2000; Request for Proposals and Request for Input; Correction Notice

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Correction to notice of request for proposals and request for input.

SUMMARY: In notice document published in the issue of Friday, December 17, 1999, (64 FR 242) the date to receive hand delivered proposals is erroneous. The due date for Form CSREES–711, ''Intent to Submit a Proposal,'' also is erroneous. This notice corrects the date to receive hand delivered proposals and the due date for Form CSREES–711, ''Intent to Submit a Proposal,'' as follows:

On page 70687, in the third column, third paragraph, first sentence of the USDA notice, the date to receive hand delivered proposals was erroneous. The correction is February 14, 2000.

On page 70687, in the third column, fifth paragraph, first sentence of the USDA notice, the date to receive Form CSREES–771, ''Intent to Submit a Proposal,'' is erroneous. The correction is January 17, 2000.

Done at Washington, D.C., this 22 day of December 1999.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service

[FR Doc. 99–33994 Filed 12–29–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Steamboat Resource Area, Idaho Panhandle National Forests, Shoshone County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare environmental impact statement.

SUMMARY: The project area is approximately 27,000 acres in size, and is located in the Steamboat Creek basin (T50N, R2E, Sec. 1–6, 8–15; T50N, R3E, Sec. 5–8, 18; T51N, R1E, Sec. 24–26, 35–36; T51N, R23, Sec. 9–11, 13–36; T51N, R3E, Sec. 30–32; Boise Meridian). The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental effects of the project.

The purpose of this proposal is twofold: over the short term, the goal is to reduce the negative effects specific roads are having on streams in the watershed. The long-term goal is to trend the watershed toward a condition of increased resilience to withstand future disturbances (such as wildfire, disease, or insect infestations) by improving the overall health and stability of both the terrestrial and aquatic ecosystems.

DATES: Comments concerning the scope of the analysis should be received in writing by January 31, 2000.

ADDRESSES: Send written comments to Coeur d'Alene River Ranger District, 2502 East Sherman Avenue, Coeur d'Alene, Idaho, 83814–5899.

FOR FURTHER INFORMATION CONTACT: Sherri Lionberger, Project Team Leader, (208) 769–3065.

SUPPLEMENTARY INFORMATION: The resource area has been modified by the effects of past harvest, road building, and historic natural disturbances. White pine blister rust continues to cause mortality in the white pine, and the species composition is changing to a less resilient type of forest. Streamside roads that infringe on flood plains, large areas of regeneration harvests, outdated skidding practices, and natural flood events have combined to increase sediment and destabilize stream channels, causing a loss of fisheries habitat locally as well as further downstream. This history has led to vegetative and watershed conditions in need of rehabilitation to trend the resource area toward more naturally-resilient characteristics. The proposal will include the following possible actions: (1) Improving aquatic resource conditions by reducing the amount of sediment entering the stream from existing roads through repair or removal of specific road segments and/or road channel crossings; and (2) Increasing the stocking and size of rust-resistant white pine and other long-lived seral conifers through regeneration and stand-tending activities such as timber harvest, prescribed fire, tree planting, pruning and thinning. The scope of this analysis is limited to activities related to the purpose and need, and measures necessary to mitigate the effects these activities may have on the environment. The decision will identify if, when, how and where to schedule activities to meet these goals.

Similar activities were examined in this area under the Boston Brook Resource Area Environmental Assessment, published in September 1997. No decisions were implemented based on that document. Since that time, there have been changes in both resource conditions and Forest Service policies, which warrant another look at this area. A new name is being used for the current proposal to make it easier for the public to recognize the area to be analyzed and to avoid confusion with the earlier analysis.

The issues raised and alternatives developed as a result of the public participation for the Boston Brook Environmental Assessment will be brought forward for the EIS. Modifications may be made based on updated resource information, changes in Forest Service policy, and/or additional public comments.

Key issues that will drive alternative development have been preliminarily identified based on past scoping activities and known resource concerns. To date, these key issues include protection or improvement of aquatic resources (water quality and fisheries habitat), and protection or improvement of forest vegetation (timber stands and rare plants). There are other issues which may not drive alternative developed but which will be analyzed to disclose environmental effects. For example, protection of key big-game habitat, and ensuring access for recreation activities.

In addition to the ''No Action'' alternative, five action alternatives have been identifies for consideration:

- An alternative that would include both road removal and timber harvest, utilizing small harvest openings that would not result in any increase in water yields.
- An alternative that would include both road removal and timber harvest, creating harvest openings of at least 5 acres in the rain-on-snow zones, to minimize increases in water yields while creating openings large enough to re-establish seral species such as white pine and western larch.
- An alternative that would include both road removal and timber harvest, simulating historical disturbance patterns which involve patches larger than 5 acres. These larger harvest units would be more economically efficient in terms of harvest and reforestation costs.
- An alternative designed to resemble a ''pulse'' event such as a large fire, by harvesting at least 1,000 acres in one general area, leaving islands or structure similar to the mosaic found after a fire. This approach would start the trend toward more resilient timber stands with longer-lived seral species, and would result in less fragmentation of stands than would harvest utilizing smaller openings in greater number.
- An alternative that would accomplish watershed rehabilitation work, without timber harvest activities.

Comments from the public and other agencies will be used in preparation of the draft EIS. The scoping process will be used to:

(1) Identify additional potential issues;

(2) Eliminate minor issues or those issues which have been covered by a relevant previous environmental analysis;

(3) Identify additional alternatives to the proposed action;

(4) Identify potential environmental effects of the proposed action and alternatives (*i.e.*, direct, indirect and cumulative effects).

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the Environmental Protection Agency and available for public review in March 2000. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from federal, state, and local agencies, the Coeur d'Alene Tribe, and other individuals or organizations that may be interested in or affected by the proposed action.

The USDA Forest Service is the lead agency for this proposal. District Ranger Susan Jeheber-Matthews is the responsible official.

The Forest Service believes it is important at this early stage 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 an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S.C. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: December 15, 1999.

Susan Jeheber-Matthews,

District Ranger.

[FR Doc. 99–33984 Filed 12–29–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on January 20, 2000, at the Hatfield Marine Science Center (Meeting Room #9), 2030 S. Marine Science Drive, Newport, Oregon. The meeting will begin at 9:00 a.m. and continue until 4:00 p.m. Agenda items to be covered include: (1) Information sharing among PAC Members, (2) background will be provided on NW Forest Plan/aquatic strategies, and (3) will develop action plan for meetings in 2000. Two 15-minute open public forums are scheduled at 11:30 a.m. and 3:45 p.m. Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest (541–750–7075), or write to the Acting Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: December 21, 1999.

Jose L. Linares,

Acting Forest Supervisor.

[FR Doc. 99–33985 Filed 12–29–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Departee Creek Watershed, Independence and Jackson Counties, Arkansas

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of availability of record of decision.

SUMMARY: Kalven L. Trice, responsible Federal official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the State of Arkansas, is hereby providing notification that a Record of Decision to proceed with the installation of the Departee Creek Watershed project is available. Single copies of the Record of Decision may be obtained from Kalven L. Trice at the address shown.

For further information contact Kalven L. Trice, State Conservationist,

Natural Resources Conservation Service, Room 3416 Federal Building, 700 West Capitol Avenue, Little Rock, Arkansas 72201, telephone 501–301–3100.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials).

Dated: December 17, 1999.

Kalven L. Trice,

State Conservationist.

[FR Doc. 99–33923 Filed 12–29–99; 8:45 am]

BILLING CODE 3410–16–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

The United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 10 a.m. local time on January 10, 2000 at the U.S. International Trade Commission, Courtroom B, 500 E Street, S.W., Washington, D.C. Topics to be discussed at the meeting will include: management changes, status of reports to Congress and the Office of Management and Budget, preparations for the FY2001 budget, interim incident selection plan, incident investigation protocol, status of on-going investigations, review of notation items, proposed Federal Regulations regarding CSB quorum, voting procedures and compliance with the Government under the Sunshine Act, CSB mission statement, schedule of future public meetings, and review of Year 2000 technology problems and chemical safety. The meeting will be open to the public. The ITC office is a secure federal building requiring photo identification for public admission. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of External Relations, (202)-261–7600, or visit our website at: *www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 99–34025 Filed 12–28–99; 9:35 am]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, January 14, 2000, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of December 10, 1999 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Alabama, Florida, Illinois, Indiana, Minnesota (Interim) and Nebraska
VI. Program Planning
VII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312

Ruby G. Moy,

Staff Director.

[FR Doc. 99–34021 Filed 12–27–99; 4:37 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Initiation of Five-Year (''Sunset'') Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of five-year (''Sunset'') reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') is automatically initiating five-year (''sunset'') reviews of the antidumping and countervailing duty orders or suspended investigations listed below. The International Trade Commission (''the Commission'') is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, or Mark Young, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560 or (202) 482–3207, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders or suspended investigations:

DOC Case No.	ITC Case No.	Country	Product
A–570–830	A–677	China	Coumarin
A–351–825	A–678	Brazil	Stainless Steel Bar
A–533–810	A–679	India	Stainless Steel Bar
A–588–833	A–681	Japan	Stainless Steel Bar
A–469–805	A–682	Spain	Stainless Steel Bar

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping (''AD'') or countervailing duty (''CVD'') order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy*

Bulletin, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: ''http://www.ita.doc.gov/import__admin/records/sunset/''.

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1999). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in this review. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order (''APO'') immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1999)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). We note that the Department considers each of the orders listed above as separate and distinct orders and, therefore, requires order-specific submissions. In accordance with the *Sunset Regulations*, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR Part 351 (1999) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: December 21, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–33963 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–802; A–475–802; A–599–802; A–588–807]

Final Results of Expedited Sunset Reviews: Industrial Belts From Germany, Italy, Singapore, and Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Reviews: Industrial Belts from Germany, Italy, Singapore, and Japan.

SUMMARY: On June 1, 1999, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on industrial belts from Germany, Italy, Singapore, and Japan (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of notices of intent to participate and adequate substantive comments filed on behalf of The Gates Rubber Company, a domestic interested party, and inadequate response (in these cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Results of Reviews* section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 30, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998), (''*Sunset Policy Bulletin*'').

Scope

The merchandise covered by the antidumping duty orders on Germany and Japan includes industrial belts other than V-belts and synchronous belts used for power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.*, closed loops) belts, or in belting in lengths or links from Germany and Japan.[1] The

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1999), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

[1] *See Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components*

Continued

antidumping duty order on imports from Italy covers industrial V-belts and synchronous belts and components used for power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.,* closed loops) belts, or in belting in lengths or links.[2] The antidumping duty order on imports from Singapore includes industrial V-belts used for power transmission. These include industrial V-belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (*i.e.,* closed loops) belts, or in belting in lengths or links.[3]

The above orders exclude conveyor belts and automotive belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift truck.

The subject merchandise was classifiable under Tariff Schedules of the United States Annotated (''TSUSA'') item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520 in the orders for all four countries. Currently, subject merchandise is classifiable under item numbers 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90 and 7326.20.00 of the Harmonized Tariff Schedule of the United States (''HTSUS'').[4]

In its substantive response, The Gates Rubber Company (''Gates'') asserts that the HTSUS subheadings of Chapter 40 were significantly revised in 1996, and, as a result, the products covered by the orders became classifiable under HTSUS numbers 3626.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.21.30, 4010.21.60, 4010.22.30, 4010.22.60, 4010.23.30, 4010.23.41, 4010.23.45, 4010.23.50, 4010.23.90, 4010.24.30, 4010.24.41, 4010.24.45, 4010.24.50, 4010.24.90, 4010.29.10, 4010.29.20, 4010.29.30, 4010.29.41, 4010.29.45, 4010.29.50, 4010.29.90, 5910.00.10, 5910.00.90, and 7326.20.00.[5] U.S. Customs officials confirmed the accuracy of the HTSUS numbers for subject merchandise suggested by Gates.[6] However, the above HTSUS and TSUSA subheadings are provided for convenience and customs purposes and the written description remains dispositive.

The Department has made the following scope rulings for the orders on imports from Germany, Italy, and Japan:

With respect to the order on subject imports from Germany, the Department's sole administrative review clarified that the scope of the order includes round belts and flat belts (56 FR 9672, March 7, 1991). Additionally, the Department determined in a 1991 scope ruling, that the scope of the order includes nylon core flat belts and excludes spindle belting.[7]

With respect to the order on subject imports from Italy, the Department, in the February 24, 1993, Scope Ruling, determined that ''Panther'' industrial belts from Pirelli Power Corp. are within the scope of the order (58 FR 11209).

With respect to the order on subject imports from Japan, the Department has made several scope rulings. The following products were determined within the scope of the order:

Product within scope	Importer	Citation
V-volt model 5L118	Japan Freight Consolidators (Calif.) Inc.	57FR 16602 (May 7, 1992).
Closed loop synthetic timing belt used in the Epson LX–800 desk-top personal computer printer.	Tower Group International, Inc. and Epson America, Inc.	58 FR 47124 (September 7, 1993).

The following products were determined to be not within the scope of the order:

Product outside scope	Importer	Citation
59011 series of belts	Kawasaki Motors Corp., USA	57 FR 19692 (May 7, 1992).
Certain round and flat belts which are composed of rubber or plastics but are not reinforced with a tensile member.	Matsushita Electric Corp., Matsushita Floor Care Company and Panasonic Company.	57 FR 57420 (December 4, 1992).
Conveyor Belts of five-series comprised of 30 models	Nitta Industries Corp., and Nitta International, Inc	58 FR 59991 (November 12, 1993).
Eight-drive and blade belts	Honda Power Equipment Manufacturing Inc	62 FR 30569 (June 4, 1997).
Twenty-two drive and blade belts	American Honda Motor Co	62 FR 30569 (June 4, 1997).

and Parts Thereof, Whether Cured or Uncured, From the Federal Republic of Germany (54 FR 25316, March 17, 1991), and *Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan,* 54 FR 25314 (June 14, 1989).

[2] *See Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy,* 54 FR 25313 (June 14, 1989).

[3] *See Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore,* 54 FR 25315 (June 14, 1989).

[4] Subject merchandise from Germany excludes item numbers 3926.90.55, 4010.10.10, and 4010.10.50; subject merchandise from Singapore excludes item numbers 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.91.11, 4010.91.15, 4010.91.19, 4010.99.11, 4010.99.15, 4010.99.19, and 4010.99.50.

[5] According to Gates, subject merchandise from Germany excludes item numbers 3926.90.55, 4010.21.30, 4010.21.60, 4010.22.30, 4010.22.60, 4010.23.30, 4010.23.41, 4010.23.45, 4010.23.50, 4010.23.90, 4010.24.30, 4010.24.41, 4010.24.45, 4010.24.50, 4010.24.90, 4010.29.10, and 4010.29.20 (*see* July 1, 1999, Substantive Response of Gates at 3); and subject merchandise from Singapore excludes item numbers 3926.90.56, 3926.90.57, 3926.90.59, 4010.23.30, 4010.23.41, 4010.23.45, 4010.23.50, 4010.23.90, 4010.24.30, 4010.24.41, 4010.24.45, 4010.24.50, 4010.24.90, 4010.29.30, 4010.29.41, 4010.29.45, 4010.29.50, 4010.29.90 for imports (*see* July 1, 1999, Substantive Response of Gates at 3).

[6] *See* Memo to File of telephone conversation with George Barthes, U.S. Customs official, regarding new HTSUS numbers for industrial belts.

[7] *See Scope Rulings,* 56 FR 57320 (November 8, 1991).

History of the Orders

Germany

In the original investigation, covering the period January 1, 1998, through June 30, 1988, the Department determined the dumping margins to be 100.60 percent *ad valorem* for Optibelt Corporation (''Optibelt''), the Germany company investigated, and ''all others'' (54 FR 15505, April 18, 1989).

Since the issuance of the order, there has been one administrative review, covering the period February 1, 1989, through May 31, 1990, in which the Department determined a dumping margin of 100.60 percent *ad valorem* for Volkmann GmbH (''Volkmann''), the German respondent subject to the review.[8]

Italy

In the original investigation, covering the period January 1, 1988, through June 30, 1998, the Department determined a dumping margin of 74.90 percent *ad valorem* percent for Pirelli Trasmissioni Industriali, S.p.A. (''Pirelli''), and ''all others.''[9]

There have been two administrative reviews of this order. In the first review, covering the period from February 1, 1989, through May 31, 1990, the Department determined a dumping margin of 60.38 percent *ad valorem* for Pirelli;[10] in the second review, covering the period June 1, 1990, through May 31, 1991, the dumping margin for Pirelli increased to 70.90 percent.[11]

Singapore

In the original investigation, covering the period January 1, 1988, through June 30, 1998, the Department determined the dumping margin for Mitsuboshi Belting (Singapore) Pte. Ltd. (''MBS''), a subsidiary of Mitsuboshi Belting Ltd. of Japan, and ''all others'', to be 31.73 percent *ad valorem*.[12]

There have been two completed administrative reviews and one terminated review of this order. The Department determined a dumping margin of 31.73 percent *ad valorem* for MBS in the first review[13] covering the period February 1, 1989, through May 31, 1990, and in the second review, covering the period June 1, 1990 through May 31, 1991.[14] A third review, covering the period June 1, 1991, through May 31, 1992, was terminated before a preliminary determination was issued (58 FR 53707, October 18, 1993).

Japan

In the original investigation, covering the period January 1, 1988, through June 30, 1998, the Department determined a dumping margin of 93.16 percent *ad valorem* for Bando Chemical Industries (''Bando'') and ''all others'' (54 FR 15485, April 18, 1989).

There have been five administrative reviews of this order. In the first review, covering the period June 7, 1989, through May 31, 1990, the Department determined a dumping margin of 93.16 percent *ad valorem* for Bando, and 52.60 percent for Nitta Industries (''Nitta'') and Mitsuboshi Belting Limited (''MBL'').[15] In the second administrative review, covering the period June 1, 1990, through May 31, 1991, we determined that the dumping margin for MBL was 93.16 percent.[16]

In the third and fourth administrative reviews, covering the periods June 1, 1991, through May 31, 1992, and June 1, 1992, through May 31, 1993, respectively, the Department determined a dumping margin of 93.16 percent for MBL (59 FR 1373, January 10, 1994). The dumping margin continued at 93.16 for MBL in the fifth review, covering the period June 1, 1993, through May 31, 1994 (60 FR 39929, August 4, 1995).

At the request of Brecoflex Corporation (''Brecoflex''), the Department initiated a circumvention inquiry on October 18, 1993; however, the Department did not make a determination regarding the merits of the inquiry because it determined that Brecoflex lacked standing as a domestic producer of a like-product (56 FR 23693, May 6, 1994).

Background

On June 1, 1999, the Department initiated sunset reviews of the antidumping orders on industrial belts from Germany, Italy, Singapore, and Japan (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Gates within the applicable deadline (June 16, 1998) specified in section 351.218(d)(1)(i) of the *Sunset Regulations* from all four countries. As the petitioner in the original investigations and a participant in each of the respective administrative reviews, Gates claimed interested-party status under section 771(9)(C) of the Act as a U.S. producer of the domestic like product. Subsequently, we received Gates' complete substantive responses to the notice of initiation on July 1, 1999. Without a substantive response from respondent interested parties, the Department, pursuant to 19 CFR 351.218(e)(1)(ii)(C), determined to conduct expedited, 120-day reviews of these orders.

In accordance with 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On October 12, 1999, the Department determined that the sunset reviews of the antidumping duty orders on industrial belts from Germany, Italy, Singapore, and Japan are extraordinarily complicated and, therefore, the Department extended the time limit for completion of the final results of these reviews until not later than December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[17]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and

[8] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from the Federal Republic of Germany; Final Results of an Antidumping Administrative Review*, 56 FR 9672 (March 7, 1991).

[9] See *Industrial Belts and Components and Parts Thereof, Whether* Cured or Uncured, from Italy; Amendment of Final Results of an Antidumping Administrative Review, 57 FR 32196 (July 21, 1992).

[10] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured from Italy; Amendment of Final Results of Antidumping Duty Administrative Review*, 57 FR 8295 (March 9, 1992).

[11] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Italy; Final Results of Antidumping Duty Administrative Review*, 58 FR 30938 (July 13, 1992).

[12] *See Final Determination of Sales at Less Than Fair Value: Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Singapore*, 54 FR 15489 (April 18, 1989).

[13] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Singapore; Final Results of Antidumping Duty Administrative Review*, 57 FR 41916 (September 14, 1992).

[14] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Singapore; Final Results of Antidumping Duty Administrative Review*, 57 FR 29469 (July 2, 1992).

[15] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 30018 (May 25, 1993).

[16] *See Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 44496 (August 23, 1993).

[17] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 55233 (October 12, 1999).

shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Gates' comments with respect to continuation or recurrence of dumping and the magnitude of the margin for each of the orders are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise significantly (*see* section II.A.3).

In addition to consideration of the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant reviews, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

Gates argues that because manufacturers/exporters of industrial belts from Germany, Italy, Singapore, and Japan have continued to dump the subject merchandise covered by the 1989 orders and dumping margins are consistently very high, the Department should determine that revocation of the orders would likely lead to further dumping (*see* July 1, 1999 Substantive Responses of Gates (Germany and Singapore at 6; Japan and Italy at 7)).

With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, Gates notes that German manufacturers/exporters continue to dump, albeit at reduced volumes, and continue to be subject to high margin rates of 100.60 percent (*see* July 1, 1999, Substantive Response of Gates at 8). Similarly, according the Gates, Italian, Singaporean and Japanese manufacturers/exporters have continued to dump since the issuance of the respective orders. Gates notes the high margin rates of 74.90 percent, 31.73 percent and 93.16 percent for Italian, Singaporean, and Japanese manufacturers/producers, respectively (*see* July 1, 1999, Substantive Responses of Gates (Italy at 9; Singapore at 8; and Japan at 10).

With respect to whether import volumes of the subject merchandise declined significantly, Gates notes that, although the average volume of imports industrial belts from Germany, Japan and Italy decreased following the imposition of the orders, dumping has not been entirely eliminated (*see* July 1, 1999, Substantive responses of Gates (Germany at 9; Japan and Italy, respectively, at 8)).

Finally, Gates asserts that dumping would likely become severe if the orders were revoked because the market for industrial belts is a mature market characterized by intense price competition (*see* July 1, 1999, Substantive Responses of Gates (Germany and Singapore at 9; Italy at 10 and Japan at 11)). Moreover, given that Asia remains in a recession, the U.S. market is an attractive target for manufacturers/exporters from Japan and Singapore (*see* July 1, 1999, Substantive Responses of Gates (Singapore at 9; Japan at 11)).

In conclusion, Gates argues that, in each case, the Department should determine that there is a likelihood that dumping would continue upon revocation of the orders because manufacturers/exporters have continued to import into the United States even as dumping margins remain very high.

Discussion

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. In these cases, dumping margins above *de minimis* continue to exist for shipments of the subject merchandise from all manufacturers/exporters from the subject countries.

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the orders. By examining U.S. Census Bureau IM146 reports, the Department finds that, consistent with import statistics provided by Gates, imports of the subject merchandise from Germany, Italy and Japan decreased following the issuance of the orders, from 1989 through 1995. During this period, average imports from Germany and Japan decreased approximately 95 percent during this period, average imports from Italy decreased approximately 30 percent; and imports from Singapore ceased altogether. In 1996, imports from all four countries increased and remained generally steady until 1998; however, imports from Germany, Japan, and Singapore were significantly lower than pre-order levels. In contrast, Italian imports from 1996 to 1998 exceeded pre-order levels by approximately 25 percent.

Therefore, the Department finds that the existence of dumping margins after the issuance of the orders is highly probative of the likelihood of continuation of recurrence of dumping. Deposit rates for exports of the subject merchandise by all known manufacturers and exporters from Germany, Italy, Singapore, and Japan are above *de minimus*. Therefore, given that dumping has continued over the life of the orders, respondent interested parties have waived their right to participate in these reviews before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the orders were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation (*see* section II.B.1 of the *Sunset Policy Bulletin*). Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption

determinations (*see* section II.B.2 and 3 of the *Sunset Policy Bulletin*).

Gates asserts that the Department should provide to the Commission the company-specific margins and the ''all others'' rates determined in the original investigations of imports from Germany, Italy, Singapore, and Japan (*see* July 1, 1999, Substantive Responses of Gates (Germany and Singapore, respectively, at 10; Japan at 11; Italy at 12)) as the rates likely to prevail if the orders were revoked. Specifically, Gates notes that, in the original investigation of subject imports from Germany, the Department determined a margin of 100.60 percent for Optibelt and ''all others.'' Subsequently, in the sole administrative review, the Department determined a rate of 100.60 percent for Volkmann. Therefore, they argue that the Department should provide to the Commission the original margin of 100.60 percent for Optibelt and ''all others'' as determined in the investigation (*see* July 1, 1999, Substantive Response of Gates (Germany) at 11).

For Italian manufacturers/exporters, gates asserts that the 74.90 percent margin in the final determination and most recent review of the order on imports from Italy demonstrates the high probability of continued dumping were the order were revoked. Gates concludes, therefore, that the original rate should be applicable to Pirelli and ''all others'' (*see* July 1, 1999, Substantive Response of Gates (Italy) at 12).

For manufacturers/exporters from Singapore, Gates asserts that the Department should provide to the Commission the margin of 31.73 percent from the original investigation for MBS and ''all others'' (*see* July 1, 1999, Substantive Response of Gates (Singapore) at 10). The Department also applied this rate to MBS in subsequent administrative reviews.

Finally, for Japanese manufacturers/exporters, Gates notes that the original margin of 93.16 percent continued in the administrative reviews of the order on imports from Japan. Therefore, Gates argues, a rate of 93.16 percent should be applicable to Bando and all other companies not specifically investigated in the investigation (*see* July 1, 1999, Substantive Response of Gates at 11).

The Department agrees with Gates' arguments concerning the choice of margins to report to the Commission for each of the countries. As noted in the *Sunset Policy Bulletin,* the rates from the original investigation are the only rates that reflect the behavior of exporters without the discipline of the order. In these reviews, we find no reason to deviate from our stated policy. Therefore, consistent with section II.B.1 of the *Sunset Policy Bulletin,* the Department finds that the original rates are probative of the behavior of manufacturers/exporters from Germany, Italy, Singapore and Japan were the orders revoked. As such, the Department will report to the Commission the company-specific and ''all others'' rates from the original investigations as contained in the *Final Results of Reviews* section of this notice.

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation of recurrence of dumping at the margin listed below:

Country and manufacturer /exporter	Margin (percent)
Germany:	
Optibelt Corporation	100.60
All Others	100.60
Italy:	
Pirelli	74.90
All Others	74.90
Singapore:	
Mitsuboshi Belting (Singapore) Pte. Lte	31.73
All Others	31.73
Japan:	
Bando	93.16
All Others	93.16

This notice serves as the only 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 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year (''sunset'') reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 23, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–33976 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–412–805; A–428–807; A–570–805]

Final Results of Expedited Sunset Reviews: Sulfur Chemicals (Sodium Thiosulfate) From the United Kingdom, Germany, and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews: sulfur chemicals (sodium thiosulfate) from the United Kingdom, Germany, and the People's Republic of China.

SUMMARY: On July 1, 1999, the Department of Commerce (''the Department'') initiated sunset reviews of the antidumping duty orders on sulfur chemicals (sodium thiosulfate) from the United Kingdom, Germany, and the People's Republic of China (64 FR 35588) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of notices of intent to participate and adequate substantive comments filed on behalf of Calabrian Corporation, a domestic interested party, and inadequate response (in these cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Results of Reviews* section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 30, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) (''*Sunset Regulations*''), and in 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the

Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

The merchandise covered by the antidumping duty orders includes all grades of sodium thiosulfate, in dry or liquid form, used primarily to dechlorinate industrial waste water, from the United Kingdom, Germany, and the People's Republic of China (''PRC''). The chemical composition of sodium thiosulfate is $Na_2S_2O_3$. Currently, subject merchandise is classifiable under item number 2832.30.1000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The above HTSUS subheading is provided for convenience and customs purposes. The written description remains dispositive.

There have been no scope rulings for the above orders on imports of sodium thiosulfate from the subject countries.

History of the Orders

In the original investigations, covering the period February 1, 1990, through July 31, 1990, the Department determined the following weighted-average dumping margins: 100.40 percent for Th. Goldschmidt AG (''Goldschmidt''), the German respondent, and ''all others'' (55 FR 51749, December 17, 1990); 50.13 percent for William Blythe & Co., Ltd. (''Blythe''), the British respondent, and ''all others'' (*id.*); and a country-wide rate of 25.57 percent for all producers/exporters of subject merchandise from the PRC (56 FR 2904, January 25, 1991).

Since the issuance of these orders, there has been one administrative review of the order on imports from the PRC, covering the period December 12, 1990, through January 31, 1992, in which China National Chemicals Import and Export Corporation (''Sinochem'') and ''all others'' were assigned a margin of 148.42 percent *ad valorem*.[1]

Background

On July 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on sodium thiosulfate from the United Kingdom, Germany, and the PRC (64 FR 35588), pursuant to section 751(c) of the Act. the Department received a Notice of Intent to Participate on behalf of Calabrian Corporation (''Calabrian'') within the deadline (July 15, 1998) specified in section 351.218(d)(1)(i) of the *Sunset Regulations* in all three reviews. As the petitioner in the original investigations and a participant in the administrative review of the order on imports from the PRC, Calabrian claimed interested-party status under section 771(9)(C) of the Act as a U.S. producer of the domestic like product. Subsequently, we received Calabrian's complete substantive responses to the notice of initiation on August 2, 1999. Although we received a Notice of Intent to Participate from General Chemical Corporation in the German order and an application for release of business proprietary information under administrative protective order (''APO'') from Blythe in the British order, we did not receive a substantive response from either of the parties. Without a substantive response from any respondent interested party, the Department, pursuant to 19 CFR 351.218(e)(1)(ii)(C), determined to conduct expedited, 120-day reviews of these orders.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On November 16, 1999, the Department determined that the sunset reviews of the antidumping duty orders on sodium thiosulfate from the United Kingdom, Germany, and the PRC are extraordinarily complicated and, therefore, the Department extended the time limit for completion of the final results of these reviews until not later than January 27, 2000, in accordance with section 751(c)(5)(B) of the Act.[2]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission (''the Commission'') the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, Calabrian's comments with respect to continuation or recurrence of dumping and the magnitude of the margin for each of the orders are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to consideration of the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant reviews, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

Calabrian argues that revocation of the orders would result in the continuation of dumping by producers/exporters of sodium thiosulfate from subject countries and the likelihood of dumping levels equal to or greater than those that existed prior to imposition of the orders (*see* August 2, 1999, Substantive Responses of Calabrian (United

[1] *See Sodium Thiosulfate From the People's Republic of China; Final Results of Antidumping Administrative Review,* 58 FR 12934 (March 8, 1993).

[2] *See Extension of Time Limit for Final Results of Five-Year Reviews,* 64 FR 62167 (November 16, 1999).

Kingdom, Germany, and the PRC) at 3). With respect to import volumes for the subject merchandise from the United Kingdom and Germany, Calabrian asserts that German and British exports decreased precipitously upon the imposition of the respective orders in 1991. Therefore, they contend that the drop in import volumes from 1991 to the present is evidence that dumping would continue if the order were revoked. *Id.* With respect to import volumes for subject merchandise from the PRC, Calabrian asserts that Chinese exports decreased precipitously upon completion of the first administrative review in March of 1993 and remained significantly below pre-order levels through 1996 (*see* August 2, 1999, Substantive Response of Calabrian (PRC) at 4).

With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, Calabrian notes that, without any completed administrative reviews, British and German producers/exporters continue to dump, albeit at reduced volumes, and continue to be subject to their original rates of 50.13 percent and 100.40 percent, respectively (*see* August 2, 1999, Substantive Responses of Calabrian (United Kingdom and Germany) at 8). Similarly, according to Calabrian, Chinese producers/exporters continued to dump after the order, with declining volumes once the final results of the first administrative review were issued and the antidumping duty deposit rate increased to 148.42 percent.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. In these cases, dumping margins above *de minimis* continue to exist for shipments of subject merchandise from all producers/exporters from the subject countries.

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the orders. By examining U.S. Census Bureau IM146 reports, the Department finds that, consistent with import statistics provided by Calabrian, imports of the subject merchandise from the United Kingdom and Germany declined significantly immediately following the issuance of the orders, and continue to remain at very low levels. Chinese imports increased following the issuance of the order (56 FR 6623, February 19, 1991) and decreased dramatically only after the administrative review, in which the margins rose to 148.42 percent for Sinochem and ''all others.'' Imports from China continue to remain at very low levels.

Therefore, the Department finds that the existence of dumping margins after the issuance of the orders is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates for exports of the subject merchandise by all known producers and exporters from the United Kingdom, Germany, and the PRC are above *de minimis.* Therefore, given that dumping has continued over the life of the orders, respondent interested parties have waived their right to participate in these reviews before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the orders were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the ''all others'' rate from the investigation (*see* section II.B.1 of the *Sunset Policy Bulletin*). Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations (*see* sections II.B.2 and 3 of the *Sunset Policy Bulletin*).

Calabrian asserts that, with respect to Germany and the United Kingdom, the Department should provide to the Commission the company-specific and ''all others'' margins determined in the original investigations as the rates likely to prevail if the orders were revoked (*see* August 2, 1999, Substantive Responses of Calabrian (United Kingdom and Germany) at 6). With respect to the margin on imports from the PRC, Calabrian asserts that the Department should report to the Commission the margin of 148.42 percent, from the first administrative review, after which Chinese imports declined significantly.

Finally, Calabrian notes that the Department has not issued any determinations with regard to duty absorption under these antidumping duty orders. However, the company asserts that, in instances where the foreign exporter sells the subject merchandise through an affiliated importer, absent findings in these sunset proceedings that no duty absorption is taking place, the Department should assume that on those transactions duty absorption is taking place.

The Department agrees with Calabrian's arguments concerning the choice of margins to report to the Commission for each of the countries. As noted in the *Sunset Policy Bulletin*, the rates from the original investigation are the only rates that reflect the behavior of exporters without the discipline of the order. Absent argument or evidence to the contrary, in the reviews of the United Kingdom and Germany, we find no reason to deviate from our stated policy. Therefore, consistent with section II.B.1 of the *Sunset Policy Bulletin*, the Department finds that the original rates are probative of the behavior of manufactures/exporters from the United Kingdom and Germany.

With respect to the PRC, as we stated in the *Sunset Policy Bulletin*, a company may choose to inrease dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order (*see* section II.B.2 of the *Sunset Policy Bulletin*). In addition, the *Sunset Policy Bulletin* notes that the Department will normally consider market share for purposes of determining whether a more recent rate is probative of an exporter's behavior. However, absent information on market share and absent argument or evidence to the contrary, we have relied on Chinese import volumes in the present case. Specifically, we found that imports from China increased after the issuance of the order, from approximately 462,000 kilograms in 1990, to 1.17 million kilograms in 1991. At the same time, dumping increased as reflected in the final results of the administrative review covering December 1990 through January 1992. Therefore, in light of the correlation between the increase in imports and the increase in the dumping margins of Sinochem and ''all others'' in the period between the original period of investigation and the first period of review, the Department finds the more recent rate from the review to be the most probative of the behavior of Chinese producers/exporters, were the order revoked.

As such, the Department will report to the Commission the company-specific and ''all others'' rates from the original British and German investigations and the country-wide rate for Chinese producers/exporters determined in the 1990/92 review as contained in the Final Results of Reviews section of this notice.

Finally, we disagree with Calabrian's assertion that we should assume that duty absorption is taking place under these orders in instances where the foreign exporter sells the subject merchandise through an affiliated importer. Because Calabrian did not request an administrative review or a duty-absorption determination in 1996 or 1998 with respect to these orders, the Department did not conduct a duty-absorption inquiry.[3] Therefore, given the lack of a finding of duty absorption, the Department will not assume a determination of duty-absorption for purposes of these sunset reviews.

Final Results of Reviews

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the margins listed below:

Country	Manufacturer/exporter	Margin (percent)
United Kingdom	William Blythe & Co., Ltd	50.13
	All Others 50.13	50.13
Germany	Th. Goldschmidt AG	100.40
	All Others 100.40	100.40
China (PRC)	Country-wide	148.42

This notice serves as the only reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year (''sunset'') reviews and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 23, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–33977 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Industry Sector Advisory Committees (ISACs) 10 and 12 for Trade Policy Matters; Request for Nominations

AGENCY: International Trade Administration, Trade Development, Commerce.

ACTION: Request for nominations.

SUMMARY: The Secretary of Commerce (Commerce) and the United States Trade Representative (USTR) are seeking nominations for appointment of environmental representatives to the Industry Sector Advisory Committee on Lumber and Wood Products (ISAC 10) and the Industry Sector Advisory Committee on Paper and Paper Products (ISAC 12). Appointments will be effective for the remainder of the current charter term of these Committees, which expires March 19, 2000, and will be extended for the following two-year charter term. In order to be considered for appointment to one of these Committees, a nominee must be a U.S. citizen, must have an interest in and specialized knowledge of environmental issues relevant to the work of the Committee, and may not be a registered foreign agent under the Foreign Agents Registration Act. This notice responds to a November 8, 1999 order of the Federal District Court for the Western District of Washington in *Northwest Ecosystems Alliance* v. *USTR* (No. C99–1165R), directing Commerce and USTR to appoint a ''properly qualified environmental representative'' to each of these committees.

In order to receive full consideration, nominations for the current charter period should be received not later than January 21, 2000. Recruitment information is available on the International Trade Administration website at www.ita.doc.gov/icp. Further inquiries may be directed to Tamara Underwood, Director, Industries Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 2015–B, Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

In section 135 of the 1974 Trade Act, as amended (19 U.S.C. 2155), Congress established a private-sector advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Section 135(a)(1) of the 1974 Trade Act directs the President to—

''Seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—

(A) Negotiating objectives and bargaining positions before entering into a trade agreement under [title I of the 1974 Trade Act and section 1102 of the Omnibus Trade and Competitiveness Act of 1988];

(B) The operation of any trade agreement once entered into; including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) Other matters arising in connection with the development, implementation, and administration of the trade policy of the United States * * *.''

Section 135(c)(2) of the 1974 Trade Act provides—

(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

(A) Consult with interested private organizations; and

(B) Take into account such factors as—

(i) Patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

[3] Section 751(a)(4) of the Act provides that, during the second and fourth administrative review of an order (or, for transition orders, during an administrative review initiated in 1996 or 1998 (*see* 19 CFR 351.213(j)), the Department, upon request, will determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to a finding if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter.

(ii) The character of the nontariff barriers and other distortions affecting such competition,

(iii) The necessity for reasonable limits on the number of such advisory committees,

(iv) The necessity that each committee be reasonably limited in size, and

(v) In the case of each sectoral committee, that the product lines covered by each committee be reasonably related.

Pursuant to this provision, Commerce and USTR have established and co-chair seventeen Industry Sector Advisory Committees (ISACs) and four Industry Functional Advisory Committees (IFACs). The Committees' efforts have resulted in strengthening U.S. negotiating positions by enabling the United States to display a united front when it negotiates trade agreements with other nations. Committees meet an average of four times a year in Washington, D.C. Members serve without compensation and are responsible for all expenses incurred in attending Committee meetings. For additional information regarding the functions and membership of these committees, and general qualifications for membership, *see* 64 FR 10448–10449, March 4, 1999 (Volume 64, Number 42).

On July 21, 1999, several groups interested in forest conservation issues brought a lawsuit against USTR and Commerce challenging the balance of representation on ISACs 10 and 12. The district court ruled in favor of plaintiffs on November 8, 1999 and ordered USTR and Commerce to ''make a good faith effort to expedite the appointment of at least one properly qualified environmental representative'' to each of these advisory committees. This notice is issued in compliance with the court's order.

Eligibility

Eligibility to serve as an environmental representative on ISAC 10 or ISAC 12 is limited to U.S. citizens who are not full-time employees of a governmental entity, who represent a ''U.S. entity'', and who are not registered with the Department of Justice under the Foreign Agents Registration Act. For purposes of the preceding sentence, a ''U.S. entity'' is an organization incorporated in the United States (or, if unincorporated, having its headquarters in the United States):

(1) That is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if more than 50 percent of its Board of Directors or membership is made up of non-U.S. citizens. If the nominee is to represent an organization more than 10 percent of whose Board of Directors or membership is made up of non-U.S. citizens, or non-U.S. entities, the nominee must demonstrate at the time of nomination that this non-U.S. interest does not constitute control and will not adversely affect his or her ability to serve as a trade advisor to the United States; and

(2) At least 50 percent of whose annual revenue is attributable to non-governmental, U.S. sources.

Selection Criteria

USTR and Commerce will select environmental representatives eligible for appointment to ISACs 10 and 12 based upon the following:

(1) The nominee should demonstrate personal interest in and knowledge of the formulation of environmental policies in the sector relevant to the work of the Committee, and ability to work with governmental and officials and industry representatives to reach consensus on complex environmental and trade issues affecting the relevant industry sector.

(2) Preference will be accorded nominees who also demonstrate knowledge of and familiarity with the relevant industry sector, as well as with international trade matters, including trade policy development, relevant to that sector.

Two representatives will be appointed, one for each Committee. Representatives will require a security clearance. Members serve without compensation and are responsible for all expenses incurred in attending Committee meetings.

Applicant Procedures

Requests for applications should be sent to the Director of the Industry Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 2015–B, Washington, D.C. 20230.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C., app. 2) and 21 CFR part 14 relating to advisory committees.

Michael J. Copps,

Assistant Secretary for Trade Development.

[FR Doc. 99–33862 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–805]

Final Results of Expedited Sunset Review: New Steel Rail From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: New steel rail from Canada.

SUMMARY: On June 1, 1999, the Department of Commerce (''the Department'') initiated a sunset review of the countervailing duty order on new steel rail from Canada (64 FR 29261) pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section of to this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: December 30, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (march 20, 1998) (''Sunset Regulations'') and 19 CFR Part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871

(April 16, 1998) (''*Sunset Policy Bulletin*'').

Scope

The merchandise subject to this countervailing duty order is new steel rail, whether of carbon, high carbon, alloy or other quality steel from Canada. Subject merchandise includes but is not limited to, standard rails, all main line sections (at least 30 kilograms per meter or 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rails (or ''third rail'') and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines, and in industrial applications.

Specifically excluded from the order are light rails (less than 30 kilograms per meter or 60 pounds per yard). Also excluded from the order are relay rails, which are used rails taken up from primary railroad track and relaid in a railroad yard or on a secondary track. As a result of a changed circumstances review in 1996, the countervailing duty order on new steel rail from Canada was partially revoked with regard to 100ARA–A new steel rail, except light rail.[1] Moreover, nominal 60 pounds per yard steel rail is outside the scope of this order.[2]

This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) items 7302.10.1010, 7302.10.1015, 7302.10.1035, 7302.10.1045, 7302.10.5020, 8548.90.0000.[3] The HTS item numbers are provided for convenience and U.S. Customs purposes only. The written description remains dispositive.

This order covers imports from all producers and exporters of new steel rail from Canada, except the Algoma Steel Corporation, which was excluded from the original order.

History of the Order

In the final determination, as amended, the Department determined that the following programs conferred countervailable benefits:

Federal Programs

(1) Debenture Guarantees Provided to Sydney Steel Corporation (''Sysco'');

(2) Forgiven Wharf Loan;

(3) Regional Development Incentives Program (''RDIP'');

(4) Certain Investment Tax Credits (''ITCs'');

Joint Federal-Provincial Programs

(5) General Development Agreements (''GDA'');

(6) Economic and Regional Development Agreements (''ERDA'');

(7) Iron Ore Freight Subsidy to Algoma;

Provincial Programs (Province of Nova Scotia)

(8) Grants for Payment of Principal and Interest on Debentures;

(9) Operating Grants Provided to Sysco; and

(10) Equity Infusions Provided to Sysco.[4]

Specifically, the Department calculated that these programs conferred a total net subsidy of 94.57 percent *ad valorem* for all Canadian manufacturers, producers, or exporters, excluding Algoma. As a result of a *de minimis* net subsidy determined for Algoma, this Canadian producer/exporter was excluded from the order.

Since the original investigation, the Department has conducted a changed circumstances review of the order.[5] As noted above, as a result of this review, the Department revoked the countervailing duty order with regard to 100ARA–A new steel rail, except light rail from Canada.[6] The Department has not conducted any administrative reviews of this order. The order remains in effect for all manufacturers and exporters of the subject merchandise from Canada, except for Algoma.

Background

On June 1, 1999, the Department initiated a sunset review of the countervailing duty order on new steel rail from Canada (64 FR 29261), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Pennsylvania Steel Technologies, Inc. (''PST''), a subsidiary of Bethlehem Steel Corporation, and Rocky Mountain Steel Mills (''RMSM'') (collectively, the ''domestic interested parties'') on June 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from the domestic interested parties on July 1, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Both PST and RMSM claimed interested party status under 19 USC 1677(9)(C) as U.S. manufacturers of the subject merchandise. In addition, PST stated that it is a subsidiary of Bethlehem Steel Corporation, a petitioner in the original investigation. We did not receive a substantive response from any respondent interested party in this case. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of the order.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). On October 12, 1999, the Department determined that the sunset review of the countervailing duty order on new steel rail from Canada is extraordinarily complicated, and extended the time limit for completion of the final results of this review until not later than December 28, 1999, in accordance with section 751(c)(5)(B) of the Act.[7]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the programs which gave rise to the net countervailable subsidy has occurred that is likely to affect the net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission (''the Commission'') the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide the Commission information concerning the nature of each subsidy and whether the subsidy is a subsidy

[1] *See New Steel Rail, Except Light Rail, From Canada; Final Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews, and Revocation in Part of Antidumping and Countervailing Duty Orders*, 61 FR 11607 (March 21, 1996).

[2] *See New Steel Rail, Except Light Rail, From Canada; Notice of Termination of Changed Circumstances Administrative Reviews and Clarification of Scope Language*, 63 FR 43137 (August 12, 1998).

[3] Per conversation with April Avalone at U.S. Customs on September 7, 1999.

[4] *See Final Affirmative Countervailing Duty Determination; New Steel Rail, Except Light Rail, from Canada*, 54 FR 31991 (August 3, 1989), as amended, *Countervailing Duty Order and Amendment to the Final Affirmative Countervailing Duty Determination of New Steel Rail, Except Light Rail, from Canada*, 54 FR 39032 (September 22, 1989), and, as amended *New Steel Rail, Except Light Rail, from Canada: Amendment to Final Affirmative Countervailing Duty Determination and Order in Accordance with Decision on Remand*, 55 FR 35702 (August 31, 1990).

[5] *See* footnote 1.

[6] *See id.*

[7] *See extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 55233 (October 12, 1999).

described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures (''Subsidies Agreement'').

The Department's determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, parties' comments with respect to each of these issues are addressed within the respective sections below.

Continuation or Recurrence of a Countervailable Subsidy

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act (''URAA''), specifically the Statement of Administrative Action (''the SAA''), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the Sunset Policy Bulletin). Additionally the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the Sunset Policy Bulletin).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy where a respondent interested party waives its participation in the sunset review. Pursuant to the SAA, at 881, in a review of a countervailing duty order, when the foreign government has waived participation, the Department shall conclude that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.[8] In this instant review, the Department did not receive a substantive response from the foreign government or from any other respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In their substantive response, the domestic interested parties argue that revocation of the countervailing duty order would likely result in the continuation or recurrence of countervailable subsidies. First, they describe several programs administered on the provincial level by the Province of Nova Scotia that were determined in the original investigation to confer bounties or grants. They argue that Sysco was and continues to be the recipient of these subsidies (*see* July 1, 1999, Substantive Response of the domestic interested parties at 8). The domestic interested parties argue that the Grants for Payment of Principal and Interest on Debentures, Operating Grants, and Equity Infusions programs continue to exist and confer countervailable subsidies. As for Long-Term Loan Guarantees, the domestic interested parties state that Sysco's public financial statements do not indicate that the trust company guarantees found countervailable in the original investigation have continued. However, they maintain that the financial position of the company is so weak that it could not obtain any commercial funding absent provincial guarantees of its debt (*see id.* at 10).

Of the three joint-federal programs, the domestic interested parties argue that under the General Development Agreements and Economic and Regional Development Agreements programs no direct or specific outlays were made to Sysco in the most recent budget, but the province or company may still be benefitting from these programs. Moreover, they point out that the Canadian government has notified the World Trade Organization that it uses both of these programs but that it considers them to be ''green box'' programs that cannot be countervailed (*see id.* at 12–13). Finally, the domestic interested parties point out that the Iron Ore Freight Subsidy to Algoma did not apply to Sysco, but rather to Algoma.

The domestic interested parties also state that there is no evidence that the federal programs found to be countervailable in the original investigation, namely, Debenture Guarantees, Forgiven Wharf Loan, Regional Development Incentives Program, and Investment tax Credits, continue to benefit Sysco. However, they point out, there has not been an administrative review of the order and the Government of Canada has not provided any information concerning these four programs (*see id.* at 13).

The domestic interested parties maintain that Sysco benefits from past and present subsidies, and therefore, the Department should determine that revocation of the countervailing duty order on new steel rail from Canada would likely result in the continuation or recurrence of countervailable subsidies.

As noted above, in our final determination, as amended, the Department determined that the programs in question conferred a bounty or grant, the net amount of which was calculated to be 94.57 percent *ad valorem* for Canadian exporters/producers other than Algoma. The Department has conducted no administrative reviews of this outstanding countervailing duty order.

Given that the Department has not conducted an administrative review of this order nor have we reviewed the programs in question in any other administrative review, the Department does not have any information that programs have been terminated without residual benefits. Therefore, we agree with the domestic interested parties that the Canadian programs remain in place. Based on the continued existence of programs found to confer countervailable subsidies, the fact that the foreign government and other respondent parties waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that it is likely that a countervailable subsidy will continue if the order is revoked.

Net Countervailable Subsidy

In the Sunset Policy Bulletin, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation as the net countervailable subsidy likely to prevail if the order is revoked because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. The Department noted that this rate may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, if there has been a program-wide change, or if the rate ignores a program found to be countervailable in a subsequent administrative review. (*See* section III.B.3 of the Sunset Policy Bulletin). Additionally, where the Department determined company-specific countervailing duty rates in the original investigation, the Department normally will report to the Commission

[8] *See* 19 CFR 351.218(d)(2)(iv).

company-specific rates from the original investigation or where no company-specific rate was determined for a company, the Department normally will provide to the Commission the country-wide or ''all others'' rate. (*See* section III.B.2 of the Sunset Policy Bulletin).

In their substantive response, the domestic interested parties argue that the countervailing duty rate likely to prevail if the order on new steel rail from Canada is revoked would be at least as large as that existing at the time of the original order. The domestic interested parties argue that as the rate determined in the original investigation is the only calculated rate which reflects the behavior of exporters without the discipline of the order in place, the Department's policy provides that it normally will select this rate to provide to the Commission. Noting that the programs found to provide subsidies in the original investigation continue to exist, the domestic interested parties maintain that the Department should utilize the subsidy rate it originally determined when calculating the net countervailable subsidy in this sunset review.

As discussed in the Sunset Policy Bulletin, the Department normally will report to the Commission an original subsidy rate as adjusted to take into account terminated programs, program-wide changes, and programs found to be countervailable in subsequent reviews. We agree with the domestic interested parties that all programs, with the exception of the Long-term Loan Guarantees program (which was determined on remand not to confer a countervailable subsidy), found in the original investigation to provide countervailable subsidies continue to exist. Absent evidence or argument that there have been any changes to the programs found to be countervailable in the original determination, as amended, that would affect the net countervailable subsidy, consistent with the Sunset Policy Bulletin, the Department determines that the net countervailable subsidy likely to prevail if the order were revoked is 94.57 percent.

Nature of the Subsidy

In the Sunset Policy Bulletin, the Department stated that, consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement.

The domestic interested parties maintain that the provincial subsidy programs fall under Article 6 of the Subsidies Agreement because they cause serious prejudice to the importing country and the total value of the subsidies provided over the past ten years, spread over the total sales value of that period, far exceeds five percent of sales (*see* July 1, 1999, Substantive Response of the domestic interested parties at 21).

Given that receipt of benefits under any of the programs included in our calculation is not contingent upon export, none of these programs fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. The Department agrees with the domestic interested parties that because the benefits received under the provincial programs include subsidies to cover operating losses sustained by an enterprise (Operating Grants) and direct forgiveness of debt and grants to cover debt repayment (Grants for Payment of Principal and Interest Debentures), these programs are actionable under Article 6 of the Subsidies Agreement. Moreover, the Equity Infusions program could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds 5 percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to make such a calculation, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Rather, we are providing the Commission the following program descriptions.

Subsidy Programs

The subsidy programs, including a description of each, identified by the Department and used in its determination of the net countervailable subsidy likely to prevail if the order were revoked are listed below.

Grants for Payment of Principal and Interest on Debentures

The Government of Nova Scotia has provided Sysco with grants to cover principal payments and interest payments on its long-term debentures since 1982.

Operating Grants Provided to Sysco

The Government of Nova Scotia has provided Sysco with operating grants to cover its general operating expenses and for capital expenditures.

Equity Infusions Provided to Sysco

The Department determined in the original investigation that Sysco is unequityworthy and, therefore, the equity infusions made by the Government of Nova Scotia were found to be countervailable.

Debenture Guarantees Provided to Sysco

Federal debentures were issued in 1973 and 1975 for 20 years.

Forgiven Wharf Loan

In 1972, the federal government provided Sysco with a loan to construct a loading wharf, which was completed in June 1978.

Regional Development Incentive Program

This program was established in 1969 for the purpose of creating stable employment opportunities in certain regions in Canada where employment and economic opportunities are chronically low, particularly in the Atlantic provinces.

General Development Agreements (GDA)

GDAs provided the legal basis for various departments of the federal and provincial governments to cooperate in the establishment of economic assistance programs.

Economic and Regional Development Agreements (ERDA)

Essentially a continuation of GDAs, ERDAs established programs, delineated administrative procedures, and set up the relative funding commitments of the federal and provincial governments.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order on new steel rail from Canada would be likely to lead to continuation or recurrence of countervailable subsidies at the rates listed below.[9]

Manufacturer/exporter	Net subsidy rate (percent)
Sydney Steel Corporation	94.57
Bernard Railtrack Export Inc.	94.57
All Others	94.57

This notice serves as the only 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 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

[9] As noted above, due to a *de minimis* net subsidy found for Algoma, this Canadian producer/exporter was excluded from the order.

This five-year (''sunset'') review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: December 23, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–33975 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121399B]

Marine Mammals; File Nos. 763–1534 and P624

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

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given that two applicants have applied in due form for a permit and permit amendment for purposes of scientific research. The National Zoological Park, Smithsonian Institution, Washington, D.C. 20008–2598, wants a permit to import grey seals (*Halichoerus grypus*)specimens. Dr. Michael Moore, Woods Hole Oceanographic Institution, MS 33 Biology Department, Woods Hole, MA 02543, wants to amend permit no. 1032.

DATES: Written or telefaxed comments must be received on or before January 31, 2000.

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

[763–1534 and P624] - Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 (978/281–9250); and

[P624] - Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312);

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are 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 (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*)

The Smithsonian, NZP (File No. 763–1534–00) proposes to import from Canada skin samples taken from grey seals on Sable Island, Nova Scotia. Additionally, the applicant requests authority to obtain and import/export samples from all species of the Order Cetacea and Pinnipedia as they become available. The objective of the study is to use DNA analysis to determine if grey seal alternative mating strategies exist across all ages and provide comparable rates of success to the primary tenured strategy.

Dr. Moore (File No. P624) proposes to amend Permit No. 1032 which authorizes research on right whales and various other cetaceans. Dr. Moore requests an amendment to expand the area of activity to all U.S. and international waters; biopsy right whales, blue whales, sei whales and sperm whales, include acoustic analysis of blubber thickness, and conduct visual and passive acoustic surveys on marine mammals.

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 activities proposed are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on either 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 these particular requests 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.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 23, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–33981 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.110499B]

Marine Mammals; File No. 772#69–03

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla shores Drive, La Jolla, CA 92038 has been issued an amendment to scientific research Permit No. 1024 (File No. 772#69).

ADDRESSES: The amendment 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 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On October 5, 1999, notice was published in the **Federal Register** (64 FR 54002) that an amendment of Permit No. 1024, issued December 30, 1996 (62 FR 1875), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 1024 authorizes the permit holder to: conduct level B harassment activities [*i.e.* censuses] on, capture, handle, and release Antarctic pinnipeds in the South Shetland Islands, Antarctica. The holder is now authorized to increase the number of

Antarctic fur seal (*Arctocephalus gazella*) females captured for tooth extraction for age determination studies.

Dated: December 22, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–33982 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 122199C]

Marine Mammals; Permit No. 982 (File No. P254D)

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that Permit No. 982, issued to the Pacific Whale Foundation, 101 N. Kihei Road, Kihei, Maui, Hawaii 96753, was amended.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following offices:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130 Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Protected Resources Program Manager, Pacific Islands Area Office, NOAA, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96822–2396 (808/973–2937).

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak or Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 982 authorizes the harassment of humpback whales (*Megaptera novaeangliae*) during the conduct of observational and photo-identification studies in Hawaii waters. This amendment changes the expiration date of the permit to September 13, 1999.

Dated: December 223, 1999.

Ann Terbush,

Chief, Permits and Documentation Division, National Marine Fisheries Service.

[FR Doc. 99–33983 Filed 12–29–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Applications of the Chicago Mercantile Exchange for Designation as a Contract Market in South Eastern, South Western and Western Oriented Strand Board Futures and Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of terms and conditions of proposed commodity futures and options contracts.

SUMMARY: The Chicago Mercantile Exchange (CME or Exchange) has applied for designation as a contract market in South Eastern Oriented Strand Board, South Western Oriented Strand Board and Western Oriented Strand Board futures and options. The proposals were submitted under the Commission's 45-day Fast Track procedures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATE: Comments must be received on or before January 14, 2000.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521 or by electronic mail to *secretary@cftc.gov*. Reference should be made to the CME Oriented Strand Board (OSB) futures and option contracts.

FOR FURTHER INFORMATION, CONTACT: Please contact John Forkkio of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC (202) 418–5281. Facsimile number: (202) 418–5527. Electronic mail: *jforkkio@cftc.gov*.

SUPPLEMENTARY INFORMATION: The designation applications were submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposals, absent any contrary action by the Commission, may be deemed approved at the close of business on February 7, 2000, 45 days after receipt of the proposals. In view of the limited review period under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under ''What's New & Pending''.

Other materials submitted by the CME in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 C.F.R. 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the CME, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on December 27, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–33993 Filed 12–29–99; 8:45 am]

BILLING CODE 6351–01–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).

Title, Associated Form, and OMB Number: Personal Information Questionnaire; NAVMC 11064; OMB Number 0703–0012.

Type of Request: Reinstatement.

Number of Respondents: 16,700.

Responses Per Respondent: 1.

Annual Responses: 16,700.

Average Burden Per Response: 30 minutes.

Annual Burden Hours: 8,350.

Needs and Uses: The Personal Information Questionnaire is used to provide Headquarters, U.S. Marine Corps with a standardized method in rating officer program applicants in the areas of character, leadership, ability, and suitability for service as a commissioned officer. Respondents are educators, employers, and other professional individuals to be named by the applicant.

Affected Public: Individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Voluntary.

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 22, 1999.

Patrica L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–33933 Filed 12–29–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

ARMS Initiative Implementation

AGENCY: Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC). The EAC charters the development of new and innovative methods to optimize the asset value of the Government-Owned, Contractor-Operated ammunition industrial base for peacetime and national emergency requirements, while ensuring economical and efficient processes at minimal operating costs, matching critical skills, balancing community economic benefits, and becoming a model for defense conversion. This meeting will update the EAC and public on the status of ongoing actions, new items of interest, and suggested future direction/actions. Topics for this meeting will include—Logistics Support Facility (LST) Award using ARMS facility contract model; Office of Installations, Logistics and Environment and Pendulum Management Company LLC Team's ''Leasing Comparison'' presentation; tenant transition process at excessed facilities; the Industrial Operations Command Strategic Plan; procedures for competition of facilities; EAC membership nominations; criteria for tenant proposal evaluation; facility requirements due to Threatcon Level Alpha or higher security requirements; and PricewaterhouseCoopers' ''Best of Breed'' presentation. This meeting is open to the public.

Date of Meeting: February 8–9, 2000.

Place of Meeting: Xerox Document University (XDU), Routes 7 and 659, Leesburg, Virginia 20176.

Time of Meeting: 8 a.m.–5 p.m. on February 8 and 8 a.m.–2 p.m. on February 9.

FOR FURTHER INFORMATION CONTACT: Mr. Elwood H. Weber, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria Virginia 22333; Phone (703) 617–9788.

SUPPLEMENTARY INFORMATION: To assist in the EAC Meeting administrative support requirements, request that all attendees provide their desired overnight accommodations (2, 1 or 0 nights) to Mr. Elwood Weber (703) 617–9788/email eweber@hqamc.army.mil or Ms. Susan Alten (703) 617–4718/email susan.alten@hqda.army.mil. XDU is a multifunctional and secure campus type atmosphere, which requires all attendees to provide advance notification, even those not staying overnight. To insure your immediate accessibility and expeditious registration, we request your attendance confirmation with this office by January 19, 2000. After January 19 your requests will be accepted on a space available basis. Corporate casual is meeting attire.

Mary V. Yonts,

Army Alternate Federal Register Liaison Officer.

[FR Doc. 99–33986 Filed 12–29–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA No: 84.031]

Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, and Alaska Native and Native Hawaiian-Serving Institutions Programs; Notice Inviting Applications for New Awards for Fiscal Year 2000

Purpose of Programs

The Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, and Alaska Native and Native Hawaiian-Serving Institutions Programs are all authorized under Title III, Part A of the Higher Education Act of 1965, as amended (HEA). These programs will be referred to collectively in this notice as the Title III Part A programs. Each provides grants to eligible institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability, and increase their self-sufficiency; thereby supporting the elements of the National Education Goals that are relevant to these institutions' unique missions.

Special Notes

1. A grantee under the Developing Hispanic-Serving Institutions (HSI) Program authorized under Title V of the HEA may not receive a grant under any part of the Title III Part A program, if any part of its HSI Program grant would overlap with the Title III Part A Program grant. Further, an HSI Program grantee may not give up that grant in order to apply for a grant under any Title III Part

A program. Therefore, a current HSI Program grantee may not apply for a grant under any Title III Part A programs under this notice.

2. An institution that does not fall within the limitation described in paragraph one may apply for a fiscal year 2000 grant under any Title III Part A program as well as the HSI Program. However, the institution may receive only one grant under any of those programs. Accordingly, if an institution applies for a grant under more than one program it must indicate that fact in each application, and further indicate which grant it wishes to receive if it is selected to receive a grant under more than one program.

3. We have changed the way we collect information for determining the value of endowment funds and total expenditures for library materials. As a result of that change, we do not now have base year data beyond 1996–1997 data. Consequently, in order to award FY 2000 grants in a timely manner, we will use 1996–1997 base year data.

Applications Available: January 10, 2000.

Deadline For Transmittal of Applications: February 18, 2000 for Title III Part A Programs development grants; March 2, 2000 for Title III Part A Programs planning grants.

Electronic Submission of Planning Grant Applications

Methods for Submission of Grant Applications

Institutions may submit applications for planning grants under the Title III Part A Programs electronically or in a paper format. Institutions must submit paper applications for development grants under each Title III Part A program.

Electronic Submission

Starting with the fiscal year 2002 competition, we hope to develop the capability to distribute, receive, and process discretionary grant applications electronically. To that end, we are conducting a limited pilot project under which applicants can submit electronically their applications for selected discretionary grant programs. Applications for planning grants under the Title III Part A Programs (CFDA Nos.: 84.031A, N, T, and W) have been included in the pilot.

This pilot will involve the use of E–GAPS, the Electronic Grant Application System portion of the Grant Administration and Payment System (GAPS). If an applicant participates in an E–GAPS Pilot, it is important to note the following:

- Participation in the E–GAPS pilot is strictly voluntary.
- Applicants will be able to submit all documents electronically including the Application for Federal Education Assistance, ED 424, the ED 524 Budget form and all necessary assurances and certifications. Original signatures on required forms may be requested at a later date.
- No points will be added or subtracted from an applicant's score because the applicant chose to submit its application electronically.
- The electronic grant application for the Title III Part A Programs-Planning Grants can be accessed at: http://gapsweb.ed.gov/.

Deadline for Intergovernmental Review: April 18, 2000 for Title III Part A Programs development grants; May 2, 2000 for Title III Part A Programs planning grants.

Available Funds: Approximately $16,000,000 for the Strengthening Institutions Program; $3,000,000 for the American Indian Tribally Controlled Colleges and Universities Program; and $2,000,000 for the Alaska Native and Native Hawaiian-Serving Institutions Program.

Estimated Range of Awards: $330,000–365,000 for development grants under the Strengthening Institutions Program; $30,000–35,000 for planning grants under the Title III Part A Programs; and $347,000–$395,000 for development grants under the American Indian Tribally Native Hawaiian-Serving Institutions Program.

Estimated Average Size of Awards: $350,000 for development grants under the Strengthening Institutions Program; $32,500 for planning grants under the Strengthening Institutions Program; $371,000 for development grants under the American Indian Tribally Controlled Colleges and Universities Program; and $371,000 for development grants under the Alaska Native and Native Hawaiian-Serving Institutions Program.

Estimated Number of Awards: 44 development grants under the Strengthening Institutions Program; 14 planning grants under the Title III Part A Programs; 8 development grants under the American Indian Tribally Controlled Colleges and Universities Program; and 5 development grants under the Alaska Native and Native Hawaiian-Serving Institutions Program.

Project Period: 60 months for development grants under the Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, and Alaska Native and Native Hawaiian-Serving Institutions Program; and 12 months for planning grants under the Title III Part A Program.

Note: The Department is not bound by any estimates in this notice.

Special Funding Considerations: In tie-breaking situations, described in 34 CFR 607.23 of the Strengthening Institutions Program regulations, we award one additional point to an applicant institution that has an endowment fund for which the 1996–1997 market value per full-time equivalent (FTE) student was less than the comparable average per FTE student at similar type institutions. We also award one additional point to an applicant institution that had 1996–1997 expenditures for library materials per FTE student that were less than the comparable average per FTE student at similar type institutions.

For the purpose of these funding considerations, an applicant must demonstrate that the market value of its endowment fund per FTE student, and library expenditures per FTE student, were less than the following national averages for years 1996–1997:

	Average market value of endowment fund, per FTE student	Average library materials expenditures per FTE student
Two-year Public Institutions	$ 1,332	$ 45
Two-year Nonprofit, Private Institutions	11,556	121
Four-year Public Institutions	2,829	165
Four-year Nonprofit Private Institutions	45,579	245

If a tie remains, after applying the additional point or points, we determine that an institution will receive a grant according to a combined ranking of two-year and four-year institutions. This ranking is established by combining endowment values per FTE student and library expenditures per FTE student. The institutions with the lowest combined library expenditures per FTE student and endowment values per FTE student are ranked higher in numerical order.

Applicable Regulations: (a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 85, 86, 97, 98, and 99; (b) the regulations for this program in 34 CFR part 607. Amendments to 34 CFR part 607 relating to the American Indian Tribally Controlled Colleges and Universities and Alaska Native and Native-Hawaiian-Serving Institutions Programs are published in the final rule portion of the **Federal Register** of December 15, 1999, 64 FR 70146, 70153–70155.

For Applications or Information Contact: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW, 6th Floor, Washington, DC 20006–8513. Telephone (202) 502–7777; E-mail: darlene__collins@ed.gov

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at http://www.access.gpo.gov/nara/index.html.

Program Authority: 20 U.S.C. 1057.

Dated: December 23, 1999.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–33958 Filed 12–29–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO.: 84.031H]

Notice Inviting Applications for Designation as Eligible Institutions for fiscal year (FY) 2000 for the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions and Developing Hispanic-Serving Institutions (HSI) Programs

Purpose of These Programs: Under the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, and Alaska Native and Native Hawaiian-Serving Institutions Programs authorized under Part A of Title III of the Higher Education Act of 1965, as amended (HEA), institutions of higher education are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. Similarly, Hispanic-Serving Institutions are eligible to apply for grants under the HSI Program, now authorized under Title V of the HEA, if they meet specific statutory and regulatory requirements.

In addition, an institution that is designated as an eligible institution under those programs may also receive a waiver of certain non-Federal share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), Federal Work Study (FWS), and Undergraduate International Studies and Foreign Language Programs (UISFLP). These first two programs are student financial assistance programs authorized under Title IV of the HEA; the third program is authorized under Title VI of the HEA. Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III Part A or Title V programs.

Special Note: Two of the criteria that each eligible institution must satisfy relate to enrollment of needy students and Education and General (E&G) expenditures. However, we changed the collection processes for determining the thresholds for these criteria, and as a result, base year data beyond 1996–1997 is currently unavailable.

In order to award FY 2000 grants in a timely manner, we will use 1996–1997 base year data to determine eligibility. Moreover, for FY 2000, we will extend the eligibility status an additional year for all institutions designated as eligible in FY 1999, with one exception—Title III and Title V institutions whose grant expired on September 30, 1999. These institutions must apply for FY 2000 eligibility using 1996–1997 base year data. Of course, institutions that were not designated as eligible institutions in fiscal year 1999 must apply under this notice for that designation for fiscal year 2000.

Deadline for Transmittal of Applications:

- February 4, 2000 for applicant institutions that wish to apply for fiscal year 2000 grants under the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian-Serving Institutions, and HSI Programs.
- May 26, 2000 for applicant institutions that wish to apply only for waivers under the FSEOG, FWS, or UISFLP Programs.

Thus, if an applicant institution wishes to apply for a grant and a waiver, the deadline date is February 4, 2000.

Electronic Submission of applications: For FY 2000, we are offering applicant institutions the option of submitting their Designation of Eligibility applications electronically. Moreover, institutions that are unable to meet the needy student enrollment or the E&G expenditure requirement may also submit their waiver requests electronically.

Eligibility Applications Available: January 5, 2000.

Eligibility Information: To qualify as an eligible institution under any of the programs included in this notice, an accredited institution must, among other things, have a high enrollment of needy students, and its education and general (E&G) expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. The complete eligibility requirements for HSI Program institutions are found in the 34 CFR 606.2–606.5, which was published in the **Federal Register** of December 15, 1999, 64 FR 70146–70153. The complete eligibility requirements for the remaining programs are found in 34 CFR 607.2–607.5, a portion of which was also amended in the **Federal**

Register of December 15, 1999, 64 FR 70146, 70153–70155. The regulations may also be accessed by visiting the following Department of Education web site on the World Wide Web: http://www.ed.gov/offices/OPE/OHEP

Enrollment of Needy Students: Under 34 CFR 606.3(a) and 607.3(a), an institution is considered to have a high enrollment of needy students if—(1) At least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base (award) year 1996–1997 must be *more than* the median for its category of comparable institutions provided in the table set forth below in this notice.

Educational and General Expenditures per Full-Time Equivalent Student: An institution should compare its 1996–1997 average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the table set forth below in this notice. If the institution's E&G expenditure for the 1996–1997 base year are *less than* the average for its category of comparable institutions, it meets this eligibility requirement.

An institution's E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages and the relevant average E&G expenditures per FTE student for the base year for the four categories of comparable institutions:

Student	Median Pell Grant percentage	Average E&G FTE
2-year Public Institutions	26.9	$8,132
2-year Non-Profit Private Institutions	39.1	12,322
4-year Public Institutions	28.7	17,067
4-year Non-Profit Private Institutions	27.1	24,756

Waiver Information: Institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b), and 607.4(c) and (d). *Institutions requesting a waiver of the needy student requirement must include the detailed information as set forth in the instructions for completing the application.*

The waiver authority provided in 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3) refers to ''low-income'' students and families. The regulations define ''low-income'' as an amount that does not exceed 150 percent of the amount equal to the poverty level in the 1996–97 base year as established by the U.S. Bureau of the Census, 34 CFR 606.3(c) and 607.3(c). For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

FY 1996–97 ANNUAL LOW-INCOME LEVELS

Size of family unit	Contiguous 48 States, the District of Columbia and outlying jurisdictions	Alaska	Hawaii
1	$11,610	$14,490	$13,365
2	15,540	19,410	17,880
3	19,470	24,330	22,395
4	23,400	29,250	26,910
5	27,330	34,170	31,425
6	31,260	39,090	35,940
7	35,190	44,010	40,455
8	39,120	48,930	44,970

For family units with more than eight members, add the following amount for each additional family member: $3,930 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $4,920 for Alaska; and $4,515 for Hawaii.

The figures shown as low-income levels represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The Census levels were published by the U.S. Department of Health and Human Services in the **Federal Register** on March 18, 1999 (64 FR 13428–13430).

In reference to the waiver option specified in 606.3(b)(4) and 607.3(b)(4) of the regulations, information about ''metropolitan statistical areas'' may be obtained by requesting the *Metropolitan Statistical Areas, 1999,* order number PB99–501538, from the National Technical Information Services, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number 1–800–553–6847. There is a charge for this publication.

Applicable Regulations: Regulations applicable to the eligibility process include the Strengthening Institutions Program Regulations in 34 CFR part 607, HSI Program regulations in 34 CFR part 606, and the Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 82, 85, 86, 97, 98 and 99.

For Applications or Information Contact: Ellen M. Sealey, Margaret A. Wheeler or Anne S. Young, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, N.W., 6th Floor, Washington, D.C. 20006–8513. Telephone (202) 502–7777. Individuals

who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Program Authority: 20 U.S.C. 1057, 1059c and 1065a.

Dated: December 23, 1999.

Claudio R. Prieto,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–33959 Filed 12–29–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.339A; 84.339B]

Fund for the Improvement of Postsecondary Education—Learning Anytime Anywhere Partnerships (LAAP) (Preapplications and Applications); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000.

Purpose of Program: To provide grants or enter into cooperative agreements to enhance the delivery, quality, and accountability of postsecondary education and career-oriented lifelong learning through technology and related innovations.

For fiscal year (FY) 2000, the Secretary encourages applicants to design projects that focus on the invitational priorities set forth in the invitational priorities section of this application notice.

Eligible Applicants: Partnerships consisting of two or more independent agencies, organizations, or institutions, including institutions of higher education, community organizations, and other public and private institutions, agencies, and organizations. **Note:** A nonprofit organization must serve as the fiscal agent for a funded partnership.

Applications Available: December 30, 1999.

Deadline for Transmittal of Preapplications: March 3, 2000.

Deadline for Transmittal of Applications: June 9, 2000.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

Deadline for Intergovernmental Review: August 8, 2000.

Available Funds: $4,300,000. **Note:** Federal funds available under this competition may not pay for more than 50 percent of the cost of a project. The non-Federal share of project costs may be in cash or in kind, fairly evaluated, including services, supplies, or equipment.

Estimated Range of Awards: $100,000 to $500,000 per year.

Estimated Size of Awards: $333,333 per year.

Estimated Number of Awards: 12–13.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 48 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86.

Authorized Activities: Funds awarded to an eligible partnership must be used to conduct one or more of the following activities:

(a) Develop and assess model distance learning programs or innovative educational software.

(b) Develop methodologies for the identification and measurement of skill competencies.

(c) Develop and assess innovative student support services.

(d) Support other activities consistent with the statutory purpose of this program.

Invitational Priorities

The Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Invitational Priority 1

Projects to address the need to ensure that significant development costs can be justified by wide-scale applicability and long-term sustainability of technology-mediated distance education, and the need to find new ways to overcome the barriers that may inhibit faculty across institutions from working collectively.

Invitational Priority 2

Projects to develop high quality, interactive courseware that can be implemented to achieve the scale necessary to recoup large investments, but is modular and sufficiently flexible for faculty to shape and modify academic content.

Invitational Priority 3

Projects to package courses and programs to assist students who wish to draw from the offerings of multiple providers and to assist institutions to cooperate and share resources.

Invitational Priority 4

Projects to use skill competencies and learning outcomes in order to measure student progress and achievement in technology-mediated distance learning programs.

Invitational Priority 5

Projects to improve quality and accountability of technology-mediated distance education to ensure that credentials are meaningful, that educational providers are accountable, and that courses meet high standards.

Invitational Priority 6

Projects to create new technology-mediated education opportunities for underserved learners, especially those who have not always been well served by traditional campus-based education or common forms of distance education, including: individuals with disabilities; individuals who have lost their jobs; individuals making the transition from welfare to the workforce; and individuals seeking basic or technical skills or their first postsecondary education experience.

Invitational Priority 7

Projects to improve support services for students seeking technology-mediated distance education to ensure that they have complete and convenient

access to needed services such as registration, financial aid, advising, assessment, counseling, libraries, and many others.

Invitational Priority 8

Projects to remove or revise institutional, system, state, or other policies which are barriers to the implementation of new types of technology-mediated distance education.

Selection Criteria

The Secretary selects from the criteria in 34 CFR 75.210 to evaluate preapplications and applications for this competition. Under 34 CFR 75.201, the Secretary announces in the application package the selection criteria and factors, if any, for this competition and the maximum weight assigned to each criterion.

GPRA Participation

In 1993, Congress enacted the Government Performance and Results Act (GPRA), which directs federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Under the GPRA policy, the LAAP program has four primary objectives, with related performance indicators that grant recipients will be asked to include in their evaluation plans. The four objectives are: (1) Develop innovative partnerships resulting in economies of scale, delivering asynchronous distance education and training; (2) increase access to asynchronous distance education for diverse groups of learners, especially to prepare them for work in technical and other areas of critical shortage or for the changing requirements of fields; (3) enable advancements in quality and accountability within postsecondary, asynchronous distance education; (4) enable advancements in flexibility of distance education design and delivery. More details about LAAP performance indicators are provided on the LAAP website: www.ed.gov/offices/OPE/FIPSE/LAAP.

FOR APPLICATIONS CONTACT: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its e-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify the competition as follows: CFDA number 84.339A.

FOR FURTHER INFORMATION CONTACT: The Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 1990 K Street, N.W., Washington, DC 20006–8544. Telephone: (202) 502–7500. Individuals may also request applications or request information by submitting the name of the competition, their name, and postal mailing address to the e-mail address LAAP@ed.gov. The application text may be obtained from the Internet address: http://www.ed.gov/FIPSE/LAAP.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact office listed in the preceding paragraph.

Individuals with disabilities also may obtain a copy of the application package in an alternate format by contacting the email address: LAAP@ed.gov

However, the Department is not able to reproduce in alternate format the standard forms included in the application package.

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Program Authority: 20 U.S.C. 1070f *et seq.*

Dated: December 23, 1999.

Maureen A. McLaughlin,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 99–33957 Filed 12–29–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science

Office of Financial Assistance Program Notice 00–09: Carbon Sequestration Research Program

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research on Carbon Sequestration in the Terrestrial Biosphere and the Oceans.

DATES: Applicants are encouraged (but not required) to submit a brief preapplication for programmatic review. Early submission of preapplications is encouraged to allow time for meaningful dialog.

The deadline for receipt of formal applications is 4:30 p.m., E.S.T., March 2, 2000, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2000 and early Fiscal Year 2001.

ADDRESSES: Preapplications, referencing Program Notice 00–09, for Section A on Terrestrial Biosphere should be sent E-mail to roger.dahlman@science.doe.gov and for Section B on the Oceans to anna.palmisano@science.doe.gov.

Formal applications, referencing Program Notice 00–09, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 00–09. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. John Houghton, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–8288, E-mail: john.houghton@science.doe.gov, fax: (301) 903–8519. The full text of Program Notice 00–09 is available via the Internet using the following web site address: http://www.sc.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION:

Predictions of global energy use in the next century suggest a continued increase in carbon emissions and rising concentrations of carbon dioxide (CO_2) in the atmosphere unless major changes

are made in the way we produce and use energy—in particular, how we manage carbon.

One way to manage carbon is to use energy more efficiently to reduce our need for a major energy and carbon source—fossil fuel combustion. Another way is to increase our use of low-carbon and carbon-free fuels and technologies, such as nuclear power and renewable sources such as solar energy, wind power, and biomass fuels.

The third and newest way to manage carbon, capturing and securely storing carbon either from the global energy system or directly from the atmosphere, is relatively new. Although many options exist to capture and sequester carbon dioxide, the focus of this solicitation is fundamental research that would enable: (a) The operation of the terrestrial biosphere in such a way to enhance the absorption and retention of atmospheric carbon; (b) The operation of the ocean surface biota also to enhance the absorption and retention of atmospheric carbon; and (c) The use of the deep ocean to store carbon dioxide that has been already separated, captured, and transported. The result of carbon retention by terrestrial and oceanic systems is commonly termed ''carbon sequestration.''

Any viable system for sequestering carbon must have a number of characteristics. It must be effective and cost-competitive with alternative means, such as renewable energy. It must have environmentally benign consequences, at least compared to alternative solutions, including no action. It must be able to be monitored and verified, because contributions to carbon sequestration almost certainly need to be measured. Research sponsored by this program could contribute to any of these goals.

This solicitation invites applications for individual projects on carbon sequestration in the terrestrial biosphere and in the oceans. The proposed research should be fundamental in nature. We are not accepting applications that test demonstrations of engineered technologies. Principal Investigators may consider the two existing DOE carbon sequestration research centers, CSITE (Carbon Sequestration in Terrestrial Ecosystems), and DOCS (DOE Center for Research on Ocean Carbon Sequestration), and the ways in which their research can complement programs there in the Centers.

Technical Areas of Interest

A. Sequestration in the Terrestrial Biosphere:

Carbon pools in the natural biogeochemical cycle are immense and quantitative estimates of the natural sequestration of carbon in various locations of the terrestrial biosphere are improving in accuracy. The feasibility of various options for enhancing sequestration, however, is only beginning to be explored. The DOE ''Carbon Sequestration Research and Development Report'' (available at http://www.sc.doe.gov/production/ober/carbseq.html) identifies potential opportunities for sequestering carbon in many ecosystems using a variety of mechanisms. The scientific foundation of different potential approaches needs to be developed. In particular, better estimates of biological fixation and metabolism of carbon are needed, along with improved data on the quantities of carbon sequestered. The intent is to develop techniques that increase fixation and alter carbon metabolism to enhance sequestration. Advanced research is encouraged that will elucidate ways of modifying natural biological and physical processes in terrestrial ecosystems to enhance carbon sequestration rates and capacities.

In general, the research should consider mechanisms and processes that can be manipulated in terrestrial ecosystems to enhance net uptake and sequestration of atmospheric carbon dioxide. Field tests are encouraged that consider feasibility and effectiveness of applying new approaches with managed and/or unmanaged terrestrial ecosystems, and which will focus on those processes or properties of ecosystems for which alteration or management will offer significant potential for enhancing the net sequestration of carbon.

The following examples are illustrative of technical areas relevant to carbon sequestration research involving the terrestrial biosphere:

1. Increasing the net fixation of atmospheric carbon dioxide by terrestrial plants with emphasis on physiology and rates of photosynthesis of vascular plants, retention of carbon by ecosystems and enhancing the translocation of carbon to soil. Research might focus on:

—Intrinsic rates of carboxylation and changes in carbon balance of vascular plants.

—Native plant species that exhibit rapid growth under a wide range of environmental conditions.

—Ways that above-and below-ground partitioning of fixed carbon can generate long-lived sequestered products through the manipulation of nutrients, water and other environmental variables. This would include biotechnological approaches to increase the availability or supply of nutrients from natural sources that otherwise limit plant productivity.

—Understanding root architecture for optimal below-ground productivity and transformation of plant biomass, including lignified materials, into soil organic matter.

2. Reducing the emission of CO_2 from soils due to heterotrophic oxidation of soil organic carbon. Research might focus on:

—Defining and producing optimal mix of organisms and substrates for slowing oxidation of plant residues in soil.

—Isolating and defining the environmental and biochemical factors that control the oxidation rate of soil carbon and how these factors could be modified to slow the rate.

3. Developing and demonstrating new, novel techniques for measuring changes of the quantity of carbon in biomass and soil of terrestrial ecosystems. Research might focus on:

—Non-invasive methods that can measure carbon changes over time. The desired resolution would imply the ability to measure changes during a three year period of as little as 50g per square meter (0.5 tonnes per hectare) for biomass or 100g per square meter (1.0 tonnes per hectare) for soil.

—*In situ* devices for producing time series measurements for a given location, where detection is the same resolution as above.

—Remote measurement devices for detecting relative changes of carbon source or sink strength of terrestrial ecosystems at same resolution as stated above.

4. Assessing the beneficial and adverse side effects of enhancing sequestration in the natural terrestrial biosphere. Research might focus on:

—Certain management practices, such as low tillage agriculture, may enhance carbon sequestration. What secondary impacts affect the soil and runoff as a consequence of these practices, such as soil fertility, erosion control, and possible increased use of pesticides?

—How would altering the carbon cycle affect the biogeochemical cycling of other elements?

—What might be the impact of enhancing the carbon content of soils on the structure and function of ecosystems including biodiversity?

B. Sequestration in the Oceans

The ocean represents a large current sink for the sequestration of anthropogenic CO_2 emissions as well as a large potential for further enhancement. Two strategies for enhancing carbon sequestration in the ocean have been proposed. One strategy is the enhancement of the net oceanic uptake from the atmosphere by fertilization of phytoplankton with micro-or macronutrients. A second strategy is the direct injection of a relatively pure CO_2 stream to ocean depths greater than 1000 m. Sources of CO_2 might include power plants, industries or other sources. The long term effectiveness and potential environmental consequences of ocean sequestration by either strategy, however, are as yet unknown.

Examples of relevant research areas to the issue of enhanced carbon sequestration by the oceans.

1. Environmental consequences of long term ocean fertilization. Research might focus on:

—Examining changes in structure and function of marine ecosystems including community structure of phytoplankton and zooplankton, ocean food webs and trophodynamics, resulting from ocean fertilization.

—Examining changes in natural oceanic biogeochemical cycles (carbon, nitrogen, phosphorus, silicon, and sulfur) resulting from carbon sequestration.

2. Effectiveness of ocean fertilization on a large scale. Research might focus on:

—Understanding the biological pumping of carbon to deep waters, the export of particulate organic carbon and particulate inorganic carbon to the deep sea, and mineralization or dissolution of all forms at depth.

—Determining how micronutrients (such as iron) and macronutrients (such as nitrogen and phosphorus) regulate the biological pump in the ocean.

—Determining to what extent increased carbon fixation in surface waters will result in an increase in carbon sequestered in the deep ocean, and how long it will remain sequestered. One approach might be the use of coupled physical, chemical and biological models.

3. Environmental consequences of direct injection of CO_2 into the ocean in midwater or deep sea habitats. Research might focus on:

—Understanding the effects of sustained release of concentrated CO_2 on biogeochemistry and ecosystem structure and function.

—Determining the effects of changes in pH and CO_2 on organisms from midwater and deep sea habitats.

—Understanding the longer-term fate of carbon, which is added to the ocean including the carbonate chemistry of mid- and deep-ocean water.

4. Effectiveness of direct injection of CO_2 for carbon sequestration. Research might focus on:

—Addressing weaknesses in Ocean General Circulation Models (OGCMs), specifically western boundary currents, ocean bottom currents and sub-grid scale processes, and test models using natural or experimental tracers.

—Coupling near-field with far-field effects of CO_2 injection, for example, couple plume modeling with basin and global scale ocean circulation models.

Collaboration

Applicants are encouraged to collaborate with researchers in other institutions, such as: universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories, where appropriate, and to include cost sharing and/or consortia wherever feasible. Additional information on collaboration is available in the Application Guide for the Office of Science Financial Assistance Program that is available via the Internet at: http://www.sc.doe.gov/production/grants/Colab.html.

Program Funding

It is anticipated that up to a total of $2,000,000 will be available for awards in this area during FY 2000, contingent upon availability of appropriated funds. Multiple year funding of awards is expected, and is also contingent upon availability of funds, progress of the research, and continuing program need.

Preapplications

A brief preapplication may be submitted. The preapplication should identify on the cover sheet the institution, Principal Investigator name, address, telephone, fax and E-mail address, title of the project, proposed collaborators, and the technical area of scientific research (i.e., A. Sequestration in the Terrestrial Biosphere or B. Sequestration in the Oceans). The preapplication should consist of a two to three page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Carbon Sequestration Research Program.

Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the formal application.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,

2. Appropriateness of the Proposed Method or Approach,

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.sc.doe.gov/production/grants/grants.html. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made. The research project description must be 15 pages or less, exclusive of attachments and must contain an abstract or summary of the proposed research. On the SC grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and E-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington DC on December 22, 1999.

Ralph H. De Lorenzo,

Acting Associate Director of Science for Resource Management.

[FR Doc. 99–33939 Filed 12–29–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–133–001]

Algonquin Gas Transmission Company; Notice of Correction Filing

December 23, 1999.

Take notice that on December 21, 1999, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Twelfth Revised Sheet No. 431, to become effective January 1, 2000.

Algonquin states that the purpose of this filing is to make a correction to the corresponding tariff sheet filed in Algonquin's December 7, 1999 filing in Docket No. RP00–133–000, which revises the Gas Research Institute (GRI) surcharges effective January 1, 2000. Specifically, Algonquin states that its December 7, 1999 filing included Tenth Revised Sheet No. 431, which reflected an incorrect sheet number designation as well as an incorrect base tariff rate for Rate Schedule X–39. Algonquin states that the Twelfth Revised Sheet No. 431 filed herein reflects the correct base tariff rate for Rate Schedule X–39 as well as the new GRI surcharges to be effective January 1, 2000.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33887 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6759–016]

Aquenergy Systems, Inc.; Notice of Availability of Final Environmental Assessment

December 23, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the application requesting the Commission's authorization to surrender the license for the existing Apalache Hydroelectric Project, located on the South Tyger River in Spartanburg County, South Carolina, and has prepared a Final Environmental Assessment (Final EA) for the proposed action.

In the Final EA, Commission staff concludes that approval of the subject surrender of license would not produce any significant adverse environmental impacts; consequently, the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the Final EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The Final EA also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

For further information, please contact Jim Haimes at (202) 219–2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33874 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. OA00–3–000

Central Illinois Light Company; QST Energy Trading Inc., Notice of Filing

December 23, 1999.

Take notice that on December 17, 1999, Central Illinois Light Company and QST Energy Trading Inc. submitted revised standards of conduct under Order No. 889 *et seq.*[1]

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, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 7, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33867 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–31–001]

Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company; Notice of Filing

December 23, 1999.

Take notice that on December 14, 1999, Columbia Gas Transmission Corporation and Columbia Gulf

[1] Open Access Same-Time Information System (Formerly Real-Time Information network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–1996 ¶31,035 (April 24, 1996), Order No. 889–A, *order on rehearing*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), III FERC Stats. & Regs. ¶31,253 (November 25, 1997).

Transmission Company (Columbia Pipelines) tendered for filing a response to the Commission's order issued on November 24, 1999 in the above-referenced proceeding.[1]

In the response Columbia Pipelines states that in the event that any Y2K-related communication failure that would render the NAVIGATOR system inaccessible through the normal electronic bulletin board process, the Columbia Pipelines are offering to all shippers several alternative methods to schedule their nominations.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 28, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202-208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33882 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–3–001]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes to FERC Gas Tariff

December 23, 1999.

Take notice that on December 17, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing a revised electronic disk containing corrected versions of the following tariff sheets to Destin's FERC Gas Tariff, Original Volume No. 1.

Original Sheet No. 201, Original Sheet No. 202, Original Sheet No. 203.

Destin states that the purpose of this filing is to correct software formatting errors in compliance with the Commission's order issued December 3, 1999.

Destin states that copies of the filing will be served upon parties designated on the official service list, its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33865 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–51–000]

East Tennessee Natural Gas Company; Notice of Application

December 23, 1999.

Take notice that on December 13, 1999, East Tennessee Natural Gas Company (East Tennessee), 1001 Louisiana, Houston, Texas 77002, filed in the above docket, an application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act (NGA), 15 U.S.C. 717f(b) and 717f(c), as amended, and Subpart A of the regulations of the Federal Energy Regulatory Commission (Commission) thereunder, 18 CFR 1575 *et seq.*, Subpart A, for authorization to construct, install and operate: (1) 15.16 miles of 12-inch pipeline looping in Washington, Smyth and Wyth Counties, Virginia; (2) three new meter stations in McMinn, Greene and Roane Counties, Tennessee, and a modification to an existing meter station in Morgan County, Tennessee; (3) approximately 0.62 miles of 22-inch replacement pipe on East Tennessee's 3100 Line, and (4) approximately 450 feet of 10″ and 12″ replacement piping in addition to two (2) mainline valves of East Tennessee's 3200 Line at the Tennessee River Crossing. Additionally, East Tennessee is seeking certain other authorizations, including authorization to up rate four compressor units located at Station 3101 in Robertson County, Tennessee and Station 3210 in Marion County, Tennessee and authorization to hydrostatically test to increase the Maximum Allowable Operating Pressure (MAOP) of 26.42 miles of pipe on East Tennessee's 3100 Line in Smith and Overton Counties, Tennessee. Finally, East Tennessee requests that the Commission authorize the abandonment of approximately 0.62 miles of pipe being replaced along East Tennessee's 3100 plus 250 feet of pipe, two (2) mainline valve assemblies and miscellaneous fittings and appurtenances being replaced along the 3200 Line by the above-referenced replacement pipe. East Tennessee submits that these activities are necessary to provide additional firm transportation service to eight (8) customers in the part of East Tennessee's pipeline system located in eastern Tennessee and southwest Virginia (Rocky Top Expansion Project)

East Tennessee states that as a result of an open season conducted between May 28 and June 23, 1999, East Tennessee has entered precedent agreements for firm transportation service with eight (8) Shippers for a total of 36,493 dekatherms per day of firm transportation service through the proposed facilities for a primary term of ten years. East Tennessee further states that transportation service to the Shippers will be provided under East Tennessee's Rate Schedule FT–A.

East Tennessee states that the proposed additions, modifications and testing is estimated to be $21,162,000. East Tennessee proposes to place the Rocky Top Expansion Project in service by November 1, 2000.

The project is more fully set forth in the application on file with the Commission and open for public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (call [202] 208–2222 for assistance).

Any questions regarding this application should be directed to Susan T. Halbach, Senior Counsel, P.O. Box 2511, Houston, Texas 77252 (713) 420–5751.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before January 13, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in

[1] 89 FERC ¶ 69,228 (1999).

determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds tat a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for East Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33864 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–041]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 23, 1999.

Take notice that on December 21, 1999, El Paso Natural Gas Company (El Paso) tendered for filing three firm Transportation Service Agreements (TSAs) between El Paso and Enron North America Corp. to be effective January 1, 2000.

El Paso states that the above TSAs are being submitted for Commission acceptance of two negotiated rate provisions pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before December 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33878 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–040]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 23, 1999.

Take notice that on December 20, 1999, El Paso Natural Gas Company (El Paso) tendered for filing a firm Transportation Service Agreement (TSA) between El Paso and Williams Energy Marketing & Trading Company (Williams) to be effective January 1, 2000.

El Paso states the TSA is being filed to implement a negotiated rate provision pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

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 service 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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33879 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–286–001]

Granite State Gas Transmission, Inc.; Notice of Pro Forma Filing

December 23, 1999.

Take notice that on December 21, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third

Revised Volume No. 1, pro forma tariff sheets to supersede its currently effective tariff sheets numbers 24, 146, 147, and 150.

Granite State states that the pro forma tariff sheets are being filed to address concerns raised at the Technical Conference held in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33881 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–227–004]

High Island Offshore System, L.L.C.; Notice of Compliance Filing

December 23, 1999.

Take notice that on December 21, 1999 High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of April 6, 1999.

First Revised Sheet No. 1
First Revised Sheet No. 2
First Revised Sheet No. 5
First Revised Sheet No. 6
Original Sheet No. 10A
First Revised Sheet No. 13
First Revised Sheet No. 15
First Revised Sheet No. 16
Original Sheet Nos. 26 thru 44
First Revised Sheet No. 54
First Revised Sheet No. 55
First Revised Sheet No. 64
First Revised Sheet No. 70
First Revised Sheet No. 72
First Revised Sheet No. 79
First Revised Sheet No. 88
First Revised Sheet No. 89
First Revised Sheet No. 99
First Revised Sheet No. 100
First Revised Sheet No. 101
First Revised Sheet No. 114
First Revised Sheet No. 116
First Revised Sheet No. 117
First Revised Sheet No. 123
Original Sheet No. 123A
First Revised Sheet No. 126
First Revised Sheet No. 134
First Revised Sheet No. 139
First Revised Sheet No. 143
First Revised Sheet No. 174
First Revised Sheet No. 177
First Revised Sheet No. 178
Original Sheet Nos. 201 thru 211
First Revised Sheet No. 212

HIOS states that such tariff sheets are being submitted to comply with the Office of Pipeline Regulation's December 14, 1999, Letter Order in this proceeding.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33880 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–48–001]

Iroquois Gas Transmission System, L.P.; Notice of Filing

December 23, 1999.

Take notice that on December 8, 1999, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing a response to the Commission's order issued on November 24, 1999 in the above referenced proceeding.[1]

Iroquois states that in the event that any Y2K-related communication failures during the Y2K rollover period it will not impose penalties that might otherwise apply when their occurrence is a result of good faith efforts to work within the contingency plan.

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 on or before December 28, 1999. protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rim.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33883 Filed 12–29–99 8:45 am]

BILLING CODE 6717–01–M

[1] 89 FERC ¶ 69,228 (1999).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

K N Interstate Gas Transmission Co.; Notice of Tariff Filing

[Docket No. RP000–105–002]

December 23, 1999.

Take notice that on December 20, 1999, K N Interstate Gas Transmission Co. (KNI) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–C, the following revised tariff sheet, to be effective January 1, 2000:

Second Substitute Fourteenth Revised Sheet No. 4

KNI states that this filing corrects an inadvertent error made during the submission of the annual GRI filing, approved by the Commission in Docket No. RP99–323–000. KNI proposes an effective date of January 1, 2000, in accordance with the Letter Order dated September 29, 1999 in the above referenced Docket.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33886 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–146–000]

K N Interstate Gas Transmission Co.; Notice of Reconciliation Filing

December 23, 1999.

Take notice that on December 21, 1999, K N Interstate Gas Transmission Co. (KNI) tendered for filing its annual reconciliation filing pursuant to Section 35 (Crediting of Imbalance Revenue) of its General Terms and Conditions of its FERC Gas Tariff, Third Revised Volume No. 1–B.

KNI has served copies of this filing upon all jurisdictional customers, interested State Commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33888 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–21–002]

Northern Border Pipeline Company; Notice of Amendment

December 23, 1999.

Take notice that on December 17, 1999, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–21–002, an amendment to its application in Docket No. CP99–21, for a certificate of public convenience and necessity, pursuant to Section 7(c) of the Natural Gas Act and Part 157 of the Commission's regulations, to construct and operate pipeline and compression facilities, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

On March 25, 1999, Northern Border filed with the Commission an amendment to its application in Docket No. CP99–21–001, wherein Northern Border modified the design of the pipeline and compression facilities it proposes. By this amendment, Northern Border now proposes to install approximately 34.4 miles of 30-inch pipeline (rather than 36-inch pipeline, as previously proposed), commencing from Northern Border's 36-inch pipeline near Manhattan, Illinois to a point near North Hayden, Indiana. The proposed pipeline extension will interconnect with Northern Indiana Public Service Company (NIPSCO) at the terminus of the pipeline at which point Northern Border proposes to install a meter station. The pipeline extension between Manhattan and North Hayden will have a design capacity of 544,000 Mcf/d and a maximum operating pressure of 1,050 psig. Due to the potential development of a new airport along the route of the proposed pipeline, Northern Border has been requested and proposes to install a tee and side value on the pipeline extension near the site. Further, the planned cooling modifications at proposed Compressor Station No. 18 have been eliminated. The change in pipeline diameter from a 36-inch to a 30-inch, and the elimination of cooling at Compressor Station No. 18 are the only facility changes from those proposed in the March 25, 1999, amendment.

As now amended, the estimated project cost is $94.4 million, in fourth quarter 1999 dollars. Northern Border says that it does not intend to use its cost projection in the instant application as the basis for an incentive rate proposal. Northern Border filed additional exhibits which compare the transportation cost for the year 2002 without the proposed facilities to the projected year 2002 cost with the proposed facilities in order to show the impact of rolling-in the proposed facilities on the first calendar year of operation's cost of service. Northern Border's year 2002 projected unit cost of service rate, including fuel, the proposed facility costs, and the related volumes is 4.30 cents per 100 Dekatherm-Miles, which is the same as the unit cost without the proposed facilities and related volumes. Northern Border says that this demonstrates that Project 2000 is financially viable without ''subsidy'' from existing customers.

On September 15, 1999, the Commission issued a Statement of Policy in Docket No. PL99–3–000, ''Certification of new Interstate Natural Gas Pipeline Facilities''. The Policy Statement announced changes to the pricing and rate criteria applicable to new construction projects and, specified that applicants proposing to add new pipeline capacity must satisfy a threshold requirement of ''no financial subsidies''. The Policy Statement also announced that a project will also be evaluated based upon consideration of (i) the interests of the applicant's existing customers; (ii) the interest of competing existing pipelines and their captive customers, and (iii) the interests of landowners and surrounding communities. Where a project results in adverse impacts to any of members of these three stakeholder groups, the project sponsor must show how the specific public benefits resulting from its project outweigh the adverse effects the members of the three stakeholder groups.

Northern Border states that Project 2000, as now amended, meets the Commission's threshold ''no financial subsidies'' requirement of for certification. Further, its says that the public benefits of Project 2000 outweigh any adverse impacts to any members of the three stakeholder groups identified in the Policy Statement, because in its amendment, Northern Border describes in detail how Project 2000 does not have any adverse impact on the three stakeholder groups listed in the Policy Statement. Northern Border therefore requests that the Commission promptly certificate Project 2000, as hereby amended, and that such approvals issue no later than March 15, 2000.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 14, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court. The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonments and a grant of the certificate are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern Border to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33944 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–7–000]

PanEnergy Texas Intrastate Pipeline Company; Notice of Petition for Rate Approval

December 23, 1999.

Take notice that on December 13, 1999, PanEnergy Texas Intrastate Pipeline Company (PTIP) filed pursuant to Section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate of 6.374 per MMBtu for interruptible transportation services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date of PTIP's Petition, PTIP's rates for firm and interruptible storage services will be deemed to be fair and equitable. The Commission may within such 150 day period extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before January 6, 2000. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33877 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–9–000]

PG&E Texas Pipeline, L.P.; Notice of Petition for Rate Approval

December 23, 1999.

Take notice that on December 20, 1999, PG&E Texas Pipeline, L.P. (PG&E TPLP) filed a Petition for Approval of Transportation Rates under Section 311 of the NGPA. In its Petition, PG&E TPLP seeks approval of rates for firm and interruptible transportation and interruptible parking and lending service. PG&E TPLP proposes that the rates be made effective December 20, 1999.

PG&E TPLP is an intrastate pipeline as defined in Section 2(16) of the NGPA, operating in the State of Texas.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date of PG&E TPLP Petition, PG&E TPLP's rates for firm and interruptible transportation and parking services will be deemed to be fair and equitable. The Commission may within such 150 day period extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before January 6, 2000. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/*

online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33875 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–8–000]

PG&E Texas Pipeline, L.P.; Notice of Petition for Rate Approval

December 23, 1999.

Take notice that on December 20, 1999, PG&E Texas Pipeline, L.P. (PG&E TPLP) filed a Petition for Approval of Contract Storage Rates under Section 311 of the NGPA. PG&E TPLP states that its petition is filed pursuant to Section 284.123(b)(2)(i) of the Commission's regulations. In its petition, PG&E TPLP proposes initial rates for firm and interruptible contract storage services. PG&E TPLP proposes that the contract storage rates be made effective December 20, 1999.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date of PG&E TPLP's Petition, PG&E TPLP's rates for firm and interruptible contract storage services will be deemed to be fair and equitable. The Commission may within such 150 day period extend the time for action or institute a proceeding in which all interested parties will be afforded an opportunity for written comments and the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before January 6, 2000. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33876 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 67; 120; 2085; 2175]

Southern California Edison; Notice of Southern California Edison's Request to use Alternative Procedures in Filing License Applications

December 23, 1999.

On December 10, 1999, the existing licensee, Southern California Edison (SCE) filed a request to use the Commission's alternative procedures in submitting applications to relicense four existing hydroelectric projects—Big Creek No. 2A, 8, and Eastwood (FERC No. 67); Big Creek No. 3 (FERC No. 120); Mammoth Pool (FERC No. 2085); and Big Creek No. 1 and 2 (FERC No. 2175). The projects are located in the San Joaquin River Basin of California, and have a combined capacity of about 871.6 megawatts. This notice invites comments on SCE's request, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date.

The alternative procedure being requested here would combine the prefiling consultation process with the environmental review process, allowing the applicants to file an applicant-prepared Environmental Assessment in lieu of Exhibit E of the license applications. This differs from the traditional process, in which the applicant consults with agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff performs all of the environmental review after the application is filed. the alternative procedures are intended to reduce redundancies in the licensing process by combining the prefiling consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants. The alternative procedures can be tailored to the particular project under consideration.

Alternative Procedures and the Big Creek Projects

In this instance, SCE is proposing a consolidated relicensing of our projects within what is known as the Big Creek System. An applicant-prepared environmental assessment would be filed on all four projects with their applications. SCE also intends on negotiating an agreement on the relicensing of the projects by December, 2004. The application on the Mammoth Pool project is due to be filed in 2005, while the other three applications are due in 2007.

Comments

SCE has demonstrated that it has made an effort to contact resource agencies, Indian tribes, nongovernmental organizations (NGOs), and others affected by the proposal, and that a consensus likely exists that the use of the alternative procedures is appropriate in this case. SCE has also submitted a communications protocol that was developed in consultation with interested entities.

Interested parties have 30 days from the date of this notice to file with the Commission, any additional comments on the licensee's proposal to use the alternative procedures. The licensee's request may be viewed on the web at http://rimsweb1.ferc.fed.us/rims/. Call 202–208–2222 for assistance.

Filing Requirements

Any comments must be filed by providing an original and 8 copies as required by the Commission's regulations to: Federal Energy Regulatory Commission, Office of the Secretary, Dockets—Room 1A, 888 First Street, NE, Washington, DC 20426.

All comment filings must bear the heading ''Comments on the Alternative Procedure,'' and include the project names and numbers: Big Creek No. 2A, 8, and Eastwood (FERC No. 67); Big Creek No. 3 (FERC No. 120); Mammoth Pool (FERC No. 2085); and Big Creek No. 1 and 2 (FERC No. 2175). For further information, please contact Vince Yearick at (202) 219–3073 or e-mail at vince.yearick@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33868 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–12–000]

Southern Natural Gas Company; Notice of Refund Report

December 23, 1999.

Take notice that on December 17, 1999, Southern Natural Gas Company (Southern) tendered for filing a Refund Report.

Southern states that pursuant to Section 23.3 of the General Terms and

Conditions of Southern's Tariff the Refund Report sets forth Rate Schedule ISS revenues to be refunded to Rate Schedule CSS customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before December 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33866 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–58–002]

Southwest Gas Storage Company; Notice of Compliance Filing

December 23, 1999.

Take notice that on December 20, 1999, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to be effective December 15, 1999:

Sub Original Sheet No. 140

Southwest states that the purpose of this filing is to comply with the Commission's Letter Order issued on December 10, 1999 in Docket Nos. RP00–58–000 and RP00–58–001, 89 FERC ¶ 61,261. The revised tariff sheet included herewith modifies Section 12.6 of the General Terms and Conditions, as directed by the Commission.

Southwest states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

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. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33884 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–145–000]

Sumas International Pipeline Inc.; Notice of Request for Waivers

December 23, 1999.

Take notice that on December 21, 1999, Sumas International Pipeline Inc. (SIPI), filed a request for waiver of GISB electronic and interactive web site standards until its Part 284 shippers request that SIPI implement those standards on its system.

SIPI states that its waiver request is consistent with waivers granted by the Commission for comparable interstate pipelines.

SIPI states that copies of the filing have been mailed to all customers of SIPI and other Interested Parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before December 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33889 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–66–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

December 23, 1999.

Take notice that on December 20, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Original Sheet No. 656A. Tennessee requests an effective date of December 13, 1999.

Tennessee states that it is filing the hard copy of Original Sheet No. 656A in compliance with the Commission's December 10, 1999 Letter Order in the above-referenced docket. Tennessee Gas Pipeline Company, 89 FERC (61,260 (1999)). Tennessee further states that the hard copy of the tariff sheet is being filed now since it was inadvertently omitted from its original November 12, 1999 filing in this docket.

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. This filing may be viewed on the web at http://www/ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33885 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–39–000, et al.]

Interstate Power Company, et al.; Electric Rate and Corporate Regulation Filings

December 22, 1999.

Take notice that the following filings have been made with the Commission:

1. Interstate Power Company

[Docket No. EC00–39–000]

Take notice that on December 13, 1999, Interstate Power Company (IPC), pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b, filed an Application for approval to sell its Medford Junction 69/12.5 kV step-down distribution substation (Substation) in Steele County, Minnesota, to Northern States Power Company (NSP), another public utility subject to Commission jurisdiction. The total sale price is $54,515.04.

Comment date: January 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Delmarva Power & Light Company; Atlantic City Electric Co; DPL REIT, Inc. and Conectiv Atlantic Generation, LLC

[Docket No. EC00–40–000]

Take notice that on December 17, 1999, Delmarva Power & Light Company (Delmarva), Atlantic City Electric Company (Atlantic), DPL REIT, Inc. (CDG) and Conectiv Atlantic Generation, LLC (CAG) (collectively, the Applicants) submitted a joint application under Section 203 of the Federal Power Act and Part 33 of the Commission's Regulations to request authorization and approval for Delmarva and Atlantic to transfer certain jurisdictional transmission facilities to CDG and CAG. The Applicants' proposed closing date for the transfer is on or about May 1, 2000. The Applicants request approval of the transfer by April 1, 2000.

The Applicants state copies of this joint application have been served upon their wholesale requirements customers, the state regulatory commissions of New Jersey, Delaware, Maryland and Virginia and on the Pennsylvania-New Jersey-Maryland Interconnection, LLC.

Comment date: January 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Tenaska Alabama Partners, L.P.

[Docket No. EG00–54–000]

Take notice that on December 17, 1999, Tenaska Alabama Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Alabama) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Tenaska Alabama, a Delaware limited partnership, will construct, own, and operate a nature gas fire combined-cycle fuel conversion facility (the Facility) to be constructed and located near Billingsley, Alabama, in Autauga County. The Facility will consist of three ''F'' Class combustion turbine-generators and a steam turbine-generator and will use natural gas as the primary fuel and fuel oil as backup fuel for the combustion turbines. The facility will also include natural gas receipt facilities, fuel oil storage facilities, fuel oil unloading facilities, and a switchyard. The nominal net electric output of the facility will be 846 MW when operating at summer conditions using natural gas. The Facility will include related transmission interconnection components necessary to interconnect the Facility with the Alabama Power company. The Facility will be used exclusively for the generation of electric energy to be delivered to an unaffiliated third-party customer.

Comment date: January 12, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. O'Brien (Philadelphia) Cogeneration, Inc.

[Docket No. EG00–55–000]

Take notice that on December 17, 1999, O'Brien (Philadelphia) Cogeneration, Inc. (OPCI) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 563 of the Commission's regulations.

OPCI, a Delaware corporation, leases certain eligible facilities and make sales of electric energy exclusively at wholesale. The leased facilities consist of five bio gas fired electric generating sets having an aggregate capacity of approximately 2 MW and 17 oil fired diesel electric generating sets having an aggregate capacity of approximately 22 MW. The generating facilities are located at the Northeast and Southwest Water Pollution Control Plants in Philadelphia, Pennsylvania.

Comment date: January 12, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Wayne-White Counties Electric Cooperative

[Docket No. EL00–28–000]

Take notice that on December 17, 1999, Wayne-White Counties Electric Cooperative (WWCEC or Cooperative) on December 17, 1999, tendered for filing a petition for partial waiver of the requirements of Part 45 of the Commission's regulations, 18 CFR 45.1, *et seq.* Specifically, WWCEC requests that the Commission grant a blanket authorization, so that persons now holding or who may in the future hold otherwise proscribed interlocking positions involving WWCEC and satisfy their obligations under Part 45 by making abbreviated filings providing the following information: (1) Full name and business address; and (2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

Copies of the filing were served upon WWCEC's only jurisdictional customer, the City of Fairfield, Illinois.

Comment date: January 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. GPU Advanced Resources, Inc.

[Docket No. ER97–3666–010]

Take notice that on December 15, 1999, GPU Advanced Resources, Inc. filed an amendment to their quarterly report for the second quarter, for information only.

7. Nicole Energy Services, Inc.

[Docket No. ER98–2683–005]

Take notice that on December 2, 1999, Nicole Energy Services, Inc. filed their quarterly report for the quarter ended September 30, 1999, for information only.

8. New Century Services, Inc.

[Docket No. ER99–4501–000]

Take notice that on December 15, 1999, New Century Services, Inc., on behalf of Public Service Company of Colorado, responded to the deficiency letter issued in this docket on November 15, 1999.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. AI Energy, Inc.

[Docket No. ER00–105–002]

Take notice that on December 3, 1999, AI Energy, Inc. filed their quarterly report for the quarter ended September 30, 1999, for information only.

10. California Independent System Operator Corporation

[Docket No. ER00–800–000]

Take notice that on December 15, 1999, California Independence System Operator Corporation tendered for filing an information filing in accordance with Part D of Appendix F, Schedule 1 of the ISO Tariff, Original Sheet No. 378, to present information concerning its calculation of the Grid Management Charge (GMC) to be effective for calendar year 2000. The informational filing contains the 2000 GMC calculation based on 2000 operating expenses, and the forecasted annual transmission volumes for 2000.

Copies of the filing were served upon the official service lists for Docket Nos. ER98–211–000, ER98–210–000, ER98–1729–000, ER98–462–000, ER98–556–000, ER98–557–000 and the California Public Utilities Commission.

Comment date: January 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Madison Gas and Electric Company

[Docket No. ER00–586–000]

Take notice that on December 16, 1999, Madison Gas and Electric Company (MGE), tendered for filing with the Federal Energy Regulatory Commission revisions to its Market-Based Power Sales Tariff.

Copies of this filing have been mailed to the service list and to the Public Service Commission of Wisconsin.

MGE requests an effective date of 60 days from the date of the original filing November 23, 1999.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Energy Company

[Docket No. ER00–788–000]

Take notice that on December 14, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Network Integration Transmission Service with Consumers Energy Company—Electric Sourcing & Trading.

The agreement is pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and Detroit Edison Company (Detroit Edison) and has an effective date of January 1, 2000.

Copies of the filing were served upon the Michigan Public Service Commission, Detroit Edison and the customer listed above.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Consumers Energy Company

[Docket No. ER00–789–000]

Take notice that on December 14, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service to the Commonwealth Edison Company pursuant to its Open Access Transmission Service Tariff filed on July 9, 1996.

The agreement has an effective date of January 1, 2000.

Copies of the filed agreement were served upon the Michigan Public Service Commission and the transmission customer.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Consumers Energy Company

[Docket No. ER00–790–000]

Take notice that on December 14, 1999, Consumers Energy Company (Consumers), tendered for filing executed service agreements for Firm and/or Non-Firm Point-to-Point Transmission Service with the Customers listed below.

All of the agreements were pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison) and have effective dates of January 1, 2000. The Customers are:

American Electric Power (''AEP'') Service Corporation, and various AEP operating utility subsidiaries
Cinergy Services, Inc., and the Cinergy operating companies
CMS Marketing, Services and Trading
Consumers Energy Company—Electric Sourcing & Trading
Duke Power
Lansing Board of Water & Light
Minnesota Power, Inc.
Morgan Stanley Capital Group, Inc.
Northern Indiana Public Service Company
OGE Energy Resources Inc.
PECO Energy Co.
PP&L, Inc.
Tenaska Power Services Co.
Tractebel Energy Marketing, Inc.
Virginia Electric and Power Company
Cargill-Alliant LLC
Detroit Edison Merchant Operation
Florida Power & Light Company

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customers.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Electric Power Company

[Docket No. ER00–791–000]

Take notice that on December 14, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Master Close-Out Netting Agreement between Wisconsin Electric Power Company (Wisconsin Electric or the Company) and Rainbow Energy Marketing (Rainbow). This agreement is a supplement to the electric service agreement No. 15 under Wisconsin Electric's Market Rate Sales Tariff. (FERC Electric Tariff, Original Volume No. 8) with Rainbow, and to the electric service agreement No. 3 under Wisconsin Electric's Coordination Sales Tariff. (FERC Electric Tariff, First Revised Volume No. 2) with Rainbow.

Wisconsin Electric respectfully requests an effective date of October 27, 1998.

Copies of the filing have been served on Rainbow, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER00–792–000]

Take notice that on December 14, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated November 5, 1999 with Enron Power Marketing, Inc. (ENRON) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 2000, for the Agreement.

PECO states that copies of this filing have been supplied to ENRON and to the Pennsylvania Public Utility Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. PECO Energy Company

[Docket No. ER00–793–000]

Take notice that on December 14, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated December 6, 1999 with Allegheny Electric Cooperative, Inc. (AEC) under PECO's

FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 2000, for the Agreement.

PECO states that copies of this filing have been supplied to ENRON and to the Pennsylvania Public Utility Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Northeast Utilities Service Company

[Docket No. ER00–794–000]

Take notice that on December 14, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing, Service Agreement to provide Network Integration Transmission Service to The Connecticut Light and Power Company under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to The Connecticut Light and Power Company.

NUSCO requests that the Service Agreement become effective January 1, 2000.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Nordic Electric, L.L.C.

[Docket No. ER00–795–000]

Take notice that on December 14, 1999, Nordic Electric, L.L.C. (Nordic Electric) petitioned the Commission to conform Nordic Electric's existing market-based rate schedule to the model market-based rate schedule for power marketers that the Commission has posted on its website. Nordic Electric states that the amendment will permit it to make market-based sales to its newly-formed affiliate, Nordic Marketing, L.L.C. Nordic Electric further states that neither it nor any of its affiliates owns or controls any transmissions or operating generation facilities, or has a franchised service area for the sale of electricity to captive customers.

A copy of the filing has been served on the Michigan Public Service Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. New Century Services Inc.

[Docket No. ER00–796–000]

Take notice that on December 14, 1999, New Century Services Inc. (NCS), on behalf of Public Service Company of Colorado (Public Service), tendered for filing the Master Power Purchase and Sale Agreement between Public Service and the City of Glendale, California (Glendale), which is an umbrella service agreement under the Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

NCS requests that this agreement become effective on October 26, 1999.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. New Century Services Inc.

[Docket No. ER00–797–000]

Take notice that on December 14, 1999, New Century Services Inc. (NCS), on behalf of Public Service Company of Colorado (Public Service), tendered for filing the Master Power Purchase and Sale Agreement between Public Service and Enron Power Marketing Inc., (EPMI), which is an umbrella service agreement under the Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

NCS requests that this agreement become effective on October 26, 1999.

Comment date: Janury 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. New York Independent System Operator, Inc.; Central Hudson Gas & Electric Corp.; Consolidated Edison Company of New York, Inc.; New York State Electric & Gas Corp.; Niagara Mohawk Power Corp.; Orange and Rockland Utilities, Inc.; Rochester Gas and Electric Corp.

[Docket No. ER00–798–000]

Take notice that on December 15, 1999, the New York Independent System Operator, Inc. (NYISO or ISO) and the Members of the Transmission Owners Committee of the Energy Association of the State of New York (Transmission Owners Committee or Member Systems) tendered for filing an amendment to their Supplemental Rate Filing to recover New York Independent System Operator Start-up and Formation Costs filed on August 25, 1999, reflecting the proposed change to Rate Schedule 1 of the ISO Open Access Transmission Tariff (ISO OATT). The NYISO requests an effective date of January 1, 2000 for changing the amortization period for the recovery of start-up costs and to reflect an update of the projected costs sought to be recovered.

A copy of this filing was served upon all persons on the Commission's official service list in this proceeding.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Commonwealth Edison Company; Commonwealth Edison Company of Indiana

[Docket No. ER00–799–000]

Take notice that on December 15, 1999, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd) tendered for filing amendments to ComEd's Open Access Transmission Tariff (OATT) to implement an Optional Additional Load Following Service for Non-Conforming Retail Loads and to modify Schedule 4A to permit Transmission Customers to trade retail imbalances attributable to adders/discounts.

ComEd requests an effective date of February 1, 1999, for the proposed amendments. Copies of the filing were served upon ComEd's jurisdictional customers and interested state commissions.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Tampa Electric Company

[Docket No. ER00–801–000]

Take notice that on December 15, 1999, Tampa Electric Company (Tampa Electric), tendered for filing new and revised tariff sheets that provide for inclusion in Tampa Electric's open access transmission tariff of a schedule for a new service called Generation to Schedule Imbalance Service.

Tampa Electric requests that the tariff amendment be made effective on February 14, 2000.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Cleco Utility Group, Inc.

[Docket No. ER00–804–000]

Take notice that on December 16, 1999, Cleco Utility Group, Inc. (CLECO), tendered for filing service agreements for Non-Firm and Short Term Firm Point-to-Point Transmission Services with TXU Energy Trading Company.

CLECO requests that the Commission accept the Service Agreement with an effective date of December 15, 1999.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. Southern California Edison Company

[Docket No. ER00–805–000]

Take notice that on December 16, 1999, Southern California Edison Company (SCE), tendered for filing a change in rate for the Transmission Revenue Balancing Account Adjustment (TRBAA) set forth in its Transmission Owner Tariff (TO Tariff) to become

effective January 1, 2000. The TRBAA rate is proposed to be a negative $0.00041 per kilowatt-hour, a reduction from the present rate of negative $0.00009 per kilowatt-hour.

Copies of this filing were served upon the California Public Utilities Commission, the California Independent System Operator, Pacific Gas & Electric Company, Sand Diego Gas & Electric Company, and all interested parties.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–806–000]

Take notice that on December 16, 1999, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 2 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of November 20, 1999 to The Detroit Edison Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Wisconsin Public Service Corporation

[Docket No. ER00–807–000]

Take notice that on December 16, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 13 to its partial requirements Service Agreement No. 1 with Consolidated Water Power Company (CWPCO). Supplement No. 13 provides CWPCO's contract demand nominations for January 2000–December 2004, under WPSC's W–3 tariff and CWPCO's applicable service agreement.

The company states that copies of this filing have been served upon CWPCO and to the State Commissions where WPSC serves at retail.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Wisconsin Public Service Corporation

[Docket No. ER00–808–000]

Take notice that on December 16, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing Supplement No. 13 to its partial requirements Service Agreement No. 5 with Manitowoc Public Utilities (MPU). Supplement No. 13 provides MPU's contract demand nominations for January 2000—December 2004, under WPSC's W–2A partial requirements tariff and MPU's applicable service agreement.

The company states that copies of this filing have been served upon MPU and to the State Commissions where WPSC serves at retail.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Florida Power & Light Company

[Docket No. ER00–810–000]

Take notice that on December 16, 1999, Florida Power & Light Company, tendered for filing the LCRR Facility Parallel Operation Agreement between Florida Power & Light Company and Seminole Electric Cooperative, Inc.

FPL requests that the agreement be made effective December 15, 1999.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: Janaury 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Virginia Electric and Power Company

[Docket No. ER00–811–000]

Take notice that on December 16, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Allegheny Energy Supply Company, LLC. Under the Service Agreement, Virginia Power will provide services to Allegheny Energy Supply Company, LLC under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of December 16, 1999, the date of filing of the Service Agreement.

Copies of the filing were served upon Allegheny Energy Supply Company, LLC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. New Century Services, Inc.

[Docket No. ER00–812–000]

Take notice that on December 16, 1999, New Century Services, Inc., on behalf of Southwestern Public Service Company (SPS), tendered for filing the following agreements under SPS's Rate Schedule for Market-Based Power Sales (SPS FERC Electric Tariff, First Revised Volume No. 3), namely (1) the Master Power Sale Agreement between SPS and Oklahoma Gas and Electric Company (OG&E), which is an umbrella service agreement under the SPS market-based rate schedule, and (2) a transaction agreement for a specific sale by SPS to OG&E of capacity and associated energy to commence on January 1, 2000 and end on December 31, 2001.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. Duquesne Light Company

[Docket No. ER00–813–000]

Take notice that on December 16, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated December 15, 1999 with ACN Power, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds ACN Power, Inc., as a customer under the Tariff.

DLC requests an effective date of December 15, 1999, for the Service Agreement.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Wisconsin Electric Power Company

[Docket No. ER00–815–000]

Take notice that on December 16, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Master Close-Out Netting Agreement between Wisconsin Electric Power Company (Wisconsin Electric or the Company) and Southern Company Energy Marketing (SCEM). This agreement is a supplement to the electric service agreement No. 86 under Wisconsin Electric's Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2) with SCEM.

Wisconsin Electric respectfully requests an effective date of August 3, 1998.

Copies of the filing have been served on SCEM, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. Ameren Services, Inc., on behalf of Ameren Generating Company, and, Marketing Company

[Docket No. ER00–816–000]

Take notice that on December 16, 1999, Ameren Services, Inc. tendered for filing the following agreements:

1. Electric Power Supply Agreement between Ameren Generating Company (Genco) and Marketing Company.

2. Electric Power Supply Agreement between Marketing Company and Central Illinois Public Service Company (AmerenCIPS).

3. FERC Electric Tariff No. 1 of Marketing Company.

Ameren Services states that these rate schedules are being filed to implement certain proposed power marketing arrangements to become effective upon the transfer to Genco of generating units currently owned and operated by AmerenCIPS. Ameren Services has proposed to make these rate schedules on February 15, 1999.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. Ohio Valley Electric Corporation

[Docket No. ER00–821–000]

Take notice that on December 16, 1999, Ohio Valley Electric Corporation (OVEC), tendered for filing Modification No. 12, dated as of November 1, 1999, to the Inter-Company Power Agreement dated July 10, 1953 among OVEC and certain other utility companies named within that agreement as ''Sponsoring Companies'' (the Inter-Company Power Agreement). The Inter-Company Power Agreement bears the designation Ohio Valley Electric Corporation Rate Schedule FPC No. 1–B.

Mod. No. 12 is part of an arrangement intended to make additional electricity available to OVEC's Sponsoring Companies during the winter of 1999–2000 and to provide DOE with billing credits in exchange for its release of a portion of its entitlement to such electricity.

OVEC has requested that the changes to the Inter-Company Power Agreement become effective as of November 1, 1999.

Copies of the filing were served upon Appalachian Power Company, The Cincinnati Gas & Electric Company, Columbus Southern Power Company, The Dayton Power and Light Company, Indiana Michigan Power Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Monongahela Power Company, Ohio Edison Company, Ohio Power Company, Pennsylvania Power Company, The Potomac Edison Company, Southern Indiana Gas and Electric Company, The Toledo Edison Company, West Penn Power Company, The Utility Regulatory Commission of Indiana, the Public Service Commission of Kentucky, the Public Service Commission of Maryland, the Public Service Commission of Michigan, the Public Utilities Commission of Ohio, the Public Utility Commission of Pennsylvania, Tennessee Regulatory Authority, the State Corporation Commission of Virginia and the Public Service Commission of West Virginia.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. Duquesne Light Company

[Docket No. ER00–822–000]

Take notice that December 16, 1999, Duquesne Light Company (DLC), tendered for filing a Service Agreement dated December 15, 1999 with Consumers Energy Company under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Consumers Energy Company as a customer under the Tariff.

DLC requests an effective date of December 15, 1999, for the Service Agreement.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

38. Duquesne Light Company

[Docket No. ER00–823–000]

Take notice that on December 16, 1999, Duquesne Light Company (DLC) tendered for filing a Service Agreement dated December 15, 1999 with ACN Power, Inc., under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds ACN Power, Inc. as a customer under the Tariff.

DLC requests an effective date of December 15, 1999, for the Service Agreement.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

39. Duke Energy South Bay, LLC

[Docket No. ER00–824–000]

Take notice that on December 16, 1999, Duke Energy South Bay, LLC (DESB) tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, a revised Schedule A to the Reliability Must Run Agreement (the RMR Agreement) between DESB and the California Independent System Operator Corporation (the ISO) relating to the South Bay generating plant at Chula Vista, California.

DESB states that the revisions to Schedule A correct certain inaccuracies in the figures for reactive power in the currently effective version, which was originally filed by San Diego Gas & Electric Company (SDG&E) which formerly owned the South Bay plant. DESB further states that the corrections are acceptable to the ISO and to SDG&E, which, under the ISO Tariff, bears costs payable by the ISO and under the RMR Agreement.

DESB states that it has served a copy of its filing on the California Public Utilities Commission.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

40. Consumers Energy Company

[Docket No. ER00–825–000]

Take notice that on December 16, 1999, Consumers Energy Company (Consumers), tendered for filing executed service agreements for Firm and Non-Firm Point-to-Point Transmission Service to the City of Holland, Michigan Board of Public Works pursuant to its Open Access Transmission Service Tariff filed on July 9, 1996.

Each agreement has an effective date of January 1, 2000.

Copies of the filed agreements were served upon the Michigan Public Service Commission and the transmission customer.

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

41. Dauphin Island Gathering Partners

[Docket No. MG99–26–001]

Take notice that on December 20, 1999, Dauphin Island Gathering Partners filed revised standards of conduct in response to the Commission's November 29, 1999 Order On Standards of Conduct. 89 FERC § 61,247 (1999).

Comment date: January 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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 or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party

must filed a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33943 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses and Soliciting Comments, Motions to Intervene, and Protests

December 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Transfer of Licenses.

b. *Project Nos.:* 487–022 and 1881–028.

c . *Date Filed:* December 7, 1999.

d. *Applicants:* PP&L, Inc. (PP&L) and PPL Holtwood, LLC (PPL Holtwood).

e. *Name of Projects:* Wallenpaupack and Holtwood.

f. *Locations:* Wallenpaupack: on the Wallenpaupack Creek and Lackawaxen River in Wayne and Pike Counties, Pennsylvania; Holtwood: on the Susquehanna River in Lancaster and York Counties, Pennsylvania. The projects do not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicants' Contacts:* Paul E. Russell, Esq., PP&L, Inc., Two North Ninth Street, Allentown, PA 18101–1179, (610) 774–4254 and Donald A. Kaplan, Esq., Adam W. Gravley, Esq., Lisa H. Tucker, Esq., Preston Gates Ellis & Rouvelas Meeds LLP, 1735 New York Avenue, NW, Suite 500, Washington, DC 20006, (202) 628–1700.

i. *FERC Contact:* Regina Saizan, (202) 219–2673, or e-mail address: *regina.saizan@ferc.fed.us.*

j. *Deadline for filing comments and or motions:* January 28, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Numbers (487–022 and 1881–028) on any comments or motions filed.

k. *Description of Transfer:* Transfer of the licenses for these projects to PPL Holtwood is being sought in connection with a proposed corporate realignment under which PP&L will separate its generation and power marketing businesses from its transmission and distribution businesses. PP&L intends to retain certain existing non-project transmission and distribution facilities and easements relating to such transmission and distribution facilities located within the project boundaries.

The transfer application was filed within five years of the expiration of the license for Project No. 487. PP&L has filed a Notice of Intent to relicense Project No. 487 and has been approved by the Commission to use the alternative licensing process pursuant to 18 CFR Section 4.34(i). In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 FR 23,756; FERC Stats. and Regs., Regs. Preambles 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (*id.*, at p. 31,438 n.318).

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33869 Filed 12–29–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions To Intervene, Protests, and Additional Study Requests

December 23, 1999.

Take notice that the following hydroelectric application has been accepted by the Commission and is available for public inspection.

a. *Type of Application:* Major New License.

b. *Project No.:* 1895–007.

c. *Date filed:* June 30, 1998.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Columbia Hydroelectric Project.

f. *Location:* On the Broad and Congaree Rivers in Richland County and the City of Columbia, South Carolina. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Neville O. Lorick, Vice President, Fossil & Hydro Operations, South Carolina Electric & Gas Company, 111 Research Drive Columbia, SC 29203, (803) 748–3000.

i. *FERC Contact:* Charles R. Hall at (202) 219–2853, charles.hall@ferc.fed.us.

j. Deadline for filing motions to intervene, protests and additional study requests is 60 days from the issuance date of this notice.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The project consists of the following existing facilities: (1) A 1,021-foot-long, 14-foot-high timber crib diversion dam; (2) a shallow, 265-acre reservoir located in the Broad River upstream from the diversion dam; (3) an 85-acre, 10-foot-deep, 150-foot-wide, 3.5-mile-long canal; (4) a 210-foot-long, granite-block masonry canal intake structure, containing 12 manually operated vertical lift gates to control the flow of water into the canal; (5) a granite-block masonry canal spillway containing two, 12-foot-wide Taintor gates separated by a 208-foot-long stoplog section; (6) a granite-block and brick masonry powerhouse, containing seven turbine-generator units with a total installed capacity of 10,600 killowatts, producing about 48 million kilowatthours annually; and (7) other appurtenances.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of Practice and Procedure, 18 CFR 385.210,385.211 and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene and must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower, Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33870 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

December 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2090–003.

c. *Date filed:* August 31, 1999.

d. *Applicant:* Green Mountain Power Corporation.

e. *Name of Project:* Waterbury Project.

f. *Location:* On Little River in Washington County, Vermont. No Federal Lands used in this project.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Craig T. Myotte, Green Mountain Power Corporation, 163 Action Lane, Colchester, VT 05446, (802) 660–5830.

i. *FERC Contact:* Robert Bell, E-mail address, robert.bell@ferc.fed.us, or telephone 202–219–2806.

j. *Deadline for filing scoping comments: February 12, 2000.*

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. The existing project consists of: (1) 1,845-foot-long, 158-foot-high rolled earth embankment Waterbury Dam; (2) an impounding having a surface area of 1,330-acres, with a storage capacity of 64,700 acre-feet and a normal water surface elevation of 593.00 feet msl; (3) a submerged concrete intake structure; (4) two 205-foot-long, 54-inch diameter steel penstocks which connects to a 79-inch diameter penstock; (4) a powerhouse having one generating unit with an installed capacity of 5,520-kW; (5) a tailrace; (9) four-mile-long, 33-kV transmission line; and (7) appurtenant facilities.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. Scoping Process.

The Commission intends to prepare an Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action.

Scoping Meetings

The Commission will hold scoping meetings, one in the daytime and one in the evening, to help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the

environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Meeting: Wednesday, January 12, 2000, 2:00 PM, Chapel Conference Room, Vermont Agency of Natural Resources, 103 South Main Street, Waterbury, Vermont.

Evening Meeting: Wednesday, January 12, 2000, 7:30 PM, Chapel Conference Room, Vermont Agency of Natural Resources, 103 South Main Street, Waterbury, Vermont.

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to the parties on the Commission's mailing list. Copies of the DS1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit on Wednesday, January 13, 2000. We will meet at 8 AM at the project site.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33871 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

December 23, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Amendment of license for the non-project use of project lands and waters.

b. *Project No.* 2230–028.

c. *Date Filed:* November 1, 1999.

d. *Applicant:* City and Borough of Sitka, Alaska.

e. *Name of Project:* Blue Lake Hydroelectric Project.

f. *Location:* Sitka, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brian Omann, Sitka Electric Department, 1306 Halibut Point Road, Sitka, AK 99835, (907) 747–6633.

i. *FERC Contact:* Any questions on this notice should be addressed to Jim Haimes at (202) 219–2780, or e-mail address: james.haimes@ferc.fed.us.

j. *Deadline for filing comments and or motions:* 20 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–2230–028) on any comments or motions filed.

k. *Description of Project:* to permit the construction of: a new valve system to be located in the existing pulp mill diffusion chamber, a non-project facility within the Commission-approved project boundary; and a 20-inch-diameter, buried pipeline across approximately 200 feet of project land owned by the City. The new pipeline would then be buried in a trench with four feet of cover within non-project lands adjacent to Pioneer and Sawmill Creek roads. The pipeline would emerge at a new mooring facility for tankers to be constructed at Silver Bay. The Anchorage District Corps of Engineers, on November 24, 1999, issued a permit to the City and Borough of Sitka for the construction of the proposed moorage facility.

After completion, the pipeline would be used to transport water from the project's Blue Lake reservoir to tankers for shipment. The proposed project is expected to withdraw approximately 14,000 acre-feet per year from the Blue Lake watershed. The maximum rate of water withdrawal from the project would be 10.6 million gallons per day.

l. *Locations of the application:* Copies of the application are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. Copies of the application also are available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list for the proposed amendment of license should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33872 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

December 23, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2362–009.

c. *Date Filed:* December 9, 1999.

d. *Applicants:* Blandin Paper Company (BPC or transferor) and Minnesota Power, Inc. (MPI or transferee).

e. *Name of Project:* Blandin.

f. *Location:* On the Mississippi River, in the City of Grand Rapids, in Itasca County, Minnesota. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* For transferor—Mr. W. John Licke, Secretary and General Counsel, Blandin Paper Company, 115 S.W. First Street, Grand Rapids, MN 55744–3699, (218) 327–6210.

For transferee—Mr. Steve Tyacke, Assistant General Counsel, Minnesota Power, Inc., 30 West Superior Street, Duluth, MN 55802, telephone (218) 723–3963

i. *FERC Contact:* Any questions on this notice should be addressed to Tom Papsidero at (202) 219–2715, or e-mail address: Thomas.Papsidero@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* January 28, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (2362–009) on any comments or motions filed.

k. *Description of Transfer:* BPC requests approval to transfer its license to MPI. The applicants state that the transfer relates to BPC's planned sale of the project to MPI under an Asset Purchase Agreement between the parties dated November 23, 1999.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). Copies are also available for inspection and reproduction at the addresses in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–33873 Filed 12–29–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[CA021–NOA; FRL–6517–6]

Adequacy Status of the Santa Barbara County, California Submitted Ozone Attainment Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the 1999 on-road mobile source emissions budgets specified in the submitted Santa Barbara County, California Ozone Attainment Plan (1998 Clean Air Plan) are adequate for conformity purposes. As a result of our finding, the Santa Barbara County Association of Governments and the Federal Highway Administration are required to use the 1999 motor vehicle emissions budgets specified in the submitted 1998 Ozone Attainment Plan for future conformity determinations.

DATES: This budget finding is effective January 14, 2000.

FOR FURTHER INFORMATION CONTACT: The finding and the response to comments are available at EPA's conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity''). You may also contact Sam Agpawa, U.S. EPA, Region IX, Air Division AIR–2, 75 Hawthorne Street, San Francisco, CA 94105; (415) 744–1228 or *Agpawa.sam@epa.gov*.

SUPPLEMENTARY INFORMATION: Today's notice is simply an announcement of a finding that we have already made. EPA Region IX sent a letter to the California Air Quality Board on December 3, 1999 stating that the 1999 on-road mobile source emissions budgets specified in the submitted 1998 Santa Barbara County Ozone Attainment Plan are adequate for conformity purposes. This finding has also been announced on our conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the ''Conformity'' button, then look for ''Adequacy Review of SIP Submissions for Conformity'').

Transportation conformity is required by section 176(c) of the Clean Air Act. Our conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not

produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emissions budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from our completeness review which is required by section 110(k)(1) of the Clean Air Act, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision''). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 17, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99–33956 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6249–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements filed December 20, 1999 through December 23, 1999 pursuant to 40 CFR 1506.9.

EIS No. 990488, Draft EIS, AFS, NC, Croatan National Forest Revised Land and Resource Management Plan (1986), Implementation, Carteret Craven and Jones Counties, NC, Due: February 14, 2000, Contact: John Ramey (828) 257–4268.

EIS No. 990489, Draft EIS, BLM, OR, North Bank Habitat Management Area (NBHMA)/Area of Critical Environmental Concern (ACEC), Federally Endangered Columbian White-Tailed Deer (CWTD) and Special Status Species Habitat Enhancements to Ensure Viability Over Time, Implementation, OR, Due: February 14, 2000, Contact: Jim Luse (541) 440–4930.

EIS No. 990490, Final EIS, USA, AZ, Fort Huachuca Real Property Master Planning, Approval of Land Use and Real Estate Investment Strategies, Cochise County, AZ, Due: January 28, 2000, Contact: Gregory Brewer (703) 692–9220.

EIS No. 990491, Final EIS, USN, GU, Agana Naval Air Station Disposal and Reuse, Implementation, Guam, Due: January 28, 2000, Contact: John Bigay (808) 471–9338.

EIS No. 990492, Draft EIS, AFS, AK, Finger Mountain Timber Sales, Timber Harvesting, Implementation, US Coast Guard, NPDES and COE Section 10 and 404 Permits, Tongass National Forest, Sitka Ranger District, AK, Due: February 28, 1999, Contact: Lisa Winn (907) 747–6671.

EIS No. 990493, Draft EIS, AFS, OR, Tower Fire Recovery Project, Restoration and Salvage, Implementation, Umatilla National Forest, North Fork John Day Ranger District, Umatilla and Grant Counties, OR, Due: February 16, 2000, Contact: Janel Lacey (541) 427–5311.

EIS No. 990494, Final EIS, NPS, VA, Booker T. Washington National Monument (BOWA), General Management Plan, Implementation, Franklin County, VA, Due: January 28, 2000, Contact: Fred Herling (215) 597–1702.

EIS No. 990495, Draft Supplement, NOA, Atlantic Tunas, Swordfish and Sharks, Highly Migratory Species Fishery Management Plan, Updated Information, Reduction of Bycatch and Incidental Catch in the Atlantic Pelagic Longline Fishery, Due: February 14, 2000, Contact: Rebecca J. Lent (301) 713–2347.

Amendment Notice:

EIS No. 990397, Draft EIS, FAA, OH, Cleveland Hopkins International Airport, To Provide Capacity, Facilities, Highway Improvements and Enhancement to Safety, Funding, Cugahoga County, OH, Due: January 31, 2000, Contact: Ernest P. Guby (734) 487–7280. Revision of FR notice published on 10/29/1999: CEQ Comment Date extended from 12/29/1999 to 01/31/2000.

EIS No. 990413, Draft EIS, AFS, ID, Salmon River Canyon Project, Implementation, Nez Perce, Payette, Bitterroot and Salmon-Challis National Forests, Idaho County, ID, Due: January 19, 2000, Contact: Bill Shields (208) 983–1950. Revision to FR notice published on 11/5/1999: CEQ Comment Date has been extended from 12/20/1999 to 01/19/2000.

EIS No. 990426, Draft EIS, USA, CA, Oakland Army Base Disposal and Reuse Plan, Implementation, City of Oakland, Alameda County, CA , Due: January 17, 2000, Contact: Theresa Persick Arnold (703) 697–0216. Published FR 11/19/1999: Review Period Extended from 1/03/2000 to 01/17/2000.

Dated: December 27, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–33996 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6249–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 13, 1999 through December 17, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (63 FR 17856).

Draft EISs

ERP No. D–AFS–J65315–UT Rating EC2, Monroe Mountain Ecosystem Restoration Project, Implementation, Fishlake National Forest, Richfield Ranger District, Sevier and Piute Counties, UT.

Summary: EPA expressed environmental concerns with the proposed action due to potential significant impacts to water quality. sensitive fish habitat (Utah Bonneville cutthroat trout) and two regionally sensitive bird species. Also, we expressed concerns with the scope of alternatives lack of a detailed monitoring plan to determine if ecosystem restoration will actually be achieved, the analysis of cumulative impacts, and the limited approach to managing livestock and elk grazing on the area where aspen will be harvested.

ERP No. D–BIA–L65330–WA Rating EC2, White River Amphitheater Project, Construction and Operation of a 20,000 Seat Open-Air Amphitheater on the Muckleshoot Indian Reservation, COE Section 404 Permit and NPDES Permit, Seattle-Tacoma, WA.

Summary: EPA expressed environmental concerns due to air quality, water quality and noise impacts. EPA recommended that the

final EIS provide an expanded evaluation of environmental effects, clearly identify mitigation measures (including monitoring efforts), and commit to implement appropriate mitigation measures.

ERP No. D–COE–C32035–00 Rating EO2, New York and New Jersey Harbor Navigation Study, Identify, Screen and Select Navigation Channel Improvements, NY and NJ.

Summary: EPA raised objections based on the significant adverse impacts that could result from the expansion of port facilities and related infrastructure, that would be associated with increasing cargo movement in the Port. EPA also requested additional information, including information on cumulative impacts, the no action alternative, and air quality impact analyses. EPA also requested a formal commitment by the involved agencies to move forward with a comprehensive port improvement plan EIS.

ERP No. D–FHW–C40151–NY Rating EC2, County Road (Mill Hill Road and Glen Road) Improvements, From Howard Drive to State Route 9N including a New Bridge over the East Branch of the Ausable River, Funding and COE Section 404 Permit, Essex County, NY.

Summary: EPA expressed environmental concerns about wetlands, water quality, and cumulative impacts associated with the project. EPA requested that these issues and other issues be addressed in the final EIS.

ERP No. D–FHW–G40153–NM Rating LO, New Mexico Forest Highway 45 (Forest Road 537) known locally as the Sacramento River Road, Improvements from Sunspot to Timberon, Otero County, NM.

Summary: EPA has no objections to the preferred alternative as proposed in the DEIS.

ERP No. D–FHW–K40239–CA Rating EC2, Interstate 215 (I–215) Transportation Improvements, From the short segments of CA–60 and CA–91 in the Cities of Riverside and Moreno Valley, Funding, Riverside County, CA.

Summary: EPA expressed environmental concerns that, both in the short-term and over the long-term, air quality could be impacted by implementing either of the build alternatives. In addition, in the long-term, the project's stated purpose of congestion relief may not be realized.

ERP No. D–NPS–L65331–WA Rating LO, Whitman National Historic Site, General Management Plan, Development Concept Plan, Implementation, Walla Walla County, WA.

Summary: EPA expressed lack of objections and suspects the proposed action will improve existing conditions.

ERP No. DS–UAF–A11074–00 Rating LO, Evolved Expendable Launch Vehicle Program, Updated Information, To Allow the Addition of up to Five Strap-on Solid Rocket Motors (SRM) to the Atlas V and Delta IV Lift Vehicle, Launch Locations are Cape Canaveral Air Station, Brevard County, FL and Vandenberg Air Force Base (AFB), Santa Barbara County, CA.

Summary: EPA has no objection to the proposed action, some technical/clarification items were provided.

Final EISs

ERP No. F–DOE–A09828–00 Surplus Plutonium Disposition (DOE/EIS–0283) for Siting, Construction and Operation of three facilities for Plutonium Disposition, Possible Sites Hanford, Idaho National Engineering and Environmental Laboratory, Pantex Plant and Savannah River, CA, ID, NM, SC, TX and WA.

Summary: EPA has no objection to the action as proposed.

ERP No. FR–BOP–E81033–MS Yazoo City, Mississippi Federal Correctional Complex, Construction and Operation, Possibly Consisting of a High Security U. S. Penitentiary, Medium Security Federal Correctional Institution and Minimum Security Federal Prison, Site Selection and Possible COE Section 404 Permit, Yazoo City, Yazoo County, MS.

Summary: EPA expressed environmental concerns regarding potential wetland impacts and requested additional clarification and mitigation information.

Dated: December 27, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–33997 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6517–7]

Gulf of Mexico Program Policy Review Board Meeting.

AGENCY: Environmental Protection Agency (US EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Act, Public Law 92–463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Policy Review Board (PRB).

DATES: The PRB meeting will be held on Wednesday, January 19, 2000 from 1 p.m. to 5 p.m. and on Thursday, January 20, 2000 from 8:30 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the DoubleTree Hotel, 101 South Adams Street, Tallahassee, Florida (850) 224–5000.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda items will include: Overview of the GMP's Objectives, Sub-objectives, Annual Performance Goals & Work Plan for FY 2000 and 2001, Overview of Successes and Issues in 1999, GMP Funding & Support—FY 2000 and Beyond, and Discussion of Gulf Regional Awards and Gulf-wide Art Contest.

The meeting is open to the public.

Dated: December 14, 1999.

James D. Giattina,

Director, Gulf of Mexico Program Office.

[FR Doc. 99–33954 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6518–4]

Proposed CERCLA Administrative Cost Recovery Settlement; The Pyridium Mercury Disposal Superfund Sites #1 & #2, Village of Harriman, Orange County, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act as amended (''CERCLA''), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Pyridium Mercury Disposal Superfund Sites #1 & #2 located in the Village of Harriman, Orange County, New York with the following settling party: the Estate of William S. Lasdon. The settlement requires the settling party to pay $1,280,000 to the Hazardous Substance Superfund in partial reimbursement of EPA's past response costs incurred with respect to the Sites. The settlement includes a covenant not to sue the settling party pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607 (a) for past response costs. For thirty (30) days

following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before January 31, 2000.

ADDRESSES: The proposed settlement is available for public inspection at USEPA, 290 Broadway, New York, New York 10007–1866. A copy of the proposed settlement may be obtained from Cynthia Psoras, Assistant Regional Counsel, USEPA, 290 Broadway, New York, New York 10007–1866, (212) 637–3169. Comments should reference the Pyridium Mercury Disposal Superfund Sites #1 & #2 located in the Village of Harriman, Orange County, New York, EPA Index No. CERCLA–02–99–02007, and should be addressed to Cynthia Psoras, Assistant Regional Counsel, USEPA, 290 Broadway, New York, New York 10007–1866. The Agency's response to any comments received will be available for public inspection at the Monroe Free Public Library located at 44 Millpond Parkway, Monroe, NY 10950 (914) 783–4411, and at the EPA, 290 Broadway, New York, New York 10007–1866.

FOR FURTHER INFORMATION CONTACT: Cynthia Psoras, Assistant Regional Counsel, USEPA, 290 Broadway, New York, New York 10007–1866, (212) 637–3169.

SUPPLEMENTARY INFORMATION: None.

Dated: December 14, 1999.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 99–33955 Filed 12–29–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6517–2]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act; South Bay Asbestos Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(I) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act (''CERCLA''), notice is hereby given that a proposed administrative cost recovery settlement concerning the South Bay Asbestos Site in the Alviso district of San Jose, California was executed by the Agency on December 16, 1999. The proposed settlement resolves an EPA claim under Sections 106 and 107 of CERCLA against the following Respondents: CertainTeed Corporation and T&N Limited; T&N Industries Inc. The proposed settlement was entered into under the authority granted EPA in Section 122(h) of CERCLA, and requires the Respondents to pay $800,000 to the Hazardous Substances Superfund in settlement of past costs. For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at: Environmental Protection Agency, Region 9, Superfund Record Center, 4th floor, 95 Hawthorne Street, San Francisco, California, 94105.

DATES: Comments must be submitted on or before January 31, 2000.

ADDRESSES: The proposed settlement as set forth in the Administrative Consent Order may be obtained from Jeannie Cervera, Assistant Regional Counsel (ORC–2), Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California, 94105. Comments regarding the proposed settlement should be sent to Jeannie Cervera at the address provided above, and should reference the South Bay Asbestos site located in San Jose, California (EPA Docket No. 99–06).

FOR FURTHER INFORMATION CONTACT: Jeannie Cervera, Assistant Regional Counsel, Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1395.

Dated: December 17, 1999.

Keith Takata,

Director, Superfund Division.

[FR Doc. 99–33953 Filed 12–29–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6500–4]

State Program Requirements; Application To Administer the National Pollutant Discharge Elimination System (NPDES) Program; Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of application for approval of the Maine Pollutant Discharge Elimination System.

SUMMARY: The State of Maine has submitted a request for approval of the Maine Pollutant Discharge Elimination System (MEPDES) Program pursuant to Section 402 of the Clean Water Act. If EPA approves the MEPDES program, the State will administer this program, which regulates the discharges of point sources to navigable waters, subject to continuing EPA oversight and enforcement authority, in place of the National Pollutant Discharge Elimination System (NPDES) program now administered by EPA in Maine. Today, EPA is requesting comments on the State's request and providing notice of a public hearing and comment period on that proposal. EPA will either approve or disapprove the State's request after considering all comments it receives.

DATES: EPA Region I will hold a public hearing on February 16, 2000 beginning at 7:00 p.m. for submission of oral or written comments on Maine's request for program approval. EPA Region I will continue to accept written comments through February 29, 2000 at its office in Boston, MA. EPA requests that copies of such written comments also be provided to the Maine Department of Environmental Protection (MEDEP).

ADDRESSES: The February 16, 2000, public hearing will be held at the Augusta Civic Center (Capital Pine Tree Room), Augusta, ME.

Written comments must be submitted to: Stephen Silva, USEPA Maine State Office, 1 Congress Street—Suite 1100 (CME), Boston, MA 02114–2023. EPA requests that a copy of each comment be submitted to: Dennis Merrill, MEDEP, Statehouse Station #17, Augusta, ME 34003.

Copies of documents Maine has submitted in support of its program approval request may be reviewed during normal business hours, Monday through Friday, excluding holidays, at: EPA Region I, 11th Floor Library, 1 Congress Street—Suite 1100, Boston, MA 02114–2023, 617–918–1990 or 1–888–372–5427; and MEDEP, Ray Building, Hospital Street, Augusta, ME.

FOR FURTHER INFORMATION CONTACT: Stephen Silva at the address listed above or by calling (617) 918–1561 or Dennis Merrill at the address listed above or by calling (207) 287–7788. The State's submissions (which comprise approximately 128 pages in the application, 382 pages in the appendix, and 11 pages in a supplement with an additional 688 pages of attachments) may be copied at the MEDEP office in Augusta, or EPA office in Boston, at a cost of 15 cents per page. A copy of the entire initial submission (not including the supplement) may be obtained from the MEDEP office in Augusta for a $20 fee.

Part of the State's program submission and supporting documentation is available electronically at the following Internet address:

http://www.state.me.us/dep/blwq/delegation/delegation.htm

SUPPLEMENTARY INFORMATION: Section 402 of the Clean Water Act (Act) created the NPDES program under which EPA may issue permits for the discharge of pollutants to waters of the United States under conditions required by the Act. Section 402 also provides that EPA may approve a State to administer an equivalent State program upon a showing that the State has the necessary authority and a program sufficient to meet the Act's requirements. The basic requirements for State program approval are listed in 40 CFR part 123. EPA Region I considers the documents submitted by the State of Maine complete and believes they address each of the requirements of the regulations found at 40 CFR part 123. EPA will take final action after all public comments have been considered.

By letter dated October 13, 1999, the Governor of Maine requested NPDES program approval and submitted a program description (including funding, personnel requirements and organization, and enforcement procedures), an Attorney General's statement, copies of applicable State statutes and regulations, and a Memorandum of Agreement (MOA) to be executed by the Regional Administrator of EPA Region I and the Commissioner of MEDEP. EPA received this package of materials on November 18, 1999. By letter dated December 15, 1999, Maine submitted a supplement to its application describing its Continuing Planning Process (cpp). This supplement was received by the EPA on December 17, 1999 and makes the application complete as of December 17, 1999.

As discussed in more detail below, Maine is applying to implement and enforce its MEPDES program in Indian country. In determining that Maine's application is complete, the EPA has not made any decision regarding this issue. Rather, the EPA will make its decision on this issue as part of its decision approving or disapproving Maine's program, after consideration of public comments.

Maine is applying to administer both the permit program for direct dischargers to State waters and the pretreatment program (which covers industrial sources discharging to publicly owned treatment works). However, Maine has asked to assume responsibility for these programs in phases, pursuant to CWA 402(n)(4). Maine's submission appears to meet the requirements for such a phased approach. Thus, any approval of the program regarding direct dischargers would take effect immediately following approval. If approved, responsibility for operating the pretreatment program would be transferred to the State only later—effective December 31, 2000, unless an earlier transfer date was announced in the **Federal Register.** Note, however, that a decision whether to transfer the entire program (direct dischargers and pretreatment) would be made following the current public comment period. Thus, any comments related to any part of the State's program must be submitted during the current public comment period. Maine's MEPDES program generally covers all discharges of pollutants subject to the federal NPDES program, but does not regulate the disposal of sewage sludge. If it approves the State program, EPA will continue to regulate sewage sludge disposal in Maine in accordance with Section 405 of the Act and 40 CFR Part 503.

Pursuant to 40 CFR 123.21 and 123.61(b), the EPA must approve or disapprove the submitted Maine program (which has been determined to be complete) within 90 days of receipt, unless this review period is extended by EPA-State agreement. To obtain approval, the State must show, among other things, that it has authority to issue permits that comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and opportunity for a hearing on each proposed permit. After close of the comment period, EPA's Regional Administrator will decide to approve or disapprove the MEPDES program, based on the requirements of section 402 of the CWA and 40 CFR Part 123. If he approves the Maine program, the Regional Administrator will so notify the State. Notice would be published in the **Federal Register** and, as of the date of program approval, EPA would suspend issuance of NPDES permits in Maine (except for: sewage sludge permits under CWA Section 405 and 40 CFR part 503 and permits for which EPA has issued public notice prior to program approval). EPA would, however, retain the right to object to MEPDES permits proposed by MEDEP, and if the objections are not resolved, issue the permit itself. EPA would also retain jurisdiction over all existing NPDES permits it has issued in Maine until MEDEP reissued them as MEPDES permits. EPA would also oversee the State's implementation of other aspects of the program. Finally, the EPA would retain its full inspection and enforcement authorities as provided for in the CWA, to address any CWA violations in Maine. These authorities would continue to operate in addition to State inspection and enforcement authorities. If the program is approved, the EPA and State will enter into a Memorandum of Agreement (MOA) specifying particular State and EPA responsibilities in program implementation, including enforcement, but this MOA is not intended to restrict EPA's statutory enforcement responsibilities or to create any rights for persons not a party to the MOA.

If EPA's Regional Administrator disapproves the MEPDES program, he will notify MEDEP of the reasons for disapproval and of any revisions or modifications to the program which are necessary to obtain approval.

Public Hearing Procedures

The following procedures will be used at the January 16, 2000 public hearing:

1. The Presiding Officer shall conduct the hearing in a manner which will allow all interested persons wishing to make oral statements an opportunity to do so; however, the Presiding Officer may impose reasonable time limits. Any person may submit written statements or documents for the record at the hearing or otherwise during the comment period.

2. The Presiding Officer may, in his discretion, exclude oral testimony if such testimony is overly repetitious of previous testimony or is not relevant to the decision to approve or require revision of the submitted State program.

3. The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record submitted to the Regional Administrator.

4. The hearing record shall be left open until the deadline for receipt of comments specified at the beginning of

this Notice to allow any person time to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing or other comments submitted during the comment period.

5. Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record. Statements should summarize any extensive written materials. All comments received by EPA Region I by the deadline for receipt of comments, or presented at the public hearing, will be considered by EPA before taking final action on the Maine request for NPDES program approval.

Summary of the Maine Pollution Discharge Elimination System (MEPDES) Permitting Program Submission

The MEPDES program is fully described in documents the State has submitted in accordance with 40 CFR 123.21, *i.e.*, a Memorandum of Agreement (MOA) for execution by MEDEP and EPA; a Program Description outlining the procedures, personnel and protocols that will be relied on to run the State's permitting and pretreatment program; a Statement signed by the Attorney General that describes the State's legal authority to administer a program equivalent to the federal NPDES program; and a description of the State's Continuing Planning Process.

I. The EPA/MEDEP MOA

The requirements for MOAs are found in 40 CFR 123.24. A Memorandum of Agreement is a document signed by both the State and the EPA. The MOA specifies program responsibilities and provides structure for the State's program management and EPA's program oversight. The MOA submitted by the State of Maine has been signed by the Commissioner of the Department of Environmental Protection. The Regional Administrator of U.S. EPA Region I will sign the document if the program has been determined approvable and all comments received during the comment period have been considered.

II. Program Description

A program description submitted by a State seeking program approval must meet the minimum requirements of 40 CFR 123.22. It must provide a narrative description of the scope, structure, coverage and processes of the State program; a description of the organization, staffing and position descriptions for the lead State agency; and itemized costs and funding sources for the program. It must describe all applicable State procedures (including administrative procedures for the issuance of permits and administrative or judicial procedures for their review) and include copies of forms used in the program. It must further contain a complete description of the State's compliance and enforcement tracking program. The State has submitted such a program description.

III. Attorney General's Statement

An Attorney General's Statement is required and described in regulations found at 40 CFR 123.23. Legal counsel representing the State must certify that the State has lawfully adopted statutes and regulations that provide the State agency with the legal authority to administer a program in compliance with 40 CFR part 123. The Attorney General's Statement from Maine certifies that the State has the legal authority to administer the MEPDES program in accordance with the regulations in 40 CFR part 123.

The Attorney General's Statement also includes the State's analysis, submitted pursuant to 40 CFR 123.23(b), asserting that the State has authority to implement the MEPDES program in Indian country. The Statement argues that the Maine Indian Claims Settlement Act (MICSA), 25 U.S.C. 1721–35, and the Maine Implementing Act, 30 MRSA §§ 6201–14, grant the State jurisdiction to enforce the program on the reservations and other Indian country of the five federally-recognized Indian tribes in the State. The State also asserts that the federal trust responsibility to federally-recognized tribes does not operate in Maine. EPA is seeking comment on the Attorney General's analysis regarding the State's jurisdiction and the EPA role in Indian country in Maine.

Finally, in anticipation of the State's assertion of jurisdiction in Indian country, EPA has already initiated consultations with representatives of the federally-recognized tribes in Maine pursuant to EPA's Indian policy of November 8, 1984 and the President's memorandum of April 1, 1993 on government-to-government relations with Indian tribes. While those consultations have been informative, EPA wishes to remind the public that any comments that any party wishes EPA to consider and address on the record in this action must be submitted during the comment period provided for in this notice.

IV. Continuing Planning Process

The State has submitted a description of its Continuing Planning Process in accordance with CWA Section 303(e) and 40 CFR 130.5. This document describes the State's planning processes for developing effluent limitations, total maximum daily loads (TMDLs) and water quality standards, among other things. This document is being separately reviewed by EPA pursuant to CWA Section 303(e) and 40 CFR 130.5, but also has been included as part of the State's application for the NPDES Program.

Comments on the Described Program

The program submitted by the State of Maine has been determined to be complete in accordance with the regulations found at 40 CFR part 123. EPA and MEDEP want to encourage public participation in this authorization process so that the citizens of Maine will understand the program in their State. Therefore, EPA requests that the public review the program that MEDEP has submitted and provide any comments they believe are appropriate. EPA will consider all comments on the MEPDES program and/or its authorization in its decision.

Other Federal Statutes

National Historic Preservation Act

Section 106 of the National Historic Preservation Act (NHPA) requires all federal agencies to take into account the effects of their undertakings on historic properties and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on such undertakings. The Agency must consult with the appropriate State Historic Preservation Officer (SHPO) and/or Tribal Historic Preservation Officer (THPO) an all federal undertakings that have the potential to cause effects on historic properties or sites listed or eligible for listing in the National Register of Historic Places. Regulations controlling Section 106 consultation are found at 36 CFR Part 800 (1999). EPA approval of the State permitting program under section 402 of the Clean Water Act would be a federal undertaking within the meaning of the NHPA. The EPA is currently in discussions with the appropriate SHPO and THPOs regarding its determination that approval of the State permitting program itself would have no effect on the preservation of historic properties within the State of Maine.

Endangered Species Act

Section 7 of the Endangered Species Act (ESA) requires that all federal agencies consult with the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS), as appropriate, to insure their

actions are not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of the designated critical habitat of such species. Section 7 also requires federal agencies to confer on any action that is likely to jeopardize the continued existence of proposed species or result in the destruction or adverse modification of proposed critical habitat. Regulations controlling interagency cooperation under Section 7 are codified at 50 CFR Part 402 (1999). EPA approval of the State permitting program under section 402 of the Clean Water Act would be a federal action subject to these requirements, however, subsequent State MEPDES permit actions would not. Pursuant to the ESA, the EPA is currently engaged in informal consultation and conferencing with both FWS and NMFS.

Magnuson-Stevens Fishery Conservation and Management Act

Section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires all federal agencies to consult with the National Marine Fisheries Service (NMFS) on agency actions that may adversely affect essential fish habitat. Regulations controlling consultation under Section 305(b)(2) are codified at 50 CFR Part 600, Subpart K (1999). EPA approval of the State permitting program under section 402 of the Clean Water Act would be a federal actions requiring consultation, however, subsequent State MEPDES permit actions would not. Pursuant to the Magnuson-Stevens Act, the EPA is currently engaged in consultation with NMFS.

Coastal Zone Management Act

Pursuant to section 307(c)(1)(C) of the Coastal Zone Management Act, Federal agencies carrying out an activity which affects any land or water use or natural resource with the Coastal Zone of a state with an approved Coastal Zone Management Plan must determine whether that activity is, to the maximum extent practicable, consistent with the enforceable requirements of the Plan and provide its determination to the State agency responsible for implementation of the Plan for review. Maine's approved Coastal Zone Management Plan is administered by the Maine Office of State Planning. Maine's permit actions are themselves subject to consistency review under State law; thus approval of the MEPDES program would not affect Maine's Coastal Zone and would be consistent with the enforceable requirements of Maine's Coastal Zone Management Plan.

Regulatory Flexibility Act

Based on General Counsel Opinion 78–7 (April 18, 1978), EPA has long considered a determination to approve or deny a State NPDES program submission to constitute an adjudication because an ''approval'', within the meaning of the APA, constitutes a ''license,'' which, in turn, is the product of an ''adjudication''. For this reason, the statutes and Executive Orders that apply to rulemaking action are not applicable here. Among these are provisions of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.* Under the RFA, whenever a Federal agency proposes or promulgates a rule under section 553 of the Administrative Procedure Act (APA), after being required by that section or any other law to publish a general notice of proposed rulemaking, the Agency must prepare a regulatory flexibility analysis for the rule, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. If the Agency does not certify the rule, the regulatory flexibility analysis must describe and assess the impact of a rule on small entities affected by the rule.

Even is the NPDES program approval were a rule subject to the RFA, the Agency would certify that approval of the State's proposed MEPDES program would not have a significant economic impact on a substantial number of small entities. EPA's action to approve an NPDES program merely recognizes that the necessary elements of an NPDES program have already been enacted as a matter of State law; it would, therefore, impose no additional obligations upon those subject to the State's program. Accordingly, the Regional Administrator would certify that this program, even if a rule, would not have a significant economic impact on a substantial number of small entities.

Authority: This action is taken under the authority of Section 402 of the Clean Water Act as amended, 42 U.S.C. 1342.

Dated: December 20, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–33776 Filed 12–29–99; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 99–295, FCC 99–404]

Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, Inter-LATA Service in the State of New York

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission grants Bell Atlantic's section 271 application for authority to enter the inter-LATA toll market in the state of New York. The Commission grants Bell Atlantic's application based on our conclusion that Bell Atlantic has satisfied all of the statutory requirements for entry, and opened its local exchange markets to full competition.

DATES: Effective December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Claudia Pabo or Andrea Kearney, Attorneys, Policy and Program Planning Division, Common Carrier Bureau, at (202) 418–1580, or via the Internet at *cpabo@fcc.gov* or *akearney@fcc.gov,* respectively. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, CY–A257, 445 12th Street, Washington, DC 204554. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This document is a brief description of the Commission's Memorandum Opinion and Order adopted December 21, 1999, and released December 22, 1999. The full text also may be obtained through the World Wide Web, at *http://www.fcc.gov/ccb/Orders/index6.html;* or may be purchased from the Commission's copy contractor, International Transcription Service Inc. (ITS), CY B–400, 445 12th Street, SW, Washington, DC.

Synopsis of the Memorandum Opinion and Order

1. *The New York Commission's Evaluation.* The New York Commission advised the Commission that, following two and one-half years of review, testing, and process improvements, Bell Atlantic-NY had met the checklist requirements of section 271(c). Specifically, the New York Commission stated that Bell Atlantic had met its obligation under section 271(c)(1)(A) by entering into more than 75

interconnection agreements approved by the New York Commission, and that competitive LECs are providing facilities-based local exchange service. The New York Commission also stated that the record developed in the New York proceeding establishes that Bell Atlantic has a legal obligation to provide the 14 checklist items, and it is meeting that obligation.

2. *The Department of Justice's Evaluation.* The Department of Justice concluded that it did not have substantial concerns about the ability of facilities-based carriers and firms that wish to resell Bell Atlantic's retail services to enter the local telecommunications markets in New York. It also concluded that Bell Atlantic had made great progress in opening the market to competition through the use of unbundled network elements, but two major areas of deficiency, operations support systems (OSS) and access to unbundled local loops, remain as important obstacles to local competition. As a result, the Department stated that this Commission could properly deny this application or, as an alternative, approve the application subject to carefully drafted conditions under which Bell Atlantic would be permitted to offer interLATA services only after taking specified steps and demonstrating that its performance has met appropriate requirements.

3. *Compliance with Section 271(c)(1)(A).* We conclude that Bell Atlantic demonstrates that it satisfies the requirements of section 271(c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in New York. Specifically, we find that AT&T, MCI World Com, and Cablevision Lightpath provide telephone exchange service either exclusively or predominantly over their own facilities to residential subscribers and to business subscribers. The New York Commission also concludes that Bell Atlantic has met the requirements of section 271(c)(1)(A). None of the commenting parties, including the competitors cited by Bell Atlantic in support of its showing, challenges Bell Atlantic's assertion in this regard.

4. *Checklist Item 1—Interconnection.* We conclude that Bell Atlantic satisfies the requirements of checklist item 1. Pursuant to this checklist item, Bell Atlantic must allow other carriers to interconnect their networks to its network for the mutual exchange of traffic. To do so, BellSouth must permit carriers to use any available method of interconnection at any available point in BellSouth's network. We find that Bell Atlantic demonstrates that it provides interconnection at all technically feasible points on its network. We likewise find that Bell Atlantic adequately demonstrates that it provides collocation in New York in accordance with the Commission's rules. Furthermore, interconnection between networks must be equal in quality whether the interconnection is between Bell Atlantic and an affiliate, or between Bell Atlantic and another carrier. Bell Atlantic demonstrates that it provides interconnection that meets this standard.

5. Bell Atlantic satisfies the pricing requirements of checklist item 1. Pursuant to this checklist item, Bell Atlantic must make physical and virtual collocation arrangements available at rates that are just, reasonable, and nondiscriminatory. We find that Bell Atlantic's collocation arrangements meet this test because Bell Atlantic offers cageless physical collocation to those competitive LECs that request it at just, reasonable, and nondiscriminatory prices. With respect to security measures, Bell Atlantic's collocation rates are not discriminatory because Bell Atlantic does not impose this cost. In addition, Bell Atlantic complies with the Commission's requirements that it allocate its space preparation and related up-front costs among competing carriers on a pro-rata basis. The New York Commission has set prices for a competing carrier's up-front site preparation costs at TELRIC-based costs, and ensured that the initial competitor to collocate will not bear the complete up-front collocation costs.

6. *Checklist Item 2—Access to Unbundled Network Elements.* We conclude that Bell Atlantic satisfies the requirements of checklist item 2. For purposes of the checklist, Bell Atlantic's obligation to provide ''access to unbundled network elements,'' or the individual components of the telephone network, is comprised of three aspects. First, to fulfill its nondiscrimination checklist obligation, Bell Atlantic must provide access to its operations support systems (OSS), meaning the systems, databases and personnel necessary to support the elements or services. Nondiscriminatory access ensures that new entrants have the ability to order service for their customers and communicate effectively with Bell Atlantic regarding basic activities such as placing orders and providing maintenance and repair for customers. For each of the primary OSS functions, including pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management and technical assistance, Bell Atlantic must provide access that enables competing carriers to perform the function in substantially the same time and manner as Bell Atlantic or, if there is not an appropriate retail analogue in Bell Atlantic's systems, in a manner that permits an efficient competitor a meaningful opportunity to compete.

7. As an initial matter, Bell Atlantic demonstrates that it provides documentation and technical assistance necessary for new entrants to connect with its OSS, and a change management process that provides information necessary for competing carriers to modify their systems and procedures when Bell Atlantic changes its OSS. With respect to pre-ordering, or the activities that a competing carrier undertakes to gather and verify the information necessary to place an order, Bell Atlantic demonstrates through evidence of actual commercial usage and results of independent third-party testing that it has deployed operationally ready interfaces and systems that offer nondiscriminatory access to pre-ordering OSS functions. Specifically, Bell Atlantic's pre-ordering interfaces and systems enable competing carriers to retrieve customer service records, validate addresses, select and reserve telephone numbers, assess the services and features available to customers, retrieve due date information, determine whether a loop is capable of supporting advanced technologies, and view a customers' directory listing.

8. In terms of the interfaces and systems that enables competing carriers to place an order for service, Bell Atlantic demonstrates through performance data and third-party testing that it return timely order confirmation and rejection notices, processes manually handled orders accurately, provides jeopardy information and order completion notification, and is capable of handling reasonably foreseeable demand volumes. In terms of provisioning, performance data and third-party test results demonstrate that Bell Atlantic provisions competing carriers' customers orders in substantially the same time and manner that it provisions orders for its own retail customers.

9. In addition, with respect to maintenance and repair, Bell Atlantic demonstrates through commercial usage and third-party test results that its interfaces and systems enable competing carriers to create, modify, and cancel trouble tickets, and to request that Bell Atlantic test a customer's circuit, in substantially the same time and manner as Bell Atlantic's retail operations. Similarly, Bell

Atlantic resolves problems associated with customers of competing carriers in substantially the same time and manner and at the same level of quality that it performs repair work for its own customers. Finally, with respect to billing, Bell Atlantic demonstrates that it provides complete and accurate reports on the service usage of competing carriers' customers in the same manner that Bell Atlantic provides such information to itself.

10. Second, pursuant to the checklist, Bell Atlantic must provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements. Using evidence of actual commercial usage and the results of independent third-party testing. Bell Atlantic demonstrates that it provides to competitors combinations of already-combined network elements as well as nondiscriminatory access to unbundled network elements in a manner that allows competing carriers to combine those elements themselves.

11. Bell Atlantic satisfies the pricing requirements of checklist item 2. In order to fulfill its obligations under this checklist item, Bell Atlantic must provide nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory. This checklist item ensures that new entrants are not placed at a competitive disadvantage due to discriminatory prices for network elements. The Commission has determined that prices for unbundled network elements must be based on Bell Atlantic's forward-looking, long-run incremental costs, or TELRIC (Total Element Long Run Incremental Cost) for each network element.

12. We find that Bell Atlantic demonstrates that the pricing of its unbundled network elements complies with TELRIC. Specifically, Bell Atlantic's prices for switches and loops offered as unbundled network elements are priced pursuant to a forward-looking, long-run incremental cost methodology.

13. In addition, we do not find that the contract termination liability provisions contained in Bell Atlantic's customer-specific arrangements (CSAs) constitute an unreasonable or discriminatory condition or limitation on the resale of its telecommunications services. We also find that Bell Atlantic is not required to provide an avoided-cost discount on its wholesale DSL offering because it is not a retail service subject to discount obligations.

13. *Checklist Item 3—Access to Poles, Ducts, Conduits, and Rights-of-Way.* Based on the evidence in the record, we find that Bell Atlantic demonstrates that it is providing nondiscriminatory access to its poles, ducts, conduits, and rights-of-way at just and reasonable rates, terms, and conditions in accordance with the requirements of section 224, and thus, satisfies the requirements of checklist item 3. The New York Commission concluded that Bell Atlantic provides nondiscriminatory access to poles, ducts, conduits, and rights-of-way in compliance with this checklist item.

14. *Checklist Item 4—Unbundled Local Loops.* Bell Atlantic satisfies the requirements of checklist item 4. Local loops are the wires, poles, and conduits that connect the telephone company end office to the customer's home or business. To satisfy the nondiscrimination requirement under checklist item 4, Bell Atlantic must demonstrate that it can efficiently furnish unbundled local loops to other carriers within a reasonable time frame, with a minimum level of service disruption, and at the same level of service quality it provides to its own customers. Nondiscriminatory access to unbundled local loops ensures that new entrants can provide quality telephone service promptly to new customers without constructing new loops to each customer's home or business.

15. Bell Atlantic provides evidence and performance data establishing that it can efficiently furnish unbundled loops, for the provision of both traditional voice services and various advanced services, to other carriers in a nondiscriminatory manner. More specifically, Bell Atlantic establishes that it misses fewer new loop installation appointments for competing carriers than it does for its retail customers. In addition, Bell Atlantic demonstrates that the new loops it installs are of substantially the same quality as the loops it provides to its retail customers. Bell Atlantic also demonstrates that it provides coordinated cutovers of loops, *i.e.*, hot cuts, to competing carriers within the prescribed time interval at least 90 percent of the time; that in no more than five percent of cases has the hot cut resulted in a service disruption; and that less than two percent of lines provisioned through hot cuts have been the subject of installation trouble reports. Additionally, Bell Atlantic establishes that it provides loop maintenance and repair functions to competitors in substantially the same time and manner as it provides them to its retail customers. Although due to unique circumstances present in this application we do not examine Bell Atlantic's provision of xDSL-capable loops separately, we provide guidance as to the evidentiary showing we would find most persuasive in evaluating future applicants' checklist compliance with respect to xDSL-capable loops.

16. *Checklist Item 5—Unbundled Local Transport.* Based on the evidence in the record, the Commission concludes that Bell Atlantic provides both shared and dedicated transport in compliance with the requirements of this checklist item. The New York Commission also finds that Bell Atlantic is in compliance with this checklist item. We are not persuaded by the assertions of some commenters that Bell Atlantic fails to provide dedicated local transport in a timely manner. We cannot accept the assertion by a number of these parties that the provision of special access should be considered for purposes of determining checklist compliance in this proceeding. Nevertheless, to the extent that parties are experiencing delays in the provisions of special access services ordered from Bell Atlantic's federal tariffs, we note that these issues are appropriately addressed in the Commission's section 208 compliant process.

17. *Checklist Item 6—Unbundled Local Switching.* Bell Atlantic satisfies the requirements of checklist item 6. A switch connects end user lines to other end user lines, and connects end user lines to trunks used for transporting a call to another central office or to a long-distance carrier. Switches can also provide end users with ''vertical features'' such as call waiting, call forwarding, and caller ID, and can direct a call to a specific trunk, such as to a competing carrier's operator services. We find that Bell Atlantic satisfies the requirements of checklist item 6, because Bell Atlantic demonstrates that it provides all of the features, functions, and capabilities of the switch.

18. *Checklist Item 7—911/E911/ Directory Assistance/Operator Services.* Based on the evidence submitted in the record, the Commission concludes that Bell Atlantic demonstrates that it is providing nondiscriminatory access to 911/E911 services, and thus satisfies the requirements of checklist item 7. We note that no commenter disputes Bell Atlantic's compliance with this portion of checklist item 7, and the New York Commission concludes that Bell Atlantic is providing nondiscriminatory access to 911/E911. We further conclude that Bell Atlantic demonstrates that it provides directory assistance services in accordance with the requirements of

checklist item 7. The New York Commission concludes that Bell Atlantic satisfies this portion of checklist item 7. We are not persuaded by commenters' arguments that Bell Atlantic fails to provide adequately directory assistance and operator services. To the extent that Bell Atlantic has not adequately addressed this problem, we note that the present record does not indicate that there is a widespread problem. Only two commenters raise this objection, suggesting the difficulty is of limited competitive consequence. In fact, several parties support Bell Atlantic's assertion of compliance with this checklist item. Accordingly, we conclude that these objections are not sufficient to conclude that Bell Atlantic has failed to comply with the requirements of checklist item 7.

19. *Checklist Item 8—White Pages Directory Listings.* Bell Atlantic satisfies the requirements of checklist item 8. White pages are the directory listings of telephone numbers of residences and businesses in a particular area. This checklist item ensures that white pages listings for customers of different carriers are compatible, in terms of accuracy and reliability, notwithstanding the identity of the customer's telephone service provider. Bell Atlantic demonstrates that its provision of white pages listings to customers of competitive LECs is nondiscriminatory in terms of their appearance and integration, and that it provides white pages listings for competing carriers' customers with the same accuracy and reliability that it provides to its own customers.

20. *Checklist Item 9—Numbering Administration.* Bell Atlantic satisfies the requirements of checklist item 9. Telephone numbers are currently assigned to telecommunications carriers based on the first three digits of the local number, known as ''NXX'' codes. To fulfill the nondiscrimination obligation in checklist item 9, Bell Atlantic must comply with the numbering administration guidelines, plan, or rules. This checklist item ensures that other carriers have the same access to new telephone numbers as Bell Atlantic. Bell Atlantic demonstrates that it has adhered to industry guidelines and the Commission's requirements.

21. *Checklist Item 10—Databases and Associated Signaling.* Bell Atlantic satisfies the requirements of checklist item 10. Databases and associated signaling refer to the call-related databases and signaling systems that are used for billing and collection or the transmission, routing, or other provision of a telecommunications service. To fulfill the nondiscrimination obligation in checklist item 10, Bell Atlantic must demonstrate that it provides new entrants with the same access to these call-related databases and associated signaling that it provides itself. This checklist item ensures that other carriers have the same ability to transmit, route, complete, and bill for telephone calls as Bell Atlantic. Bell Atlantic demonstrates that it provides other carriers nondiscriminatory access to its: (1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion or, in the alternative, a means of physical access to the signaling transfer point linked to the unbundled database; and (3) Service Management Systems; and to design, create, test, and deploy Advanced Intelligent Network (AIN) based services at the SMS through a Service Creation Environment.

22. *Checklist Item 11—Number Portability.* Bell Atlantic satisfies the requirements of checklist item 11. Number portability enables consumers to take their phone number with them when they change local telephone companies. Bell Atlantic demonstrates that it provides number portability to consumers without impairment of quality, reliability, or convenience.

23. *Checklist Item 12—Dialing Parity.* Based on the evidence in the record, we find that Bell Atlantic demonstrates that it provides local dialing parity in accordance with the requirements of section 251(b)(3) and thus satisfies the requirements of this checklist item. No commenter challenges Bell Atlantic's assertion that it provides local dialing parity. Furthermore, the New York Commission concludes that Bell Atlantic meets the requirements of this checklist obligation.

24. *Checklist Item 13—Reciprocal Compensation.* Bell Atlantic satisfies the requirements of checklist item 13. Pursuant to this checklist item, Bell Atlantic must compensate other carriers for the cost of transporting and terminating a local call from Bell Atlantic. Alternatively, Bell Atlantic and the other carrier may enter into an arrangement whereby neither of the two carriers charges the other for terminating local traffic that originates on the other carrier's network. This checklist item is important to ensuring that all carriers that originate calls bear the cost of terminating such calls. Bell Atlantic demonstrates that it has reciprocal compensation arrangements in accordance with section 252(d)(2) in place, and that it is making all required payments in a timely fashion.

25. *Checklist Item 14—Resale.* Bell Atlantic satisfies the requirements of checklist item 14. This checklist item requires Bell Atlantic to offer other carriers all of its retail services at wholesale rates without unreasonable or discriminatory conditions or limitations so that other carriers may resell those services to an end user. This checklist item ensures a mode of entry into the local market for carriers that have not deployed their own facilities. Bell Atlantic demonstrates that it offers all of its retail services for resale at wholesale rates without unreasonable or discriminatory conditions or limitations. Bell Atlantic also shows that it provides nondiscriminatory access to operations support systems for the resale of its retail telecommunications services, and provisions resale services on a nondiscriminatory basis.

26. *Section 272 Compliance.* Bell Atlantic demonstrates that it will comply with the requirements of section 272. Pursuant to section 271(d)(3), Bell Atlantic must demonstrate that it will comply with the structural, transitional, and non-discriminatory requirements of section 272, as well as certain requirements governing its marketing arrangements. Bell Atlantic shows that it will provide interLATA telecommunications through structurally separate affiliates, and that its BOCs will operate in a non-discriminatory manner with respect to these affiliates and unaffiliated third parties. In addition, Bell Atlantic demonstrates that it will comply with public disclosure requirements of section 272, which requires Bell Atlantic to post on the Internet certain information about transactions between its affiliates and BOCs. Finally, Bell Atlantic demonstrates compliance with the joint marketing requirements of section 272.

27. *Public Interest Standard.* We conclude that approval of this application is consistent with the public interest, convenience, and necessity. While no single factor is dispositive in our public interest analysis, our overriding goal is to ensure that nothing undermines our conclusion, based on our analysis of checklist compliance, that markets are open to competition. We note that a strong public interest showing cannot overcome failure to demonstrate compliance with one or more checklist items.

28. Among other factors, we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstances of

this Application. We find that, consistent with our extensive review of the competitive checklist, barriers to competitive entry in the local market have been removed and the local exchange market today is open to competition. We thus disagree with commenters' arguments that the public interest would be disserved by granting Bell Atlantic's application because the local market in New York has not yet truly been opened to competition. We also find that the record confirms our view that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.

29. Another factor that could be relevant to our analysis is whether we lack sufficient assurance that markets will remain open after grant of application. We find that the performance monitoring and enforcement mechanisms developed in New York, in combination with other factors, provide strong assurance that Bell Atlantic will continue to satisfy the requirements of section 271 after entering the long distance market. Where, as here, a BOC relies on performance monitoring and enforcement mechanisms to provide such assurance, we will review the mechanisms involved to ensure that they are likely to perform as promised. We conclude that these mechanisms have a reasonable design and are likely to provide incentives sufficient to foster post-entry checklist compliance. We base this predictive judgment on the fact that the plan has the following important characteristics: (1) potential liability that provides a meaningful and significant incentive to comply with the designated performance standards; (2) clearly-articulated, pre-determined measures and standards, which encompass a comprehensive range of carrier-to-carrier performance; (3) a reasonable structure that is designed to detect and sanction poor performance when it occurs; (4) a self-executing mechanism that does not leave the door open unreasonably to litigation and appeal; and (5) reasonable assurances that the reported data is accurate. Parties to this proceeding identify numerous criticisms relating to the structure of these mechanisms, but none are sufficient to cause us to conclude that the plan will fail to foster post-entry compliance with the checklist requirements.

30. Consistent with our accounting rules with respect to antitrust damages and certain other penalties paid by carriers, we conclude that Bell Atlantic should not be permitted to reflect any portion of the bill credits associated with these enforcement mechanisms as expenses under the revenue requirement for interstate services of the Bell Atlantic incumbent LEC. We also conclude that other concerns identified by commenters do not convince us that grant of this application would be inconsistent with the public interest. Finally, we have determined in a separate order that Bell Atlantic's provisions of National Directory Assistance is permissible and consistent with section 271(g)(6) of the Act, and conclude that any uncertainty about Bell Atlantic's past compliance with this provisions is not grounds for denying the application.

31. *Section 271(d)(6) Enforcement Authority.* Congress sought to create incentives for BOCs to cooperate with competitions by withholding long distance authorization until they satisfy various conditions related to local competition. We note that these incentives may diminish with respect to a given state once a BOC receives authorization to provide interLATA service in that state. The statute nonetheless mandates that a BOC comply fully with section 271's requirements both before and after it receives approval from the Commission and competes in the interLATA market. Working in concert with state commissions, we intend to monitor closely post-entry compliance and to enforce vigorously the provisions of section 271 using the various enforcement tools Congress provided us in the Communications Act. Swift and effective post-approval enforcement of section 271's requirements is essential to Congress' goal of achieving lasting competition in local markets.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–33901 Filed 12–29–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 16, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Donald L. Howell and HQFP Holdings, LTD., LLP, Houston, Texas; to acquire voting shares of FNB Financial Services, Inc., Durant, Oklahoma, and thereby indirectly acquire voting shares of First National Bank in Durant, Durant, Oklahoma.

2. Donald Lee Patry and Donald Carl Harder both of Whitewater, Kansas; to acquire voting shares of Whitewater BancShares, Inc., Whitewater, Kansas, and thereby indirectly acquire voting shares of Bank of Whitewater, Whitewater, Kansas.

Board of Governors of the Federal Reserve System, December 27, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33992 Filed 12–29–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the

nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 26, 2000.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. FGB Bankshares, Inc., Hammond, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of First Guaranty Bank, Hammond, Louisiana.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Baytree Bancorp, Inc., Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Baytree National Bank & Trust Company (in organization), Chicago, Illinois.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Calvert Financial Corporation, Jefferson City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Bunceton Bancshares, Inc., Blue Springs, Missouri, and thereby indirectly acquire Bunceton State Bank, Bunceton, Missouri.

Board of Governors of the Federal Reserve System, December 27, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33991 Filed 12–29–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 16, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. Bank of America Corporation, Charlotte, North Carolina; BancWest Corporation, Honolulu, Hawaii; BB&T Corporation, Winston-Salem, North Carolina; First Union Corporation, Charlotte, North Carolina; SunTrust Banks, Inc., Atlanta, Georgia; Wachovia Corporation, Winston-Salem, North Carolina; and Zions Bancorporation, Salt Lake City, Utah; to acquire through their subsidiary, Star Systems, Inc., Maitland, Florida, and thereby indirectly acquire up to 38 percent of the voting securities of Bank Network Securities, Inc., Chicago, Illinois (in organization), and thereby engage in providing investment and financial advisory services, pursuant to § 225.28(b)(6) of Regulation Y; providing brokerage services and investment advisory services, pursuant to § 225.28(b)(7)(i) of Regulation Y; buying and selling all types of securities on a ''riskless principal'' basis, pursuant to § 225.28(b)(7)(ii) of Regulation Y; underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions and other obligations, instruments, and securities that a member bank of the Federal Reserve System may underwrite or deal in, pursuant to § 225.28(b)(8)(i) of Regulation Y; engaging as principal in investing and trading activities, pursuant to § 225.28(b)(8)(ii) of Regulation Y; engaging in lending activities, pursuant to § 225.28(b)(1) of Regulation Y; engaging in leasing activities, pursuant to § 225.26(b)(3) of Regulation Y; engaging in general insurance agency activities, pursuant to § 225.28(b)(11)(vii) of Regulation Y; underwriting and dealing in the following securities (collectively ''Tier II Securities''): all types of debt, equity, and other securities (other than ownership interest in open-end investment companies that a member bank may not underwrite or deal in) (''bank ineligible securities''), *see Board Order, Societe Generale*, 84 Fed. Res. Bull. 680 (1998); and in providing cash management services, *see Board Order, Societe Generale*, Fed. Res. Bull. 680 (1998).

B. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Citizens Community Bancorp, Inc., Marco Island, Florida; to acquire CCB Mortgage Corporation, Marco Island, Florida, and thereby engage in extending credit and servicing loans pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 27, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–33990 Filed 12–29–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m. (EST), January 10, 2000.

PLACE: 4th Floor Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the December 13, 1999, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: December 27, 1999.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 99–34023 Filed 12–27–99; 4:59 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of

proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(c) Ways to enhance the quality, utility and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1. Follow-up Survey for the Multi-site Evaluation of the Welfare-to-Work Grant Program—New—This data collection will support the Office of the Assistant Secretary for Planning and Evaluation in its efforts to further document the status of Welfare-to-Work formula and competitive grantees and provide information on implementation issues as part of the Congressionally mandated evaluation of the Welfare-to-work grants program.

Respondents: Individuals;

Number of Responses: 4,250;

Burden per Response: .75 hours;

Total Annual Burden: 3,188 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: December 21, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–33942 Filed 12–29–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Food and Drug Administration

Health Care Financing Administration

CLIA Program; Transfer of Clinical Laboratory Complexity Categorization Responsibility

AGENCY: Centers for Disease Control and Prevention, Food and Drug Administration, and Health Care Financing Administration, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), the Food and Drug Administration (FDA), and the Health Care Financing Administration (HFCA) are announcing that CDC is transferring the responsibility for the categorization of commercially marketed in vitro diagnostic (IVD) tests under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) to FDA. Categorization is the process of assigning commercial clinical laboratory tests to one of three CLIA regulatory categories (waived, moderate complexity, high complexity). An interagency agreement on the scope and nature of the transfer of this CLIA function was signed on February 27, 1999.

DATES: The transfer from CDC to FDA of responsibility under CLIA for complexity categorization of commercially marketed IVD's is expected to be completed by January 31, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett or Clara A. Sliva, Center for Devices and Radiological Health (CDRH) (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–827–0496.

SUPPLEMENTARY INFORMATION: Under section 353 of the Public Health Service Act (42 U.S.C. 263a), as amended by CLIA, and regulations implementing CLIA published on February 28, 1992 (57 FR 7002), existing and new commercial clinical laboratory tests are categorized into one of three regulatory categories. The three test categories are: Waived, moderate complexity, and high complexity tests.

HCFA was originally charged with administering the CLIA program and the Public Health Service was enlisted later to provide technical and scientific support. Under the regulations issued in 1992, FDA was assigned the responsibility of categorizing the complexity of commercially marketed laboratory tests. In 1994, this responsibility was delegated to CDC because of budgetary considerations.

CDC, FDA, and HCFA signed an interagency agreement on February 27, 1999, to transfer the CLIA complexity categorization responsibility for commercially marketed tests from CDC to FDA. The transfer was contingent upon FDA's receipt of funding for this function. The transfer will permit manufacturers of commercially marketed IVD's to submit premarket applications for products and requests for complexity categorizations of those products to one agency. When the transfer is complete, FDA staff in CDRH will evaluate the appropriate complexity category as they review premarket submissions for clinical laboratory devices. Products seeking a waiver categorization, devices exempt from premarket notification, and devices under premarket review by other FDA centers also will be processed by these FDA staff. The criteria for categorization under CLIA will not change. All other CLIA responsibilities currently assigned to CDC, including review of test systems, assays, or examinations not commercially marketed as IVD products, will remain with CDC.

FDA and CDC expect the transfer of responsibility to be completed by January 31, 2000. Until that time, requests for categorization should continue to be submitted to CDC. Both agencies are currently participating in training necessary to accomplish the transfer. FDA intends to provide guidance on how categorizations will be administratively processed before manufacturers begin to send their requests to CDRH.

Dated: December 21, 1999.

Jeffrey P. Koplan,

Director, Centers for Disease Control and Prevention.

Jane E. Henney,

Commissioner of Food and Drugs.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administraion.

[FR Doc. 99–33941 Filed 12–29–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–5347]

Draft ''Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products From Xenotransplantation Product Recipients and Their Contacts;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products From Xenotransplantation Product Recipients and Their Contacts.'' The draft guidance document is intended to provide recommendations to all registered blood and plasma establishments, and establishments engaged in manufacturing plasma derivatives. The draft guidance document provides recommendations regarding donor deferral and the disposition of blood products.

DATES: Submit written comments at any time, however, comments should be submitted by February 28, 2000, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of ''Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products From Xenotransplantation Product Recipients and Their Contacts'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document. Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled ''Guidance for Industry: Precautionary Measures to Reduce the Possible Risk of Transmission of Zoonoses by Blood and Blood Products From Xenotransplantation Product Recipients and Their Contacts.'' The draft guidance document provides FDA's recommendations to all registered blood and plasma establishments and establishments engaged in manufacturing plasma derivatives regarding donor deferral. It also provides recommendations on the disposition of blood products manufactured from a donor who is retrospectively discovered to have received a xenotransplantation product or to have been in close contact with a recipient of a xenotransplantation product.

Concerns have arisen in the last few years about the potential infectious disease and public health risks associated with xenotransplantation. Zoonoses are infectious diseases of animals that can be transmitted to humans through exposure to, or consumption of animals. Because transplantation necessitates disruption of the recipient's usual protective physical and immunologic barriers, xenotransplantation may facilitate transmission of known or as yet unrecognized infectious agents to humans.

The ''Draft Public Health Service (PHS) Guideline on Infectious Disease Issues in Xenotransplantation'' published in the **Federal Register** of September 23, 1996 (61 FR 49920). The draft guideline, which includes outlines of health surveillance programs and principles for screening candidate source animals for infectious agents of concern, indicated that patient consent forms should state clearly that xenotransplantation product recipients should never, subsequent to receiving the transplant, donate Whole Blood, blood components, Source Plasma, Source Leukocytes, tissues, breast milk, ova, sperm, or any other body parts for use in humans.

In an open public meeting on December 17, 1997 (62 FR 62776, November 25, 1997), the Xenotransplantation Subcommittee of the Biological Response Modifiers Advisory Committee recommended that close contacts of xenotransplantation product recipients, as well as the recipients themselves, should not donate blood or tissue because these individuals are theoretically at risk of acquiring zoonoses, and of transmitting them through blood and tissue donations. At FDA's Blood Products Advisory Committee open public meeting held on March 19, 1998 (63 FR 8461, February 19, 1998), donor deferral issues related to xenotransplantation were also discussed.

The draft guidance document represents the agency's current thinking with regard to possible risk of transmission of zoonoses by xenotransplantation product recipients and their contacts, through blood and blood products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

The draft guidance document is being distributed for comment, however, the recommendations may be implemented immediately without prior approval by FDA. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by February 28, 2000, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cber/guidelines.htm.

Dated: December 22, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–33940 Filed 12–29–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0232]

Agency Information Collection Activities: Submission for OMB Review; Comment Request.

AGENCY: Health Care Financing Administration; HHS,

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Medicare Program Integrity Program Organizational Conflict of Interest Disclosure Certificate and Supporting Regulations in 42 CFR 421.310 and 421.312;

Form No.: HCFA–R–0232 (OMB# 0938–0723); *Use:* This information is used to assess whether contractors who perform, or who seek to perform, Medicare Integrity Program functions, such as medical review, fraud review or cost audits, have organizational conflicts of interest and whether any conflicts have been resolved. The entities providing the information will be organizations that have been awarded, or seek award of, a Medicare Integrity Program contract; *Frequency:* On occasion; *Affected Public:* Businesses or other for profit; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 2,400.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: December 6, 1999.

John Parmigiani,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–33987 Filed 12–29–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health and Human Services

National Heart, Lung, and Blood Institute; Proposed Collection; Comment Request The Multi-Ethnic Study of Atherosclerosis

Summary

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The Multi-Ethnic Study of Atherosclerosis.

Type of Information Request: New.

Need and Use of Information Collection: MESA is a cohort study evaluating people aged 45–84 years and measures of subclinical disease cardiovascular disease (disease detected before it has produced signs and symptoms) that predict progression to clinically overt disease in a diverse population. The purpose is to develop population-based methods for identifying asymptomatic people at high risk of clinical events. The results of this study will allow application for future screening for identification of people at increased risk for cardiovascular disease and intervention studies for treatment of those at increased risk. This study will include a substantial proportion of previously understudied minority groups.

Need and use of Information Collection; Frequency of Response; Affected Public and Type of Respondents: The annual reporting burden is as follows:

Estimated number of Respondents: 16,514;

Estimated Responses/Respondent: 3.88;

Average Burden Hours/Response: 4.55; and

Estimated Total Annual Burden Hours Requested: 25,070.

There are no costs for respondents. Estimated annualized cost for information collection for information collection for a 10-year period (in thousands) is $6870. The estimated annualized start-up costs are $756, and the estimated annualized operating and maintenance costs are $6114.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information will have practical utility; (2) The accuracy of the agency's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information

To request more information on the proposed project or to obtain a copy of data collection plans and instruments, contact Dr. Robin Boineau, Epidemiology and Biometry Program, Division of Epidemiology and Clinical Applications, NHLBI, NIH, II Rockledge Centre, 6701 Rockledge Drive, MSC # 7934, Bethesda, MD, 20892–7934, or call non-toll-free number (301) 435–0707, or E-mail your request, including your address to: boineau@nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before February 28, 2000.

Dated: December 22, 1999.

Peter Savage,

Acting Director, Division of Epidemiology and Clinical Applications.

[FR Doc. 99–33910 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Proposed Collection; Comment Request, the Framingham Study

Summary

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: The Framingham Study.

Type of Information Collection Request: Revision of a currently approved collection (OMB NO. 0925–0216).

Need and Use of Information Collection: This project involves physical examination and testing of the surviving members of the original Framingham Study cohort and the surviving members of the offspring cohort. Investigators will contact doctors, hospitals, and nursing homes to ascertain participants' cardiovascular events occurring outside the study clinic. Information gathered will be used to further describe the risk factors, occurrence rates, and consequences of cardiovascular disease in middle aged and older men and women.

Frequency of Response: The cohort participants respond every two years; the offspring participants respond every four years.

Affected Public: Individuals or households; Businesses or other for profit; Small businesses or organizations.

Type of Respondents: Middle aged and elderly adults; doctors and staff of hospitals and nursing homes.

The annual reporting burden is as follows:

Estimated Number of Respondents: 2,865;

Estimated Number of Responses per Respondent: 3,398;

Average Burden Hours Per Response: 0.6321; and

Estimated Total Annual Burden Hours Requested: 6,154.

The annualized cost to respondents is estimated at $61,540, assuming respondents time at the rate of $10 per hour. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF HOUR BURDEN

Type of response	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Framingham Original Cohort	340	3,912	0.3496	465
Framingham Offspring Cohort	1,267	5,642	0.7300	5,218
Physician, hospital, nursing home staff [1]	629	1.0	0.6700	421
Framingham next-of-kin[1]	629	1.0	0.0800	50
Total	2,865	—	—	6,154

[1] Annual burden is placed on doctors, hospitals, nursing homes, and respondent relatives/informants through requests for information which will help in the compilation of the number and nature of new fatal and nonfatal events occurring outside the Framingham examining clinic.

Request For Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information-to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information

To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Paul Sorlie, Project Officer, NIH, NHLBI, 6701 Rockledge Drive, MSC 7934, Bethesda, MD 20892–7934, or call non-toll-free number (301) 435–0456 or E-mail your request, including your address to: SorlieP@nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before February 28, 2000.

Dated: December 14, 1999.

Lawrence Friedman,

Director, Division of Epidemiology and Clinical Applications.

[FR Doc. 99–33911 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary and Alternative Medicine; Notice of Meeting

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the National Advisory Council for Complementary and Alternative Medicine (NACCAM).

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Complementary and Alternative Medicine.

Date: January 24–25, 2000.

January 24, 2000

8:30 am to 12:30 pm Open: The agenda includes Statement of Understanding, Review of the Director, NACCAM, Report, and other business of the Council

12:30 pm to adjournment Closed: To review and evaluate grant applications and/or proposals

Place: NIH Neuroscience Office Building, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

January 25, 2000

Open: Proposed program initiatives, Subcommittees, and Public Comments

Place: NIH Neuroscience Office Building, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Contact Person: Richard Nahin, Ph.D., Executive Secretary, National Center for Complementary and Alternative Medicine, National Institutes of Health, 9000 Rockville Pike, Room 5B36, Bethesda, MD 20892, 301–594–2013.

The public comments session is scheduled from 11:00 am to 11:30 am. Each speaker will be permitted 5 minutes for their presentation. Interested individuals and representatives of organizations are requested to notify Dr. Richard Nahin, National Center for Complementary and Alternative Medicine, NIH, 31 Center Drive (MSC 2182), Building 31, Room 5B36, Bethesda, Maryland, 20892, 301–594–2013, Fax: 301–480–9500. Letters of intent to present comments, along with a brief description of the organization represented, should be received no later than 5:00 pm on January 12, 2000. Only one representative of an organization may present oral comments. Any person attending the meeting who does not request an opportunity to speak in advance of the meeting may be considered for oral presentation, if time permits, and at the discretion of the Chairperson. In addition, written comments may be submitted to Dr. Nahin at the address listed above up to ten calendar days (February 4, 2000) following the meeting.

Copies of the meeting agenda and the roster of members will be furnished upon request by Dr. Richard Nahin, Executive Secretary, NACCAM, National Institutes of Health, Building 31, Room 5B36, 31 Center Drive, Bethesda, Maryland 20892, (301) 594–2013, Fax 301–480–9500.

Dated: December 23, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–33915 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel Thrombosis of the Arterial & Cerebral Vasculature: New Molecular Genetic Concepts for Prevention & Treatment.

Date: January 19–20, 2000.

Time: 7:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David T. George, PHD, NIH, NHLBI, DEA, Review Branch, Rockledge Building II, Room 7188, 6701 Rockledge Drive, Bethesda, MD 20892–7924, 301/435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: December 20, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33912 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel.

Date: January 10–11, 2000.

Time: January 10, 2000, 8:00 a.m. to Recess.

Agenda: To review and evaluate grant application and/or proposals.

Place: Westin Hotel San Francisco Airport, 1 Old Bayshore Hwy., Millbrae, CA 94030.

Time: January 11, 2000, 8:00 a.m. to Adjournment at 12 noon.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Westin Hotel San Francisco Airport, 1 Old Bayshore Hwy., Millbrae, CA 94030.

Contact Person: Ken D. Nakamura, PHD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: December 20, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33913 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting of the Osteoarthritis Initiative—A Public-private Research Collaboration

Notice is hereby given of the Meeting The Osteoarthritis Initiative—A Public-Private Research Collaboration, February 28–29, 2000, to be held at the Lister Hill Auditorium, NIH Campus, Bethesda, Maryland 20892 This meeting will be open to the public from 8 a.m. to 5 p.m. on both days.

This meeting is being organized by several NIH Institutes and Centers, the FDA, and numerous pharmaceutical and biotechnology companies who have formed a consortium to develop and support a project that will enhance and facilitate the development of clinical interventions for osteoarthritis. The development and testing of treatments for osteoarthritis through clinical trials are now limited because good biological markers to serve as surrogates for disease endpoints are not available. This consortium was formed in response to a 1998, NIH-wide initiative from Dr. Harold Varmus to foster investigations that utilize fundamental knowledge and laboratory technologies to develop surrogate biomarkers of disease. In all areas of medicine there has been an enormous growth in the identification of potential targets for disease modification. Without the tools for rapid and inexpensive testing of potential targets, the development of new drugs will continue to be limited. Osteoarthritis presents great scientific opportunity and public need.

The consortium that has resulted from meetings of an Osteoarthritis Initiative Steering Group is exploring the options for government and industry to cosponsor, as a public-private consortium, the establishment of a research infrastructure to develop and evaluate biomarkers for osteoarthritis. Summaries of the meetings held can be found at *http://www.nih.gov/niams/news/oisg/index.htm*.

The overall scientific goal of the OA Initiative is to examine the progressive development of OA through the support of an epidemiological, human cohort prospective study with the following aims:

- Identifying specific quantitative surrogate markers of OA disease which can be used to monitor disease progression and response to therapy and become acceptable as registrable end points in clinical studies evaluating disease modifying agents;
- Enabling more efficient and effective clinical trials and a better understanding of the causative pathological mechanisms responsible in the development and progression of the OA disease;
- Initiating a new paradigm in which registrable clinical endpoints are established in non-interventional studies; and
- Establishing the managerial framework for similar Public/Private Partnerships in other disease areas.

The broad questions stated below represent starting points for the discussion of the scientific plan at and following the OA Initiative Meeting February 28–29, 2000:

- Are structural (anatomic) features of the joint (hip, knee, and hand) and associated tissue, such as joint space narrowing and osteophyte development, reliable markers of disease and disease progression?
- Are there biochemical or biophysical markers that would allow assessment of response to disease-modifying therapies?
- What research tools, resources, and knowledge are needed to develop reliable biomarkers of OA that may serve as surrogate endpoints in clinical trials?

The February 28–29, 2000 meeting will focus on the development of a strategic plan for the Osteoarthritis Initiative. Input from the scientific community to this strategic plan based on the questions stated above is invited and welcomed.

Ms. Maureen Knowles (NIAMS; Extramural Program; Natcher building; Room 5As–43; Bethesda, MD 20892–6500; Phone: 301–594–5055, Fax: 301–480–4543, e-mail: *mk92w@nih.gov*) will provide further information or it can be accessed at the following Web site *http://www.nih.gov/niams/news/currmeetregmat.htm*.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Knowles at 301–594–5055, in advance of the meeting.

Dated: December 20, 1999.

Ruth L. Kirschstein,

Deputy Director, National Institutes of Health.

[FR Doc. 99–33909 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: January 6, 2000.

Time: 12:00 p.m. to 1:15 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852.

Contact Person: M. Virginia Wills, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–6106, vw21k@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 CC (02) Special Emphasis Panel.

Date: January 6, 2000.

Time: 12:30 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 6000 Executive Blvd., Suite 409, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: M. Virginia Wills, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–6106, vw21k@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National

Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 21, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33917 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: January 13, 2000.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS—East Campus, 79 TW Alexander Drive, Building 4401, Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PHD, Scientific Review Administrator, NIEHS, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: January 19, 2000.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS–East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PHD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: December 21, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33918 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: January 13, 2000.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS—East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: January 13, 2000.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, 79 TW Alexander Drive, Building 4401, Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education, 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: December 21, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33919 Filed 12–29–99 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research, Special Emphasis Panel 00–19, Review of R03 & F33.

Date: January 4, 2000.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research, Special Emphasis Panel 20–00, Review of R03 & F32 Grants.

Date: January 7, 2000.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle. •

Name of Committee: National Institute of Dental Research, Special Emphasis Panel 27–00, Review of R01 Grant.

Date: February 8, 2000.

Time: 11:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: December 22, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33920 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: February 1–2, 2000.

Open: February 1, 2000, 1:00 p.m. to 5:00 p.m.

Agenda: For discussion of program policies and issues.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Closed: February 2, 2000, 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Conference Room D, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Mary Leveck, PHD, Associate Director for Scientific Programs, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Nursing Research, National Institutes of Health, HHS)

Dated: December 22, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33921 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: January 18, 2000.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 22, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33922 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Regents of the National Library of Medicine Planning Subcommittee.

Date: January 24, 2000.

Open: 3 p.m. to 5 p.m.

Agenda: Reports and program discussion.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: January 24–26, 2000.

Open: January 25, 2000, 9 a.m. to 4 p.m.

Agenda: Administrative reports and program discussion.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Closed: January 25, 2000, 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Open: January 26, 2000, 9 a.m. to 12 p.m.

Agenda: Administrative reports and program discussion.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

Date: January 25, 2000.

Open: 7:30 a.m. to 8:45 a.m.

Agenda: Outreach and Public Information items.

Place: National Library of Medicine, Building 38, Conference Room B, 8699 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS Bldg 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: January 25, 2000.

Closed: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg 38, Room 2E17B, Bethesda, MD 20894.

(Catalog of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: December 22, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33916 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center For Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Emphasis Panel.

Date: January 5, 2000.

Time: 2 pm to 4:30 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcelina B. Powers, DVM, MS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7804, Bethesda, MD 20892; (301) 435–1720.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 11, 2000.

Time: 2 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lawrence N. Yager, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892; (301) 435–0903, yagerl@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 12, 2000.

Time: 2 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892; (301) 435–1242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Fund.

Date: January 12, 2000.

Time: 4 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892; (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 17–19, 2000.

Time: 4 pm to 5 pm

Agenda: To review and evaluate grant applications.

Place: L'Auberge Del Mar, 1540 Camino Del Mar, Del Mar, CA 29014.

Contact Person: Nancy Lamontagne, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4170, MSC 7806, Bethesda, MD 20892; (301) 435–1726.

This notice is being published less than 15 days prior to the meeting due to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 18–19, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW, Washington, DC 20015.

Contact Person: Anita Miller Sostek, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892; (301) 435–1260.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: January 19, 2000.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dharam S. Dhindsa, DVM, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892; (301) 435–1174, dhindsad@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844,

93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 23, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–33914 Filed 12–29–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Survey of Organized Consumer Self-Help Entities—New

The self-help movement in the United States has mushroomed, and increasingly serves mental health consumers and family members as a complement to, or substitution for, traditional mental health services. The purposes of this project of SAMHSA's Center for Mental Health Services are to estimate the number of self-help entities nationwide and to describe their characteristics—structure, types of activities engaged in, approaches to well-being and recovery, resources, and linkages to other entities in the community, such as the mental health service delivery system. The survey will gather information from a sample of 3,000 mental health self-help entities run by and for recipients of mental health services and/or their family members. Data will be collected from three types of self-help entities: mutual support groups; self-help organizations; and, consumer-operated businesses and services. Computer Assisted Telephone Interviewing (CATI) will be used to conduct interviews with in-scope entities. The total response burden estimate is shown below.

Instrument	Number of respondents	Responses/respondent	Average burden/response (Hrs)	Total burden (Hrs)
Screener	7,600	1	.17	1,292
Questionnaire	3,000	1	.42	1,260
Total	.....	.....	.....	2,552

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: December 23, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–33946 Filed 12–29–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–52]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 22, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

[FR Doc. 99–33671 Filed 12–29–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Permits; Environmental Impact Statement on Resident Canada Goose Management; Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) is issuing this notice to invite public participation in the scoping process for preparing an Environmental Impact Statement (EIS) for resident Canada goose management under the authority of the Migratory Bird Treaty Act. The EIS will consider a range of management alternatives for addressing expanding populations of locally-breeding Canada geese that are

increasingly posing threats to health and human safety and damaging personal and public property. This notice describes possible alternatives, invites further public participation in the scoping process, identifies the location, date, and time of public scoping meetings, and identifies to whom you may direct questions and comments.

DATES: You must submit written comments regarding EIS scoping by March 30, 2000, to the address below. Dates for nine public scoping meetings are identified in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: You should send written comments to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, D.C. 20240. Alternately, you may submit comments electronically to the following address: canada__goose__eis@fws.gov. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, or Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION: On August 19, 1999, we published a Notice of Intent to prepare an EIS on resident Canada goose management (64 FR 45269). This action is in response to the growing numbers of Canada geese that nest and reside predominantly within the conterminous United States and our desire to examine alternative strategies to control and manage resident Canada geese that either pose a threat to health and human safety or cause damage to personal and public property.

Resident Canada Goose Populations

Numbers of Canada geese that nest and reside predominantly in the conterminous United States have increased tremendously in recent years. These geese are usually referred to as ''resident'' Canada geese. Recent surveys in the Atlantic, Mississippi, and Central Flyways (Wood *et al.*, 1994; Kelley *et al.*, 1998; Nelson and Oetting, 1998; Sheaffer and Malecki, 1998; Wilkins and Cooch, 1999) suggest that the resident breeding population now exceeds 1 million individuals in both the Atlantic (17 States) and Mississippi (14 States) Flyways. Available information shows that in the Atlantic Flyway, the resident population has increased an average of 14 percent per year since 1989. In the Mississippi Flyway, the resident population of Canada geese has increased at a rate of about 6 percent per year during the last 10 years. In the Central and Pacific Flyways, populations of resident Canada geese have similarly increased over the last few years. We are concerned about the rapid growth rate exhibited by these already large populations.

Because resident Canada geese live in temperate climates with relatively stable breeding habitat conditions and low numbers of predators, tolerate human and other disturbances, have a relative abundance of preferred habitat provided by current urban/suburban landscaping techniques, and fly relatively short distances to winter compared with other Canada goose populations, they exhibit a consistently high annual production and survival. Given these characteristics, the absence of waterfowl hunting in many of these areas, and free food handouts by some people, these urban/suburban resident Canada goose populations are increasingly coming into conflict with human activities in many parts of the country.

Conflicts between geese and people affect or damage several types of resources, including property, human health and safety, agriculture, and natural resources. Common problem areas include public parks, airports, public beaches and swimming facilities, water-treatment reservoirs, corporate business areas, golf courses, schools, college campuses, private lawns, amusement parks, cemeteries, hospitals, residential subdivisions, and along or between highways.

While short-term management strategies have helped alleviate some localized problems and conflicts, because of the unique locations where large numbers of these geese nest, feed, and reside, for long-term management of these birds we believe that new and innovative approaches and strategies for dealing with bird/human conflicts will be needed. In order to properly examine alternative strategies to control and manage resident Canada geese that either pose a threat to health and human safety or cause damage to personal and public property, the preparation of an EIS is necessary.

Alternatives

We are considering the following alternatives. After the scoping process, we will develop the alternatives to be included in the EIS and base them on the mission of the Service and comments received during scoping. We are soliciting your comments on issues, alternatives, and impacts to be addressed in the EIS.

A. No Action Alternative

Under the No Action Alternative, no additional regulatory methods or strategies would be authorized. We would continue the use of special hunting seasons, the issuance of depredation permits, and the issuance of special Canada goose permits. These permits would continue to be issued under existing regulations.

For each of the next 5 alternatives, as a baseline for comparison, we would continue the use of special hunting seasons, the issuance of depredation permits, and the issuance of special Canada goose permits. All of these permits would continue to be issued under existing regulations.

B. Increased Promotion of Non-lethal Control and Management

Under this alternative, we would actively promote the increased use of non-lethal management tools, such as habitat manipulation and management, harassment techniques, and trapping and relocation. While permits would continue to be issued under existing regulations, no additional regulatory methods or strategies would be introduced.

C. Nest and Egg Depredation Order

This alternative would provide a direct population control strategy for resident Canada goose breeding areas in the U.S. This alternative would establish a depredation order authorizing States to implement a program allowing the take of nests and eggs to stabilize resident Canada goose populations without threatening their long-term health. Monitoring and evaluation programs are in place, or would be required, to estimate population sizes and prevent populations from falling below either the lower management thresholds established by Flyway Councils, or individual State population objectives. Since the goal of this alternative would be to stabilize breeding populations, not direct reduction, no appreciable reduction in the numbers of adult Canada geese would likely occur.

D. Depredation Order for Health and Human Safety

This alternative would establish a depredation order authorizing States to establish and implement a program allowing the take of resident Canada goose adults, goslings, nests and eggs from populations posing threats to health and human safety. The intent of this alternative is to significantly reduce

or stabilize resident Canada goose populations at areas such as airports, water supply reservoirs, and other such areas, where there is a demonstrated threat to health and human safety, without threatening the population's long-term health. Monitoring and evaluation programs are in place, or would be required, to estimate population sizes and prevent populations from falling below either the lower management thresholds established by Flyway Councils, or individual State population objectives. Under this alternative, some appreciable localized reductions in the numbers of adult geese could occur.

E. Conservation Order

This alternative would authorize direct population control strategies such as nest and egg destruction, gosling and adult trapping and culling programs, or other general population reduction strategies on resident Canada goose populations in the U.S. This alternative would establish a conservation order authorizing States to develop and implement a program allowing the take of geese posing threats to health and human safety and damaging personal and public property. The intent of this alternative is to significantly reduce or stabilize resident Canada goose populations at areas where conflicts are occurring without threatening the long-term health of the overall population. Monitoring and evaluation programs are in place, or would be required, to estimate population sizes and prevent populations from falling below either the lower management thresholds established by Flyway Councils, or individual State population objectives. State breeding populations would be monitored annually each spring to determine the maximum allowable take under the conservation order. Under this alternative, some appreciable localized reductions in the numbers of adult geese would likely occur and lesser overall population reductions could occur.

F. General Depredation Order

This alternative would authorize direct population control strategies such as nest and egg destruction, gosling and adult trapping and culling programs, or other general population reduction strategies on resident Canada goose populations in the U.S. This alternative would establish a depredation order allowing any authorized person to take geese posing threats to health and human safety and damaging personal and public property. The intent of this alternative is to significantly reduce resident Canada goose populations at areas where conflicts are occurring. Monitoring and evaluation programs are in place, or would be required, to estimate population sizes and prevent populations from falling below either the lower management thresholds established by Flyway Councils, or individual State population objectives. Under this alternative, some appreciable localized reductions in the numbers of adult geese would likely occur and lesser overall population reductions could occur.

Issue Resolution and Environmental Review

The primary issue to be addressed during the scoping and planning process for the EIS is to determine which management alternatives for the control of resident Canada goose populations will be analyzed. We will prepare a discussion of the potential effect, by alternative, which will include the following areas:

(1) Resident Canada goose populations and their habitats.

(2) Human health and safety.

(3) Public and private property damage and conflicts.

(4) Sport hunting opportunities.

(5) Socioeconomic effects.

We will conduct the environmental review of the management action in accordance with the requirements of the National Environmental Policy Act, as appropriate. We are furnishing this Notice in accordance with 40 CFR 1501.7, to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the EIS. A draft EIS should be available to the public in the spring of 2000.

Public Scoping Meetings

Nine public scoping meetings will be held on the following dates at the indicated locations and times:

1. February 8, 2000; Nashville, Tennessee, at the Ellington Agricultural Center, Ed Jones Auditorium, 440 Hogan Road, 7 p.m.

2. February 9, 2000; Parsippany, New Jersey, at the Holiday Inn, 707 Route 46 East, 7 p.m.

3. February 10, 2000; Danbury, Connecticut, at the Holiday Inn, 80 Newtown Road, 7 p.m.

4. February 15, 2000; Palatine, Illinois, at the Holiday Inn Express, 1550 E. Dundee Road, 7 p.m.

5. February 17, 2000; Bellevue, Washington, at the DoubleTree Hotel, 300—112th Avenue S.E., 7 p.m.

6. February 22, 2000; Bloomington, Minnesota, at the Minnesota Valley National Wildlife Refuge Visitors Center, 3815 East 80th Street, 7 p.m.

7. February 23, 2000; Brookings, South Dakota, at South Dakota State University, Northern Plains Biostress Laboratory, Room 103, Junction of North Campus Drive and Rotunda Lane, 7 p.m.

8. February 28, 2000; Richmond, Virginia, at the Virginia Department of Game and Inland Fisheries Headquarters, Board Room, 4000 West Broad Street, 7 p.m.

9. March 1, 2000; Denver, Colorado, at the Colorado Department of Wildlife, Northeast Region Service Center, Hunter Education Building, 6060 Broadway, 7 p.m.

At the scoping meetings, you may choose to submit oral and/or written comments. To facilitate planning, we request that those desiring to submit oral comments at meetings send us their name and the meeting location they plan on attending. You should send this information to the location indicated under the **ADDRESSES** caption. However, you are not required to submit your name prior to any particular meeting in order to present oral comments.

You may also submit written comments by either sending them to the location indicated under the **ADDRESSES** caption or sending them electronically to the following address: canada__gooseeis@fws.gov. All electronic comments should include a complete mailing address in order to receive a copy of the draft EIS. All comments must be submitted by March 30, 2000.

References Cited

Kelly, J. R., D. F. Caithamer, and K. A. Wilkins. 1998. Waterfowl population status, 1998. U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 33 pp. + app.

Nelson, H. K. and R. B. Oetting. 1998. Giant Canada goose flocks in the United States. Pages 483–495 in D. H. Rusch, M. D. Samuel, D. D. Humburg, and B. D. Sullivan, eds. Biology and management of Canada geese. Proceedings of the International Canada Goose Symposium, Milwaukee, WI.

Sheaffer, S. E. and R. A. Malecki. 1998. Status of Atlantic Flyway resident nesting Canada geese. Pages 29–34 in D. H. Rusch, M. D. Samuel, D. D. Humburg, and B. D. Sullivan, eds. Biology and management of Canada geese. Proceedings of the International Canada Goose Symposium, Milwaukee, WI.

Wilkins, K. A., and E. G. Cooch. 1999. Waterfowl population status, 1999. U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 33 pp. + appendices.

Wood, J. C., D. H. Rusch, and M. Samuel. 1994. Results of the 1994 spring survey of giant Canada goose survey in the Mississippi Flyway. U.W. Co-op Unit. 9 pp. (mimeo).

Dated: December 23, 1999.

Thomas O. Melius,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–33961 Filed 12–29–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–00–7122–00–56–36, SRP–00–06/07]

Temporary Closure of Selected Public Lands in La Paz County, AZ, During the Operation of the 2000 Whiplash Parker 400K/200K (kilometer) Desert Race(s)

AGENCY: Bureau of Land Management, Interior.

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 2000 Whiplash Parker 400K/200K Desert Race.

DATES: January 14, 2000, through January 16, 2000.

SUPPLEMENTARY REGULATIONS: 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 a.m. Friday morning, January 14, 2000 to 6 p.m. Sunday, January 16, 2000.

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. 8 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.

h. 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.

i. Take any vehicle through, around or beyond a restrictive sign, recognizable barricade, fence, or traffic control barrier.

j. 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.

k. 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.

l. 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 lands is found in 43 CFR Part 8340, Subpart 8341; 43 CFR 8360, Subpart 8364.1, and 43 CFR Part 8372. Persons who violate its 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 23, 1999.

Donald Ellsworth,

Field Manager, Lake Havasu Field Office.

[FR Doc. 99–33947 Filed 12–29–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–AA]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of meeting.

SUMMARY: The Eastern Montana Resource Advisory Council will have a meeting January 27, 2000 at the BLM—Montana State Office Conference Room, 5001 Southgate Drive, Billings, Montana starting at 8:00 a.m. Primary agenda topics include the Lewis and Clark Bicentennial Celebration, continued discussion on access, and an update on the draft off-highway vehicle environmental impact statement.

The meeting is open to the public and the public comment period is set for 11:00 a.m. on January 27. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with

public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council

Dated: December 16, 1999.

Timothy M. Murphy,

Miles City Field Manager.

[FR Doc. 99–33988 Filed 12–29–99; 8:45 am]

BILLING CODE 4310–$$–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–956–99–1420–00]

Colorado: Filing of Plats of Survey

December 14, 1999.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 am., December 14, 1999. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurvey of portions of certain mineral claims in T. 47 N., R. 1 W., New Mexico Principal Meridian, Colorado, Group 1202, was accepted December 2, 1999.

The plat representing the dependent resurvey of portions of the east and north boundaries, and subdivisional lines, and the survey of the subdivision of section 1 in T. 2 N., R. 94 W., Sixth Principal Meridian, Colorado, Group 1212, was accepted December 6, 1999.

The plat representing the dependent resurvey of a portion of the south boundary and subdivisional lines, and the subdivision of section 35, T. 11 N., R. 79 W., Sixth Principal Meridian, Colorado, Group 1213, was accepted October 28, 1999.

The plat representing the entire record of the dependent resurvey of a portion of the south boundary, T. 6 N., R. 93 W., Sixth Principal Meridian, Colorado, Group 1215, was accepted November 19, 1999.

The plat representing the dependent resurvey of a portion of the Base Line through R. 93 W., a portion of the subdivisional lines, certain tract lines, and the survey of the subdivision of section 34, T. 1 N., R. 93 W., Sixth Principal Meridian, Colorado, Group 1228, was accepted September 23, 1999.

The plat of the entire record for the survey in section 23, T. 46 N., R. 2 W., New Mexico Principal Meridian, Colorado, Group 1251, was accepted September 27, 1999.

The supplemental plat, creating new lots 26 and 27 in section 36, T. 9 S., R. 81 W., Sixth Principal Meridian, Colorado, was accepted October 4, 1999.

These surveys were requested by the BLM for administrative purposes.

This plat(in 4 sheets) represents the dependent resurvey of a portion of the boundary between T. 51 N., Rs. 5 & 6 E., and portions of certain mineral claims in sections 7, 12, 13, and 18, T. 51 N., Rs. 5 & 6 E., New Mexico Principal Meridian, Colorado, Group 1022, was accepted September 29, 1999.

These surveys were requested by the Forest Service for administrative purposes.

The plat representing the dependent resurvey of the East bdy., a portion of the subdivisional lines, and the subdivision of certain sections in T. 33 N., R. 5 W., New Mexico Principal Meridian, Colorado, Group 1193, was accepted October 20, 1999.

This survey was requested by the Bureau of Indian Affairs for administrative purposes.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado

[FR Doc. 99–33924 Filed 12–29–99; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–410]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

SUMMARY: On December 17, 1999, the Commission received a request from the United States Trade Representative (USTR) for an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of providing advice concerning possible modifications to the Generalized System of Preferences (GSP). Following receipt of the request and in accordance therewith, the Commission instituted investigation No. 332–410 in order to provide as follows—

(1) With respect to the articles listed in Part A of the attached Annex, advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties for all beneficiary developing countries under the GSP. In providing its advice, the USTR requested that the Commission assume that the benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the competitive need limits specified in section 503(c)(2)(A) of the Trade Act of 1974(1974 Act) (19 U.S.C. 2463(c)(2)(A)); and

(2) With respect to articles listed in Part A and Part C of the attached Annex, advice as to whether products like or directly competitive with the articles were being produced in the United States on January 1, 1995; and

(3) With respect to the article listed in Part B of the attached Annex, advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the removal of the country specified with respect to the article in Part B from eligibility for duty-free treatment under the GSP for such article; and

(4) In accordance with section 503(d)(1)(A) of the 1974 Act, advice on whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act for Brazil for HTS Subheading 7202.99.10 in Part A and the country specified with respect to the articles in Part D of the attached Annex.

With respect to the competitive need limit in section 503(c)(2)(A)(I)(I) of the 1974 Act, the Commission, as requested, will use the dollar value limit of $90,000,000.

As requested by USTR, the Commission will seek to provide its advice not later than March 16, 2000.

EFFECTIVE DATE: December 23, 1999.

FOR FURTHER INFORMATION CONTACT: (1) Project Manager, Eric Land (202–205–3349); (2) Deputy Project Manager, Cynthia B. Foreso (202–205–3348).

All of the above are in the Commission's Office of Industries. For information on legal aspects of the investigation contact William Gearhart of the Commission's Office of the General Counsel at 202–205–3091.

Background

The USTR letter noted that the Trade Policy Staff Committee (TPSC) announced in the December 23, 1999 **Federal Register** the acceptance of product petitions for modification of the GSP received as part of the 1999 annual review. The letter stated that modifications to the GSP which may result from this review will be announced in the spring of 2000 and become effective in the summer of 2000.

Public Hearing

A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on February 2, 2000, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, D.C. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter asking to testify with the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436, not later than the close of business (5:15 p.m.) January 18, 2000. In addition, persons testifying should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on January 20, 2000. Posthearing briefs should be filed with the Secretary by close of business on February 11, 2000. In the event that no requests to appear at the hearing are received by the close of business January 18, 2000, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after January 20, 2000, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to appearing at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on February 11, 2000. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). Persons submitting business confidential information should be aware that the Commission may include such information in the confidential version of its report to the USTR. All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: December 23, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

Attachment Annex I (HTS Subheadings) [1]

A. Petitions to add products to the list of eligible articles for the GSP.

7202.99.10 [2]
8104.19.00
8104.30.00

B. Petitions to remove duty-free status from beneficiary developing countries for products on the list of eligible articles for the GSP.

2905.42.00 (Brazil)

C. Petitions to determine whether products like or directly competitive with an eligible article were being produced in the United States on January 1, 1995.

3817.10.50

D. Petitions for waiver of competitive need limits for products on the list of eligible products for the specified country.

2905.11.20 (Chile)
7202.50.00 (Russia)

[FR Doc. 99–33903 Filed 12–29–99; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–201–70]

Circular Welded Carbon Quality Line Pipe

Determination

On the basis of the information in the investigation, the Commission—(1) Determines, pursuant to section 202(b) of the Trade Act of 1974, that circular welded carbon quality line pipe (hereinafter line pipe) [1] is being imported into the United States in such increased quantities as to be a substantial cause of serious injury or the threat of serious injury [2] to the domestic industry producing an article like or directly competitive with the imported article; and (2) makes negative findings, pursuant to section 311(a) of the North American Free-Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3371(a)), with respect to imports of line pipe from Canada and Mexico.[3]

Recommendations with Respect to Remedy [4]

The Commission [5] *(Vice Chairman Miller and Commissioners Hillman and Koplan) recommends:*

(1) That the President impose a tariff-rate quota for a 4-year period on imports of line pipe, with the in-quota amount set at 151,124 short tons in the first year, and with that amount to be increased by

[1] See USTR **Federal Register** notice of December 23, 1999 (64 F.R. 246) for article description.

[2] The petitioner also requests a waiver of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act for Brazil on the articles provided for in subheading 7202.99.10.

[1] The imported article covered by this investigation is welded carbon quality line pipe of circular cross section, of a kind used for oil and gas pipelines, whether or not stencilled. For purposes of this investigation, ''carbon quality'' is defined to mean: products in which (1) iron predominates, by weight, over each of the other contained elements, (2) the carbon content is 2 percent or less, by weight, and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.15 percent of vanadium, or 0.15 percent of zirconium.

Such line pipe is currently classified in subheadings 7306.10.10 and 7306.10.50 of the Harmonized Tariff Schedule of the United States (HTS). Although the HTS categories are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive. The investigation excludes certain merchandise described as arctic grade line pipe, defined as welded line pipe that (1) has an outer diameter of 4.5 inches or more and a wall thickness equal to or less than 0.75 inches; and (2) when subjected to a Charpy V-notch test performed at minus 50 degrees Fahrenheit or below applied to three specimens taken from the well area, has a ft-lbs rating of no less than 17 ft-lbs for each sample, with an average for all three at no less than 19 ft-lbs; and (3) using at least three samples, has a minimum average shear area of 85 percent in the base metal and 50 percent in the weld; and (4) when subjected to a hydrogen induced cracking test to be performed as per NACE (National Association of Corrosion Engineers) TM0284 test with solution A, has a crack length ratio that does not exceed 15 percent, a crack sensibility ratio that does not exceed 2 percent, and a crack thickness ratio that does not exceed 5 percent.

[2] Vice Chairman Marcia E. Miller and Commissioners Jennifer A. Hillman and Stephen Koplan found serious injury. Chairman Lynn M. Bragg and Commissioner Thelma J. Askey found a threat of serious injury. Commissioner Carol T. Crawford made a negative determination.

[3] Chairman Bragg dissenting with respect to Mexico. Chairman Bragg finds that imports of welded line pipe from Mexico account for a substantial share of total imports and contribute importantly to the threat of serious injury to the domestic industry.

[4] Commissioner Crawford, having made a negative determination on injury, was not eligible to vote on remedy. In light of her negative determination, Commissioner Crawford does not believe any import relief is appropriate in this investigation.

[5] The Commission notes that, pursuant to section 330(d)(2) of the Tariff Act of 1930 (19 U.S.C. 1330(d)(2)), the remedy recommendation of Vice Chairman Miller and Commissioners Hillman and Koplan in this investigation is to be treated as the remedy finding of the Commission for purposes of section 203 of the Trade Act.

10 percent in each of the second, third, and fourth years, with over-quota imports to be subject to a duty of 30 percent ad valorem in addition to current U.S. tariffs;

(2) That the President, if he determines to allocate the overall quota, recognize the disproportionate growth and impact of the imports from Korea;

(3) That the President initiate international negotiations with Korea to address the underlying cause of the import surge and the serious injury to the domestic industry;

(4) Having made negative findings with respect to imports of line pipe from Canada and Mexico under section 311(a) of the NAFTA Implementation Act, that such imports be excluded from the tariff-rate quota; and

(5) That the tariff-rate quota not apply to imports of line pipe from Israel, or to any imports of line pipe entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act.

Chairman Bragg and Commissioner Askey recommend:

(1) That the President impose a duty, in addition to the current rate of duty, for a 4-year period, on imports of line pipe that are within the scope of this investigation as follows: 12.5 percent ad valorem in the first year of relief, 11 percent ad valorem in the second year of relief, 9.5 percent ad valorem in the third year of relief, and 8 percent ad valorem in the fourth year of relief;

(2) That the increased rates of duty not apply to imports of line pipe from Canada, Israel, or to any imports of line pipe that entered duty-free from beneficiary countries under the Caribbean Basin Economic Recovery Act or the Andean Trade Preference Act;

(3) Commissioner Askey, having made a negative finding with respect to imports of line pipe from Mexico under section 311(a) of the NAFTA Implementation Act, recommends that such imports from Mexico be excluded from the increased duty. Chairman Bragg, having made an affirmative finding under section 311(a) of the NAFTA Implementation Act, recommends that imports of line pipe from Mexico be subject to the duty increase.

The Commissioners find that the respective actions that they have recommended will address the serious injury or threat of serious injury found to exist and be most effective in facilitating the efforts of the domestic industry to make a positive adjustment to import competition.

Background

Following receipt of a petition properly filed on June 30, 1999, by counsel on behalf of Geneva Steel, Vineyard, UT; IPSCO Tubulars, Inc., Camanche, IA; Lone Star Steel Company, Dallas, TX; LTV Steel Tubular Products Company, Youngstown, OH;[6] Maverick Tube Corporation, Chesterfield, MO; Newport Steel, Newport, KY; Northwest Pipe Company, Portland, OR; Stupp Corporation, Baton Rouge, LA; and the United Steelworkers of America, AFL-CIO, Pittsburgh, PA, the Commission instituted investigation No. TA–201–70, Circular Welded Carbon Quality Line Pipe, under section 202 of the Trade Act of 1974 to determine whether circular welded carbon quality line pipe is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.

Notice of the institution of the Commission's investigation and of the scheduling of public hearings to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 4, 1999 (64 FR 42414). The hearing in connection with the injury phase of the investigation was held on September 30, 1999, and the hearing on the question of remedy was held on November 10, 1999. Both hearings were held in Washington, DC; all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the President on December 22, 1999. The views of the Commission are contained in USITC Publication 3261 (December 1999), entitled Circular Welded Carbon Quality Line Pipe: Investigation No. TA–201–70.

Issued: December 23, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33902 Filed 12–29–99; 8:45 am]

BILLING CODE 7020–02–U

[6] Petitioners amended the petition on Sept. 14, 1999, to include LTV Steel.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–677 (Review)]

Coumarin From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on coumarin from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on coumarin from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is February 22, 2000. Comments on the adequacy of responses may be filed with the Commission by March 20, 2000.

For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). The Rules may also be found on the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 00–5–050, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1995, the Department of Commerce issued an antidumping duty order on imports of coumarin from China (60 FR 7751). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is China.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined the Domestic Like Product as all coumarin.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined the Domestic Industry as producers of all coumarin.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is February 9, 1995.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 22, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is March 20, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1993.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: December 21, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33964 Filed 12–29–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–414]

Certain Semiconductor Memory Devices and Products Containing Same; Notice of Decision To Extend the Deadline for Determining Whether to Review an Initial Determination Finding No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend by fourteen (14) days, or until January 27, 2000, the deadline for determining whether to review an initial determination (ID) finding no violation of section 337 of the Tariff Act of 1930, as amended in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission ordered the institution of this investigation on September 18, 1998, based on a complaint filed on behalf of Micron Technology, Inc., 8000 South Federal Way, Boise, Idaho 83707–0006 (''complainant''). The notice of investigation was published in the **Federal Register** on September 25, 1998. 63 Fed. Reg. 51372 (1998).

The presiding administrative law judge (ALJ) issued his final ID on November 29, 1999, concluding that there was no violation of section 337. He found that: (a) Complainant failed to establish the requisite domestic industry showing for any of the three patents at issue; (b) all asserted claims of the patents are invalid; (c) none of the asserted claims of the patents are infringed; and (d) all of the patents are unenforceable for inequitable conduct.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h)(2) of the Commission's Rules of Practice and Procedure (19 C.F.R. 210.42(h)(2)).

Copies of the public version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

Issued: December 21, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33906 Filed 12–29–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–678, 679, 681, and 682 (Review)]

Stainless Steel Bar From Brazil, India, Japan, and Spain

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on stainless steel bar from Brazil, India, Japan, and Spain would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is February 22, 2000. Comments on the adequacy of responses may be filed with the Commission by March 20, 2000.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). The Rules may also be found on the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On February 21, 1995, the Department of Commerce issued antidumping duty orders on imports of stainless steel bar from Brazil, India, and Japan (60 FR 9661). On March 2, 1995, the Department of Commerce issued an antidumping duty order on imports of stainless steel bar from Spain (60 FR 11656). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Brazil, India, Japan, and Spain.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as all stainless steel bar. One Commissioner defined the Domestic Like Product differently.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of all stainless steel bar. One Commissioner defined the Domestic Industry differently.

(5) The Order Dates are the dates that the antidumping duty orders under review became effective. In the reviews concerning Brazil, India, and Japan, the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 00–5–051, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Order Date is February 21, 1995. In the review concerning Spain, the Order Date is March 2, 1995.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the ''same particular matter'' as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was ''personal and substantial.'' However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 22, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 20, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of

subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in each of the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1993.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from each of the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandisefrom each of the Subject Countries accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from each of the Subject Countries; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from each of the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in each of the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in each of the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from each of the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in each of the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in each of the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: December 21, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33965 Filed 12–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–851 (Final)

Synthetic Indigo From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–851 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of synthetic indigo, provided for in subheadings 3204.15.10, 3204.15.40, and 3204.15.80 of the Harmonized Tariff Schedule of the United States. [1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

[1] For purposes of this investigation, synthetic indigo is defined as the deep blue synthetic vat dye known as synthetic indigo and those of its derivatives designated commercially as ''Vat Blue 1.'' Included are Vat Blue 1 (synthetic indigo), Color Index No. 73000, and its derivatives; pre-reduced indigo or indigo white (Color Index No. 73001); and solubilized indigo (Color Index No. 73002). The subject merchandise may be sold in any form (e.g., powder, granular, paste, liquid, or solution) and in any strength.

EFFECTIVE DATE: December 14, 1999.

FOR FURTHER INFORMATION CONTACT: Jozlyn Kalchthaler (202–205–3457), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of synthetic indigo from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on June 30, 1999, by Buffalo Color Corp., Parsippany, NJ, and the United Steelworkers of America, AFL–CIO/CLC.

Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on April 19, 2000, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on May 2, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before April 24, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on April 27, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is April 26, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 9, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before May 9, 2000. On May 25, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before May 30, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: December 22, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33904 Filed 12–29–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–409]

The Impact on the U.S. Economy of Including the United Kingdom in a Free Trade Arrangement with The United States, Canada, and Mexico

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: December 21, 1999.

SUMMARY: Following receipt of a request on November 18, 1999, from the Senate Committee on Finance (Committee), the Commission instituted investigation No. 332–409, The Impact on the U.S. Economy of Including the United Kingdom in a Free Trade Arrangement

with the United States, Canada, and Mexico, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). The Commission plans to submit its report by August 18, 2000.

As requested by the Committee, the Commission will provide to the extent possible:

- An overview of the current economic relationship among the United States, Canada, Mexico, and the United Kingdom in terms of trade and investment flows, including a discussion of the key industries and comparative advantages of each country.
- Identification of all existing barriers (tariff and non-tariff) to trade and investment among the United States, Canada, Mexico, and the United Kingdom.
- For the United States and the United Kingdom, the estimated effect of eliminating these barriers on:
- The volume of trade in goods and services between the two countries;
- Gross Domestic Product for each country resulting from increased trade and investment
- Employment across industry sectors, with special attention to changes in the competitive position of industries, job creation and loss, productivity, and wages;
- Balance of payments for each country as a result of new trade patterns;
- Amount of foreign direct investment between the two countries,;
- Final prices paid by consumers in each country.
- A discussion on any increase in quality or selection of goods, or other consumer benefits.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Kyle Johnson, Project Leader (202–205–3229) or Soamiely Andriamananjara, Deputy Project Leader (202–205–3252), Office of Economics, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205-3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

In its letter to the Commission, the Committee stated that the U.S.-Canada Free Trade Agreement (CFTA) and the North American Free Trade Agreement (NAFTA) have significantly helped to expand the volume of trade between the United States and its North American trading partners, and that the Committee seeks an analysis in order to determine whether the success of the CFTA and NAFTA can be replicated with other trading partners.

In estimating the effect of the elimination of barriers to trade and investment on the economies of the United States and the United Kingdom, the Commission will conduct a comparative statics analysis based on the most current data available on trade, investment, the barriers to these flows, and the trade and investment relationships between these countries and their other significant trading partners.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC, beginning at 9:30 a.m. on April 11, 2000. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436, no later than 5:15 p.m., March 28, 2000. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 4, 2000; the deadline for filing post-hearing briefs or statements is 5:15 p.m., May 5, 2000. In the event that, as of the close of business on April 7, 2000, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1806) after April 7, 2000, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked ''Confidential Business Information'' at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on May 4, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects

NAFTA, United Kingdom, tariffs, investment, and imports.

Issued: December 22, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–33905 Filed 12–29–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on December 16, 1999, a proposed Consent Decree in *United States* v. *Akzo Nobel Coatings, Inc., et al.*, Civil Action No. 95–71470, was lodged with the United States District Court for the Eastern District of Michigan, Southern Division. This consent decree represents a settlement of claims of the United States against Gage products Company for reimbursement of response costs and injunctive relief in connection with the Metamora Landfill Superfund Site (''Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under this settlement with the United States, Gage Products Company will pay $187,020.49 in reimbursement of response costs incurred by the United States Environmental Protection Agency at the Site.

The Department of justice will receive for a period of thirty (30) days from the

date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Akzo Nobel Coatings, Inc., et al.,* D.J. Ref. 90–11–3–289A.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, Southern Division, 211 West Fort Street, Suite 2300, Detroit, MI 48226, and at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–33837 Filed 12–29–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and Section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on December 16, 1999, a proposed *de minimis* Consent Decree in *United States* v. *American Jetway Corporation, et. at.,* Civil Action No. 98–73295, was lodged with the United States District Court for the Eastern District of Michigan, Southern Division. This consent decree represents a settlement of claims of the United States against American Jetway Corporation for reimbursement of response costs and injunctive relief in connection with the Metamora Landfill Superfund Site (''Site'') pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under this settlement with the United States, American Jetway Corporation will pay the total amount of $50,000, plus accrued interest, in five installment payments over a period of approximately 4 years, in reimbursement of response costs incurred by the United States Environmental Protection Agency at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *American Jetway Corporation et. al.,* D.J. Ref. 90–11–3–289/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, Southern Division, 211 West Fort Street, Suite 2300, Detroit, MI 48226, and at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590. A copy of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–33836 Filed 12–29–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

In accordance with Departmental policy at 28 CFR 50.7, notice is hereby given that on December 15, 1999, a proposed consent decree in *United States* v. *Eagle-Picher Industries, Inc.* Civil Action No. CIV 99–712–S, was lodged with the United States District Court for the Eastern District of Oklahoma. The proposed Consent Decree resolves the liability of Eagle-Picher under sections 106 and 107 of CERCLA at the Eagle-Picher Henryetta Superfund Site (''Site'') located in Henryetta, Oklahoma. Under the terms of the Consent Decree, Eagle-Picher has agreed to an Allowed Environmental Claim in its Bankruptcy proceeding in the amount of $5.0 million for reimbursement of response costs.

For a period of thirty (30) days from the date of this publication, the Department of Justice will receive written comments relating to the proposed consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Eagle-Picher Industries, Inc.* DOJ #90–11–3–1724/1.

The proposed consent decree may be examined at the offices of the United States Attorney for the Eastern District of Oklahoma, 1200 West Okmulgee, Muskogee, Oklahoma, 74401, and at the office of the United Stats Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (Attention: Jon Weisberg, Assistant Regional Counsel). A copy of the consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC. 20044. Copies of the decree may be obtained by mail from the Consent Decree Library. Such requests should be accompanied by a check in the amount of $5.50 (25 cents per page reproduction charge for decree, payable to ''Consent Decree Library''. When requesting copies, please refer to *United States* v. *Eagle-Picher Industries, Inc.* DOJ #90–11–3–1724/1.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–33833 Filed 12–29–99 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on December 16, 1999, the United States lodged a consent decree in *United States* v. *St. Charles Riverfront Station, Inc.*, Civil Action No. 4:99CV01978SNL (E.D.Mo.), with the Untied States District Court for the Eastern District of Missouri.

The proposed consent decree would resolve the United States' allegations that Defendant St. Charles Riverfront Station violated sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, and section 12 of the Rivers and Harbors Act, 33 U.S.C. 406, by unlawfully discharging dredged material into the Missouri River in St. Charles County, Missouri. The proposed consent decree would require Defendant to pay a $550,000 civil penalty. The proposed decree also provides that Defendant is enjoined from discharging pollutants into waters of the United

States except as authorized by the Clean Water Act and Rivers and Harbors Act.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Wendy L. Blake, Environmental Defense Section, P.O. Box 23986, Washington, D.C. 20026–3986, and should refer to *United States* v. *St. Charles Riverfront Station, Inc.*, DJ Reference No. 90–5–1–1–05577.

The proposed consent decree may be examined at the Clerk's Office of the United States District Court for the Eastern District of Missouri, 1114 Market Street, Room 260, St. Louis, Missouri.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 99–33835 Filed 12–29–99; 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 Departmental policy, 28 CFR 50.7, notice is hereby given that on December 17, 1999, a proposed consent decree in *United States* v. *Titanium Metals Corporation*, CV–9–98–00682–HDM (RLH) (D. Nev.), was lodged with the United States District Court for the District of Nevada. The proposed consent decree would resolve pending claims of the United States against Titanium Metals Corporation (''TIMET''), in the above-referenced action.

The Complaint in the above-referenced civil action seeks injunctive relief and civil penalties for alleged violations of the Clean Air Act, 42 U.S.C. § 7413(b), at TIMET's titanium manufacturing plant in Henderson, Nevada. The complaint alleges that TIMET installed a carbon monoxide (''CO'') burner at its plant prior to obtaining either a Prevention of Significant Deterioration or minor source permit. The installation of the burner in reduced emissions of CO, but increased the facility's potential to emit sulfur dioxide (''SO_2''). Under the proposed Decree, TIMET has agreed to install the Best Available Control Technology to control SO_2 emissions, enforceable limits on CO and SO_2 emissions, and payment of a civil penalty of $430,000 over a two year period.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611, and should refer to *United States* v. *Titanium Metals Corporation*, CV–8–87–00682 (D. Nev.), and the Department of Justice Reference No. 90–5–2–1–2235.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Nevada, 701 East Bridger, 8th Floor, Las Vegas, NV 89101; and at the Region IX Office of the United States Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to DJ #90–5–2–1–2235, and enclose a check in the amount of $7.75 (31 pages at 25 cents per page for reproduction costs). Make checks payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–33834 Filed 12–29–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 189–99]

Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice (DOJ) is establishing a system of records entitled ''DOJ Computer Systems Activity and Access Records, DOJ–002.''

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the new system. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the proposed system. Therefore, please submit any comments by 40 days from publication of this notice. The public, OMB, and the Congress are invited to submit written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Washington, DC 20530, (202) 307–1823.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system to OMB and the Congress.

Dated: December 17, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

SYSTEM NAME:

Department of Justice (DOJ) Computer Systems Activity and Access Records, DOJ–002

SYSTEM LOCATION:

Department of Justice offices (and other sites utilized by the Department of Justice) throughout the world.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who access DOJ network computers or mainframe/enterprise servers, including individuals who send and receive electronic communications, access Internet sites, or access system databases, files, or applications from DOJ computers or sending electronic communications to DOJ computers; and individuals attempting to access DOJ computers or systems without authorization.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system of records may include: records on the use of the interoffice and Internet e-mail systems, including the e-mail address of the sender and receiver of the e-mail message, subject, date, and time; records on user access to DOJ's office automation networks, including user ID, date and time of log on and log off, and denials of access to unauthorized files or directories; records of Internet access from a DOJ computer, such as the Internet Protocol (IP) address of the computer being used to initiate the Internet connection, the site accessed, date, and time; records relating to mainframe/enterprise server access, such as user ID of the individual accessing the mainframe, date and time, and the process being run on the mainframe; records relating to verification or authorization of an individual's access to systems, files, or applications, such as user IDs, passwords, user names, title, and agency.

Logs of Internet access from a DOJ computer do not contain names or similar personal identifiers. However, for official government business purposes, a name may be associated with an IP address.

AUTORITY FOR MAINTENANCE OF THE SYSTEM:

The Computer Security Act of 1987, 40 U.S.C. 1441 note, requires Federal

Agencies to plan for the security and privacy of their computer systems.

PURPOSE(S):

the underlying raw data in this system of records is used by DOJ systems and security personnel, or persons authorized to assist these personnel, to plan and manage system services and to otherwise perform their official duties. Authorized DOJ managers may use the records in this system to investigate improper access or other improper activity related to computer system access; to initiate disciplinary or other such action; and/or where the record(s) may appear to indicate a violation or potential violation of the law, to refer such record(s) to the appropriate investigative arm of DOJ, or other law enforcement agency for investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USE:

Information maybe made available in accordance with the disclosure provisions cited below.

1. To members of Congress or staff to respond to inquiries made on behalf of individual constituents who are record subjects.

2. To representatives of the General Services Administration and/or the National Archives and Records Administration who are conducting records management inspections under the authority of 44 U.S.C. 2904 and 2906.

3. To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that the release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

4. To a Federal, state, local, tribal or foreign agency, or a private contractor, in connection with: the hiring or retention of any employee; the issuance of a security clearance; the conduct of a security or suitability investigation or pursuit of other appropriate personnel matter; the reporting of an investigation on an employee; the letting of a contract; or the issuance of a grant, license, or other benefit to an employee by the agency, but only to the extent that the information disclosed is relevant and necessary to the agency's decision on the matter.

5. To provide information to any person(s) authorized to assist in an approved investigation of improper usage of DOJ computer systems.

6. To an actual or potential party or his or her authorized representative for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

7. In the event that material in this system of records appears to indicate, either on its face or in conjunction with other information, a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute, or by regulation, rule, or order issued pursuant thereto, to a Federal, State local tribal, or foreign unit of government charged with the responsibility therefor.

8. In a proceeding before a court or adjudicative body, when any of the following is a party to litigation or has an interest in litigation and such records are determined by the DOJ to be arguably relevant to the litigation: the DOJ; any employee of the DOJ in his or her official capacity; or any employee of the DOJ in his or her individual capacity where the DOJ has agreed to represent or has authorized private attorneys to represent the employees; or, the United States, where the DOJ determines that the litigation is likely to affect it or any of its subdivisions.

9. To contractors, grantees, experts, consultants, detailees, and other non-DOJ employees performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

10. To other government agencies where required by law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Records are stored in electronic and/or paper form.

RETRIEVABILITY:

Records may be retrieved by user name, user ID, e-mail address, or other identifying search term employed, depending on the record category. The Department does not usually connect IP addresses with a person. However, in some instances, for official government business purposes, the Department may connect the IP address with an individual, and records may be retrieved by IP address.

SAFEGUARDS:

Access is limited to those who have an official need to know. Specifically, only systems and security personnel or persons authorized to assist these personnel have access to automated records and magnetic storage media. These records are kept in a locked room with controlled entry. The use of password protection identification features and other automated data processing system protection methods also restrict access. All records are located in buildings with restricted access.

RETENTION AND DISPOSAL:

Records of verification, authorization, computer system access, and other activities generated by the system shall be retained no longer than one year, unless required for management review, then destroyed/deleted. (Records retention schedule pending approval by the Archivist of the United States.)

SYSTEM MANAGER:

Deputy Assistant Attorney General, Information Resources Management, Justice Management Division, Department of Justice, Washington, DC 20530.

NOTIFICATION PROCEDURE:

To determine whether the system may contain records relating to you, write to the System Manager identified above.

RECORD ACCESS PROCEDURES:

Same as ''Notification Procedure'' above. Provide name, assigned computer location, and a description of information being sought, including the time frame during which the record(s) may have been generated. Provide verification of identity as instructed in 28 CFR, § 16.41(d).

CONTESTING RECORD PROCEDURES:

See ''Notification Procedure'' and ''Record Access Procedure'' above. Identify the information being contested, the reason for contesting it, and the correction requested. In general, this information is computer-generated and is not subject to contest.

RECORD SOURCE CATEGORIES:

Most records are generated internally, i.e., computer activity logs; individuals covered by the system; and management officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–33838 Filed 12–29–99; 8:45 am]

BILLING CODE 4410–OJ–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

James Garvey Cavanagh, M.D. Revocation of Registration

On August 5, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order

to Show Cause to James Garvey Cavanagh, M.D., of Hawthorne, Nevada, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AC9084485 pursuant to 21 U.S.C. 284(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of Nevada. The order also notified Dr. Cavanagh that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on August 21, 1999. No request for a hearing or any other reply was received by the DEA from Dr. Cavanagh or anyone purporting to represent him in this matter. Therefore, the Acting Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Cavanagh is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Acting Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Acting Deputy Administrator finds that Dr. Cavanagh currently possesses DEA Certificate of Registration AC9084485 issued to him in Nevada. The Acting Deputy Administrator further finds that on March 18, 1999, the Board of Medical Examiners of the State of Nevada issued its Findings of Fact, Conclusions of Law, and Order revoking Dr. Cavanagh's license to practice medicine in the State of Nevada.

The Acting Deputy Administrator concludes that Dr. Cavanagh is not currently licensed to practice medicine in Nevada, and therefore, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here it is clear that Dr. Cavanagh is not currently authorized to handle controlled substances in the State of Nevada. As a result, Dr. Cavanagh is not entitled to a DEA registration in that state.

Accordingly, the Acting 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 AC9084485, previously issued to James Garvey Cavanagh, M.D. be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective January 31, 2000.

Dated: December 22, 1999.

Julio F. Mercado,

Acting Deputy Administrator.

[FR Doc. 99–33978 Filed 12–29–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–1]

Michael Alan Patterson, M.D., Grant of Restricted Registration

On September 23, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Michael Alan Patterson, M.D. (Respondent) of Memphis, Tennessee, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest.

By letter dated October 22, 1998, Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause. Following prehearing procedures, a hearing was held in Nashville, Tennessee on March 10, 1999, before Administrative Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing, both parties submitted proposed findings of fact, conclusions of law and argument. On August 11, 1999, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision (Opinion), recommending that Respondent's application for registration be granted subject to various conditions. Neither party filed exceptions to Judge Randall's Opinion, and on September 15, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, with specifically noted exceptions, the Recommended Rulings, 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 or conclusions herein, or of any failure to mention a matter of fact or law.

The Acting Deputy Administrator finds that Respondent admits to a history of drug and alcohol abuse, beginning with marijuana and beer on the weekends as a teenager. When Respondent entered college in 1980, he used cocaine sporadically after being introduced to the drug by one of his brothers.

Respondent received his medical degree in 1983, and from July 1983 through June 1986, Respondent was a resident in family practice in Florida. During his residency Respondent used a DEA Certificate of Registration issued to him in Florida that expired on March 31, 1987. As a resident, his drug use remained sporadic but became more frequent.

In 1986, Respondent moved to Mississippi to fulfill an obligation to the National Health Service Corps. Respondent obtained medical licenses in both Mississippi and Tennessee. Ultimately, Respondent was issued DEA Certificates of Registration in both states.

In order to earn additional income, Respondent also worked for an emergency room service and for a freestanding urgent care center from 1986 through 1989. During this time he worked approximately 80 to 100 hours per week. According to Respondent, in 1986 his drug use ''progress[ed] to heavy,'' and the use of cocaine helped him stay awake so he could continue working.

Respondent testified that financial, marital, and work-related stress contributed to his drug use. He further testified that he began staying out late at night, if he returned home at all, and he frequented topless clubs. He failed to show up for work, and if he did show up, he was too ''crashed out'' to be productive. Eventually, Respondent's former wife notified his employer that Respondent had a cocaine problem.

As a result, the then-medical director of the Tennessee Medical Foundation, Physicians Health Program, (PHP), set

up an intervention with Respondent, and Respondent entered treatment on March 16, 1990. According to Respondent he was very resistant to treatment at that time and fought it ''tooth and nail.'' Respondent completed the four-month treatment program in July or August 1990, however he did not enter into an ongoing contract with the treatment center at that time.

After his treatment, Respondent returned to work part-time at the freestanding urgent care center, and later in 1990, be began a second job working full-time at a 24-hour minor medical emergency center. Additionally, in November or December 1991, Respondent began working at a hospital center. Respondent's employers were aware of his drug abuse problems and treatment.

In the spring or summer of 1991, Respondent began drinking again, and allowed his DEA registrations to expire. Although he had been sent notices to renew his registrations, Respondent testified that he ''avoid[ed] the mail'' during this time because he owed debts to several bill collectors. By January 1992, Respondent began using cocaine and crack cocaine again. As a result of his relapse, Respondent was fired from the 24-hour minor medical emergency center in March 1992.

Respondent was not aware that he had let his DEA registrations lapse until the hospital where he was working requested a copy of his current DEA registration. Respondent attempted to renew his registration in Tennessee, but he inadvertently sent the wrong form to DEA with the fee. When the incorrect form and money was returned to Respondent, he spent the money on cocaine and failed to renew his registration. Since he still needed to have a current registration to submit to the hospital, Respondent's then girlfriend altered his expired DEA Certificate of Registration to reflect a 1995 expiration date instead of the actual 1991 expiration date. This forgery resulted in the hospital terminating Respondent's employment on September 15, 1992. At the hearing Respondent testified that he was abusing drugs and alcohol at the time of the alteration of his Certificate of Registration, and that ''there's no real justification to give you, other than I was sick and irresponsible.''

Respondent's substance abuse worsened, and during this time he was arrested and charged with the misdemeanors of drunk driving, reckless driving, public intoxication and possession of drug paraphernalia. Respondent pled guilty to two of the charged. In addition, from the summer of 1991 to November 1992, Respondent prescribed controlled substances without a valid registration and exchanged prescriptions for discounts on the cost of cocaine.

An investigation of Respondent began in 1992 based upon information from a confidential informant that she received controlled substance prescriptions from Respondent for no legitimate medical reason. On February 16, 1993, Respondent voluntarily met with law enforcement personnel. At this time, Respondent was currently undergoing inpatient treatment at a halfway house for his addiction. Respondent cooperated and provided full disclosure during this meeting, as well as subsequent meeting.

This investigation of Respondent, as well as his own admissions, revealed that Respondent has written controlled substance prescriptions to a number of individuals for no legitimate medical reason. He exchanged these prescriptions for services to include topless or private dances. He traded cocaine for sex and private dances, and he used cocaine and marijuana with these dancers.

Respondent acknowledged his prior behavior, his activity regarding his relationships with these individuals, and his unlawful prescribing of controlled substances. Respondent has accepted responsibility for his actions.

Subsequently, Respondent agreed to cooperate with the local police department. He provided a list of people that he had written controlled substance prescriptions to for no legitimate medical purpose. He also provided the names of individuals from whom he had purchased drugs from in the past and indicated from whom he thought he could buy drugs from in the future. Respondent agreed to work with the local police department to make telephone calls and contacts in an effort to set up undercover buys of drugs. Respondent was not very successful in gaining evidence against others since it was known that Respondent was in trouble. Respondent's cooperation with the local police department continued until August 1993.

Respondent entered treatment for a second time in November 1992, this time voluntarily. Respondent testified that he realized that his first attempt at treatment was ''a half-hearted effort'' and that at that time he was in denial of his addiction. By the time of his second attempt at treatment he had essentially lost everything. He testified, ''if I didn't get into treatment at that time, I really didn't think I would be here much longer.'' Respondent was in impatient treatment for three weeks and then continued to undergo inpatient treatment at a halfway house for impaired professional until June 1993.

While in treatment, Respondent's Tennessee medical license expired on December 31, 1992. Respondent did not submit a renewal application for this license until March 23, 1993 and did not pay the license fee until May 11, 1993. Respondent continued to practice medicine even though his license had not been renewed. Respondent explained that when he returned to work in 1993, he thought his medical license was in a ''grace period.''

After completing his treatment in June 1993, Respondent returned to work at the 24-hour minor medical emergency center and for the emergency room service, both of which were aware of Respondent's prior drug treatments. On his application for employment with the emergency room service submitted on September 29, 1993, Respondent indicated that his privileges or professional services at any hospital had never been revoked, event though his privileges at the hospital center had been revoked in September 1992. At the hearing, Respondent admitted that this mistake was an oversight and that ''[he] had no reason to intentionally try and mislead or lie on that application.''

Respondent has maintained a contract with the PHP since March 3, 1993. After treatment, the PHP coordinates and monitors physician's recovery process for a minimum of two years. As part of the contract with the PHP physicians agree to attend weekly peer group meetings and monthly meetings with PHP personnel, to undergo random drug testing, to attend Alcoholics Anonymous or Narcotics Anonymous meetings, and to participate in individualized therapy.

After fulfilling the terms of his initial two-year contract with the PHP, Respondent has continued to renew his contract. Respondent has complied with the terms of this contract.

As a result of Respondent's past behavior, the Tennessee Board of Medical Examiners (Board) sought to take action against Respondent's Tennessee medical license. Respondent failed to appear for a scheduled hearing before the Board on June 21, 1994. According to Respondent he never received notice from the Board that the hearing was going to take place. As a result, on June 22, 1994, the board entered a Default Order revoking Respondent's Tennessee medical license and assessing a $4,300 civil penalty. The Board found among other things that Respondent had lied on his Tennessee medical license renewal form and on his employment application

dated September 29, 1993, that he engaged in unprofessional, dishonorable or unethical conduct, that he was habitually intoxicated which affected his ability to practice medicine, and that he dispensed controlled substances not in the course of professional practice. Respondent stopped practicing medicine when he received written notification in July 1994 of the Board's action.

Based upon his conduct in 1991 and 1992, Respondent was indicted on July 19, 1995, in the United States District Court for the Western District of Tennessee, and charged with 387 felony counts related to his handling of controlled substances. On November 18, 1996, Respondent pled guilty to 17 counts of the unlawful distribution of controlled substances in violation of 21 U.S.C. 841(a)(1). On March 27, 1997, Respondent was sentenced to three years probation, 2,000 hours of community service, and assessed a fine of $850. As conditions of his probation, Respondent is required to submit to random drug screens and to meet monthly with his probation officer. As of the date of the hearing Respondent had completed 1,500 to 1,600 hours of his community service obligation and has complied with all of the conditions of his probation.

On July 1, 1995, Respondent began a three-year psychiatry residency program at the University of Tennessee. He was selected for the position of Chief Resident in psychiatry by his fellow residents and faculty. During his residency, Respondent used the institutional DEA numbers of the institutions where he worked as a resident. No questions were ever raised by any official or representative at the University of Tennessee regarding the Respondent's handling of controlled substances.

After his indictment and while in his residency program, Respondent assisted DEA in undercover activities for close to a year. Respondent's assistance produced four controlled substance buys, two of which resulted in convictions.

Effective October 6, 1997, the Board reinstated Respondent's medical license, finding that ''[t]he [Respondent] has been monitored by the Tennessee Medical Foundation's Physician Health Program and is currently in good standing with the program. He presented evidence of five (5) years of sobriety.'' The Board placed several restrictions on Respondent's medical license including that he maintain an affiliation with the PHP for five years to include at least five unannounced drug screens per year; that he only apply for a DEA registration in Schedules III, IV and V; and that he only practice in a supervised setting under a licensed physician acceptable to the Board until his criminal probation is lifted, but for not less than two years.

Respondent has been in compliance with the Board's restrictions. On average, Respondent is tested for drugs eight to ten times per year. According to Respondent, he plans to maintain a lifetime relationship with the PHP, not just the five years imposed by the Board.

The medical director of the PHP testified at the hearing that he has been in frequent contact with Respondent for over three and a half years. He believes that Respondent's prognosis for continued recovery from his drug addiction is excellent. The medical director testified that he does not have any reservations concerning Respondent's ability to handle Schedules III, IV and V controlled substances and that he ''fully support[s]'' the granting of Respondent's application. However, both Respondent and the medical director testified that Respondent may benefit from a course on the proper handling of controlled substances.

Respondent testified that he has been sober since November 6, 1992. He further testified that he would pay greater attention to detail about his registration status, and the proper maintenance and renewal of his DEA and state registration ''won't be a problem in the future at any time.'' He feels that he is ''much more responsible'' now. Respondent is ashamed of his previous conduct. He testified however that ''today I know that I'm not the same person that I was six, seven, eight years ago . . . who was sick and addicted.'' Respondent testified that he understands the consequences of a relapse.

Since 1998, Respondent has been employed at a treatment facility where, for the most part, he practices addiction medicine. Presently, if Respondent's treatment of a patient requires the use of controlled substances, one of Respondent's supervisors writes the prescription. The Board has approved Respondent's employment at the treatment facility and any change in employment would require additional Board approval.

On October 28, 1997, Respondent executed the application for registration that is the subject of these proceedings. Respondent applied to be registered in Schedules III, IV and V and provided his home address as his ''Proposed Business Address.'' Respondent testified that he does not intend to handle controlled substances at his residence and that the address on his application should be modified to reflect the address at the treatment facility where he is currently employed.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration, if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

As to factor one, the Board revoked Respondent's Tennessee medical license in June of 1994. However, three years later the Board reinstated Respondent's license subject to various restrictions. In reinstating Respondent's license, the Board recognized that Respondent had been drug-free for five years and was in good standing with the PHP. Therefore, it is undisputed that Respondent is currently authorized to handle controlled substances in Tennessee.

While state licensure is a prerequisite for a DEA registration, it is not dispositive of whether Respondent's registration would be in the public interest. However, it is noteworthy that the Board stated that ''[a]ny DEA certificate that the [Respondent] shall apply for shall be limited to Schedule III, IV and V.'' The Acting Deputy Administrator agrees with Judge Randall that, ''[a]lthough this restriction is not an endorsement by the Board for issuing a DEA registration to the Respondent, at a minimum, this statement expresses the Board's confidence in the Respondent's ability to handle the responsibilities of a DEA registrant, particularly regarding the Respondent's

ability to handle Schedules III, IV and V controlled substances.''

Respondent's experience in dispensing controlled substances and his compliance with laws related to controlled substances may be considered under factors two and four. The Acting Deputy administrator finds that Respondent's handling of controlled substances was abysmal during his active drug abuse. Respondent violated 21 U.S.C. 843(a)(2) by prescribing controlled substances without a valid DEA registration. He caused his expired DEA Certificate of Registration to be altered. In addition, Respondent violated 21 U.S.C. 841(a)(1) by prescribing controlled substances to individuals for no legitimate medical purpose. He wrote these prescriptions in exchange for discounts on his cocaine and crack purchases and in exchange for topless dances from women.

The Acting Deputy Administrator finds this conduct to be reprehensible, and certainly could justify denying Respondent's application for registration. However, all of this conduct occurred when Respondent was heavily involved in substance abuse. Respondent has been drug-free since November 1992. He underwent intensive treatment and is still actively participating in aftercare treatment.

Also of concern is that Respondent continued to practice medicine in 1993 after he failed to timely renew his state medical license. However, this occurred when Respondent was undergoing substance abuse treatment and he thought his license was subject to a grace period.

Other than his practice of medicine without a current state license, there is no evidence that Respondent improperly handled controlled substances after he entered treatment in November 1992. In fact, Respondent handled controlled substances without question from July 1, 1995 to June 30, 1998 when using institutional numbers issued to him by the University of Tennessee during his residency.

Regarding factor three, it is undisputed that when Respondent was abusing drugs and alcohol, he was arrested for drunk driving, reckless driving, public intoxication and possession of drug paraphernalia. He pled guilty to two of these charges. In addition, on November 18, 1996, Respondent pled guilty to 17 counts of unlawful distribution of controlled substances. Respondent was sentenced to three years probation and 2,000 hours of community service. Evidence in the record indicates that Respondent has complied with the terms of his probation. While such convictions clearly could justify denying Respondent's application for registration, the Acting Deputy Administrator finds it significant that these convictions resulted from Respondent's behavior when he was addicted to drugs and alcohol, and as has been previously discussed, Respondent has been drug-free for seven years and his prognosis for continued recovery is excellent.

As to factor five, other conduct which may threaten the public health and safety, it is undisputed that Respondent was previously addicted to alcohol and drugs, including marijuana, cocaine and crack cocaine. According to Respondent, his conduct was ''dangerous, illegal, [and] irresponsible'' when he was addicted. However, Respondent has undergone intensive treatment for his substance abuse and his treatment is ongoing.

It is true that Respondent previously had undergone treatment but had relapsed. However, Respondent admits that he was resistant to treatment at that time. The second time that Respondent entered treatment, he did so voluntarily and is committed to such treatment. The evidence suggests that his chances of repalse are slight. He understands the consequences of a relapse. He intends to maintain a lifetime relationship with the PHP and he currently works with others who are addicted to drugs and alcohol.

Judge Randall also found it significant under this factor that Respondent incorrectly listed his home address on his application for registration. However, she further found that it was not so egregious as to warrant a denial of Respondent's application for registration. The Acting Deputy Administrator agrees that this incorrect listing of his business address does not warrant denial of Respondent's application.

Judge Randall concluded, and the Acting Deputy Administrator agrees, that the Government has made a prima facie case for denial of Respondent's application. Respondent unlawfully prescribed controlled substances, altered his DEA Certificate of Registration, abused alcohol and drugs, and was convicted of offenses relating to controlled substances. However, it is not in the public interest to deny Respondent's application.

Respondent has acknowledged his past unlawful behavior and has accepted responsibility for his conduct. Respondent has a serious addiction to drugs and alcohol during his unlawful conduct. He has been sober since November 1992 and his chances of continued recovery are excellent. He intends to maintain a lifetime relationship with the PHP and he is currently still being monitored by the State of Tennessee. The evidence suggests that Respondent is clearly committed to his recovery and is seeking to help others with substance abuse problems by predominantly practicing addiction psychiatry. Judge Randall also found it significant that Respondent cooperated with law enforcement by fully disclosing his unlawful conduct, by providing information against others, and by assisting in undercover buys.

Therefore, the Acting Deputy Administrator agrees with Judge Randall that it would not be in the public interest to deny Respondent's application. However given the egregiousness of Respondent's past behavior, Judge Randall recommended that restrictions be imposed on Respondent's registration that would ''add a measure of protection to the public interest, while affording [Respondent] the opportunity to demonstrate his ability and willingness to handle controlled substances responsibly in his medical practice.'' Judge Randall recommended that Respondent's application for registration be granted subject to the following restrictions:

(1) The Respondent must resubmit a registration application reflecting his ''Proposed Business Address'' as required by regulation;

(2) The Respondent be granted a Certificate of Registration only for Schedules III, IV and V;

(3) By not later than two years after the date of the final order, the Respondent shall submit to the local DEA office evidence of successful completion, after August of 1999, of formal training in the proper handling or prescribing of controlled substances. Such training should be provided by an accredited institution at the Respondent's own expense;

(4) For three years after the effective date of the final order in this case, the Respondent shall submit, on a quarterly basis, a log of all of the controlled substances he has prescribed, administered or dispensed during the previous quarter, to the Special Agent in Charge of the nearest DEA office, or his or her designee. The log should include: the patient's name; the date that the controlled substance was prescribed, administered or dispensed; and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed. If no controlled substances are prescribed, administered or dispensed during a given quarter, the Respondent shall indicate that fact in writing, in lieu of

submission of the log. Review of such a log should provide adequate assurances for his future responsible conduct as a registrant.

The Acting Deputy Administrator agrees with Judge Randall that Respondent's application for registration should be granted and that it is appropriate to impose restrictions on such registration. However, the Acting Deputy Administrator finds it unnecessary to require Respondent to resubmit an application listing his proper business address. At the hearing in this matter, Respondent requested that his application be modified to reflect the address of his current place of employment. The Acting Deputy Administrator finds that this request is sufficient to modify his application and a new application for registration is not required. However, if Respondent's place of employment has changed from that represented at the hearing, a new written request for modification of the address on his application must be submitted.

In addition, the Acting Deputy Administrator disagrees with Judge Randall's recommendation that Respondent be given two years to present evidence of successful completion of formal training in the proper handling or prescribing of controlled substances. Given the nature of Respondent's past conduct, the Acting Deputy Administrator finds that it is in the public interest for such training to be completed within one year of being issued his DEA registration.

Finally, the Acting Deputy Administrator believes that it is prudent to require Respondent to continue his affiliation with the PHP for three years regardless of whether such affiliation is required by the Board.

Therefore, the Acting Deputy Administrator concludes that Respondent should be granted a DEA Certificate of Registration in Schedules III, IV and V subject to the following restrictions:

(1) By not later than one year after the Certificate of Registration is issued, Respondent shall submit to the DEA office in Nashville Tennessee evidence of successful completion, after August of 1999, of formal training in the proper handling or prescribing of controlled substances. Such training should be provided by an accredited institution at the Respondent's own expense.

(2) For three years after the issuance of the Certificate of Registration, Respondent shall submit, on a quarterly basis, a log of all of the controlled substances he has prescribed, administered, or dispensed during the previous quarter, to the Resident Agent in Charge of the DEA office in Nashville, Tennessee, or his or her designee. The log should include: the patient's name; the date that the controlled substance was prescribed, administered or dispensed; and the name, dosage and quantity of the controlled substance prescribed, administered or dispensed. If no controlled substances are prescribed, administered or dispensed during a given quarter, the Respondent shall indicate that fact in writing, in lieu of submission of the log.

(3) Respondent shall continue his affiliation with the Tennessee Medical Foundation's Physicians' Health Program for at least three years from the issuance of the Certificate of Registration, regardless of whether such affiliation is required by the Tennessee Board of Medical Examiners.

Accordingly, the Acting 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 the application for registration submitted by Michael Alan Patterson, M.D., be, and it hereby is, granted subject to the above described restrictions. This order is effective upon the issuance of the DEA Certificate of Registration, but no later than January 31, 2000.

Dated: December 22, 1999.

Julio F. Mercado,

Acting Deputy Administrator.

[FR Doc. 99–33979 Filed 12–29–99; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: January 31, 2000 and February 1, 2000, 8:00 a.m. to 5:00 p.m.

Place: NSF, 4201 Wilson Boulevard, Rooms 380 and 390, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Clifford J. Astill, Program Director Geomechanics and Geotechnical Systems, Geoenvironmental Engineering and Geohazards Mitigation, Division of Civil and Mechanical Systems, Room 545, (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'00 Control, Geomechanics and Geotechnical Systems and Geoenvironmental Engineering and Geohazards Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: December 23, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–33974 Filed 12–29–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date/Time: January 13–14, 2000, 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Lawrence E. Brandt, Digital Government Program, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230 Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to National Science Foundation for financial support.

Agenda: To review and evaluate CISE Digital Government Program proposals submitted in response to the program announcement (NSF 99–103).

Reason for Closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: December 23, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–33973 Filed 12–29–99 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel for Geosciences: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel for Geosciences (1756).

Date/Time: January 13–14, 2000, 7:30 AM–5:00 PM.

Place: National Science Foundation, 4201 Wilson Blvd., Room 365, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Alexander Shor, Program Director, Oceanographic Technical Services & Instrumentation Panel, Oceanographic Centers & Facilities Section, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 306–1580.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Oceanographic Technical Services & Instrumentation Panel.

Reason for Closing: The proposal being reviewed includes information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in The Sunshine Act.

Dated: December 23, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–33972 Filed 12–29–99 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Graduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Graduate Education (57).

Date/Time: February 10th and 11th 2000, 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 375, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Dr. Sonia Ortega, Program Director, Mrs. Carolyn L. Piper, Asst. Program Director, Mrs. Arneeta Speight, Senior Program Assistant and Ms. Deborah A. Daniels, Senior Program Assistant, Division of Graduate Education, National Science Foundation, 4201 Wilson Blvd. Room 907N, Arlington, VA 22230. (703) 306–1697.

Purpose of Meeting: To provide advice and recommendations concerning preproposals submitted to NSF for financial support.

Agenda: To review and evaluate applications submitted to the NSF–NATO Postdoctoral Fellowships in Science and Engineering program as part of the selection process for awards.

Reason for Closing: The applications being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b (c)(4) and (6) of the Government in the Sunshine Act.

Dated: December 23, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–33971 Filed 12–29–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* On occasion. Upon submittal of an application for a construction permit, operating license, operating license renewal, early site review, design certification review, decommissioning or termination review, manufacturing license, materials license, or upon submittal of a petition for rulemaking.

5. *Who will be required or asked to report:* Licensees and applicants requesting approvals for actions proposed in accordance with the provisions of 10 CFR parts 30, 32, 33, 34, 35, 36, 39, 40, 50, 52, 54, 60, 61, 70 and 72.

6. *An estimate of the number of responses:* 27.

7. *The estimated number of annual respondents:* 29.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 60,288.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 51 of the NRC's regulations specifies information and data to be provided by applicants and licensees so that the NRC can make determinations necessary to adhere to the policies, regulations, and public laws of the United States, which are to be interpreted and administered in accordance with the policies set forth in the National Environmental Policy Act of 1969, as amended.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by January 31, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0021), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 23rd day of December, 1999.

For the Nuclear Regulatory Commission.

Beth C. St. Mary,

Acting NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–33967 Filed 12–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

In the Matter of Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2, and 3); Exemption

I

The Duke Energy Corporation (Duke/the licensee) is the holder of Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, that authorize operation of the Oconee Nuclear Station, Units 1, 2, and 3 (Oconee), respectively. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities consist of three pressurized water reactors located on Duke's Oconee site in Seneca, Oconee County, South Carolina.

II

Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Appendix J, contains the following requirements:

a. Section III.D.2(b)(i) requires that air locks be tested prior to initial fuel loading and at 6-month intervals thereafter at an internal pressure not less than P_a (the calculated peak containment internal pressure related to the design basis accident).

b. Section III.D.2(b)(ii) requires that air locks opened during periods when containment integrity is not required shall be tested at the end of such periods at P_a.

c. Section III.D.2(b)(iii) requires that air locks opened during periods when containment integrity is required shall be tested within 3 days after being opened. For air locks opened more frequently than once every 3 days, the air lock shall be tested at least once every 3 days during the period of frequent openings. For air lock doors having testable seals, testing the seals fulfills the 3-day test requirement.

III

The proposed action is in accordance with the licensee's application for exemption contained in a submittal dated October 5, 1999.

Whenever the plant is in cold shutdown (Mode 5) or refueling (Mode 6), containment integrity is not required. However, if an airlock is opened when in Modes 5 or 6 (which is usually the case), 10 CFR 50, Appendix J, Section III.D.2(b)(ii) requires that an overall air lock leakage test at not less than P_a be performed before plant heatup and startup (*i.e.*, before Mode 4 is entered). The licensee has requested an exemption that would allow this test requirement to be met by performing an air lock door seal leakage test per 10 CFR 50, Appendix J, Section III.D.(b)(iii) during plant startup prior to entering Mode 4 if no maintenance has been performed on the air lock that could affect its sealing capability. If maintenance has been performed that could affect its sealing capability, an overall air lock leakage test per 10 CFR 50, Appendix J, Section III.D.2(b)(ii) would be necessary prior to establishing containment integrity.

The existing air lock doors are designed so that the air lock pressure test can only be performed after a strongback (structural bracing) has been installed on the inner door, since the pressure used to perform the test is opposite that of accident pressure and would tend to unseat the door. Performing the full air lock test in accordance with the present requirements takes approximately 12 hours, since it requires installation of the strongback, performing the test, and removing the strongback. During the test, access through the air lock is prohibited, which, therefore, requires evacuation of personnel from the containment or the personnel must remain inside the containment during the test until Mode 4 is reached. The licensee has determined that pressurizing the volume between the seals to 60 pounds per square inch gauge pressure after each opening, and prior to establishing containment integrity, provides the necessary surveillance to ensure the sealing capability of the door seals.

If the periodic 6-month test of 10 CFR 50, Appendix J, Section III.D.(b)(i) and the test required by 10 CFR 50, Appendix J, Section III.D.(b)(iii) are current, no maintenance has been performed on the air lock that could affect its sealing capability, and the air lock is properly sealed as determined by the seal test, there is no reason to expect that the air lock will leak just because it has been opened in Modes 5 or 6. Therefore, there is no impact on plant operation or safety. In addition, due to the design of the air lock, the 6-month test should detect air lock deterioration.

IV

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations.

Accordingly, the staff concludes that the licensee's proposed approach of substituting the 3-day seal leakage test requirements of 10 CFR 50, Appendix J, Section III.D.(b)(iii) for the full pressure test of 10 CFR 50, Appendix J, Section III.D.(b)(ii) is acceptable when no maintenance that could affect the sealing capability has been performed on the air lock. Whenever maintenance that could affect the sealing capability has been performed on the air lock, the full pressure test requirements of 10 CFR 50, Appendix J, Section III.D.(b)(ii) must still be met.

Therefore, the staff concludes that requesting the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that application of the regulation is not necessary to serve the underlying purpose of the rule. The underlying purpose of the rule is to ensure that: (a) leakage through the primary containment, and systems and components penetrating the primary containment, does not exceed the allowable leakage rate values specified in the Technical Specifications or associated Bases; and (b) periodic surveillance of containment penetrations and isolation valves, and systems and components penetrating the containment, is performed so that proper maintenance and repairs are made during the service life of the containment.

V

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants Duke an exemption from the requirements of 10 CFR Part 50, Appendix J, Section III.D.2(b)(ii) for containment air lock tests as described above, for the Oconee Nuclear Station, Units 1, 2, and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment (64 FR 70072).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of December 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33970 Filed 12–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

GPU Nuclear, Inc.

[Docket No. 50–219]

Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of GPU Nuclear, Inc. (the licensee), to withdraw its April 28, 1999 application, as supplemented by letters dated August 30 and September 3, 1999, proposing to amend Facility Operating License No. DPR–16 for the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

The proposed amendment would have revised the facility operating license to approve handling of loads up to and including 45 tons using the reactor building crane during power operations. .

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on October 8, 1999 (64 FR 54925). However, by letter dated December 8, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 28, 1999, as supplemented by letters dated August 30 and September 3, 1999, and the licensee's letter dated December 8, 1999, 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 accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 23rd day of December 1999.

For the Nuclear Regulatory Commission.

Helen N. Pastis, Sr.,

Project Manager, Section I, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–33969 Filed 12–29–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–1014]

Holtec International Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Request for Exemption From Requirements of 10 CFR Part 72

By letter dated October 4, 1999, Holtec International (Holtec or applicant) requested an exemption, pursuant to 10 CFR 72.7, from the requirements of 10 CFR 72.234(c). Holtec, located in Marlton, New Jersey, is seeking Nuclear Regulatory Commission (NRC or the Commission) approval to procure materials for, and fabricate, three MPC–68 multi-purpose canisters, three HI–STORM 100 overpacks, and one HI–TRAC–125 transfer cask prior to receipt of the Certificate of Compliance (CoC) for the HI–STORM 100 cask system. The MPC–68 multi-purpose canister, the HI–STORM 100 overpack, and the HI–TRAC–125 transfer cask are basic components of the HI–STORM 100 system, a cask system designed for the dry storage and transportation of spent nuclear fuel. The HI–STORM 100 cask system is intended for use under the general license provisions of Subpart K of 10 CFR Part 72 by New York Power Authority (NYPA) at the James A. FitzPatrick Nuclear Power Plant (JAF) located in Oswego, New York.

Environmental Assessment (EA)

Identification of Proposed Action: By letter dated October 26, 1995, as supplemented, and pursuant to 10 CFR Part 72, Holtec submitted an application to the NRC for a CoC for the HI–STORM 100 cask system. This application is currently under consideration by the NRC staff. The applicant is seeking Commission approval to procure materials for, and fabricate, three MPC–68 multi-purpose canisters, three HI–STORM 100 overpacks, and one HI–TRAC–125 transfer cask prior to the Commission's issuance of a CoC for the HI–STORM 100 cask system. The HI–STORM 100 system is intended for use under the general license provisions of Subpart K of 10 CFR Part 72 by NYPA at JAF in Oswego, New York. The applicant requests an exemption from the requirements of 10 CFR 72.234(c), which state that ''Fabrication of casks under the Certificate of Compliance must not start prior to receipt of the Certificate of Compliance for the cask model.'' The proposed action before the Commission is whether to approve fabrication, including material procurement, and whether to grant this exemption pursuant to 10 CFR 72.7.

Need for the Proposed Action: Holtec requested the exemption to 10 CFR 72.234(c) to ensure the availability of storage casks so that NYPA can maintain full core off-load capability at JAF. JAF will lose full core off-load capability in the fall of 2002. JAF has proposed an initial cask loading in the summer of 2001. To support training and dry runs prior to the initial loading, NYPA requests the delivery of the first cask by the spring of 2001. Holtec states that to meet this schedule, fabrication, including material procurement, must begin in January 2000.

The HI–STORM 100 cask system application, dated October 26, 1995, is under consideration by the Commission. It is anticipated that, if approved, the HI–STORM–100 cask system CoC may be issued by July 2000. The proposed procurement and the fabrication exemption will not authorize use of any Holtec cask to store spent fuel. That will occur only when, and if, a CoC is issued. An NRC approval of the procurement and grant of the fabrication exemption request should not be construed as an NRC commitment to favorably consider any Holtec application for a CoC. Holtec will bear the risk of all activities conducted under the exemption, including the risk that the three MPC–68 multi-purpose canisters, three HI–STORM 100 overpacks, and one HI–TRAC–125 transfer cask that Holtec plans to construct may not be usable because they may not meet specifications or conditions placed in a CoC that the NRC may ultimately approve.

Environmental Impacts of the Proposed Action: Regarding the procurement approval and fabrication exemption, the Environmental Assessment for the final rule, ''Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites'' (55 FR 29181 (1990)), considered the potential environmental impacts of casks which are used to store spent nuclear fuel under a CoC and concluded that there would be no significant environmental impacts. The proposed action now under consideration would not permit use of the casks, but would only permit procurement and fabrication. There are no radiological environmental impacts from procurement or fabrication since cask material procurement and cask fabrication do not involve radioactive materials. The major non-radiological environmental impacts involve use of natural resources due to cask fabrication. Each MPC–68 multi-purpose canister weighs approximately

44 tons and is made of steel. Each HI–STORM 100 overpack weighs approximately 100 tons and is constructed of metal and concrete. The HI–TRAC–125 transfer cask weighs approximately 125 tons and is made of structural steel and lead. The amount of materials required to fabricate these components is expected to have very little impact on the associated industry. Fabrication of the metal components would be at a metal fabrication facility, while fabrication of the concrete overpacks would be partially fabricated at the same metal fabrication facility, with only the concrete pours being done at JAF. The metal and concrete used in the fabrication of these components is insignificant compared to the amount of metal and concrete fabrication performed annually in the United States. If the components are not usable, the components could be disposed of or recycled. The amount of metal and concrete disposed of is insignificant compared to the amount of metal and concrete that is disposed of annually in the United States. Based upon this information, the fabrication of these components will have no significant impact on the environment since no radioactive materials are involved, and the amount of natural resources used is minimal.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed actions, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed actions would be to deny approval of the exemption and, therefore, not allow fabrication until a CoC is issued. This alternative would have the same environmental impact.

Given that there are no significant differences in environmental impact between the proposed action and the alternative considered and that the applicant has a legitimate need to procure materials and fabricate the components prior to certification and is willing to assume the risk that any fabricated components may not be approved or may require modification, the Commission concludes that the preferred alternative is to approve the procurement request and grant the exemption from the prohibition on fabrication prior to receipt of a CoC.

Agencies and Persons Consulted: Mr. J. Spath, Director, Radioactive Waste Policy and Nuclear Coordination, New York Energy Research and Development Authority, was contacted about the Environmental Assessment for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of approving procurement of materials for three MPC–68 multi-purpose canisters, three HI–STORM 100 overpacks, and one HI–TRAC–125 transfer cask, and granting an exemption from 10 CFR 72.234(c) so that Holtec may fabricate these components prior to issuance of a CoC will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

The request for the exemption from 10 CFR 72.234(c) was filed on October 4, 1999. For further details with respect to this action, see the application for CoC for the HI–STORM 100 cask system, dated October 26, 1995. On July 30, 1999, a preliminary Safety Evaluation Report and a proposed CoC for the HI–STORM 100 cask system were issued by the NRC staff to initiate the rulemaking process. The exemption request and CoC application are docketed under 10 CFR Part 72, Docket 72–1014. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 21st day of December 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–33968 Filed 12–29–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Public Availability of Agency Inventories Under the Federal Activities Inventory Reform Act of 1998 (Pub. L. 105–270) (''FAIR Act'')

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

ACTION: Notice of Public Availability of Commercial Activities Inventories.

SUMMARY: The Office of Management and Budget (OMB) hereby announces that the FAIR Act Commercial Activities Inventories are now available to the public from the agencies listed below.

The ''Federal Activities Inventory Reform Act of 1998'' (Pub. L. 105–270) (''FAIR Act'') requires that OMB publish an announcement of public availability of agency Commercial Activities Inventories upon completion of OMB's review and consultation process concerning the agencies' inventory submissions. OMB has completed this process for the agencies listed below.

Commercial Activities Inventories are now available from the following agencies:

Agency and Contact

Department of Defense—Paul Solomon, 703–917–7431, Web address: http://gravity.Lmi.org/dodfair/

Department of Justice—Larry Silvis, 202–616–3754; Web address: http://www.usdoj.gov/jmd/pe/preface.htm

Department of State—Robert McFadden, 202–647–7780

Department of Transportation—Bill Moga, 202–366–9666

Department of the Treasury—Kevin Whitfield, 202–622–0248; Web address: http://www.treas.gov/fair

Department of Veterans Affairs—John O'Hara, 202–273–5068; Web address: http://www.va.gov; E–mail:fairact@mail.va.gov; fax: 202–273–5991 or 202–273–5993

Federal Communications Commission—Mark Reger, 202–418–1925

Federal Emergency Management Agency—Mary Ellen Presgraves, 202–646–2988

Intelligence Community Management Staff and Central Intelligence Agency*—Office of Public Affairs, 703–874–3050

Intelligence Community: Other Agencies*—Competitive Sourcing Officer, 703–695–1860

National Capital Planning Commission—Teresa Jackson, 202–482–7217

National Transportation Safety Board—Donald J. Libera of Richard Miller, 202–314–6210

Offices of Inspector General:

Department of Agriculture—Richard M. Guyer, 202–690–0291

Department of Defense—Joel L. Leson, 703–604–9701

Department of State—James K. Blubaugh, 202–647–5013

Department of the Treasury—Emilie Baebel, 202–927–5200

Department of the Treasury, Tax Administration—Agapi Doulaveris, 202–622–3968

Railroad Retirement Board—Martin J. Dickman, 312–751–4690

Peace Corps—Susan Hancks, 202–692–1612

Smithsonian Institution—L. Carole Wharton, 202–357–2917

Federal Retirement Thrift Investment Board—Richard White, 202–942–1633

*** Note:** Appropriate security clearance and need to know must be established for access.

Stephen A. Weigler,

Acting Associate Director for Administration.

[FR Doc. 99–33825 Filed 12–29–99; 8:45 am]

BILLING CODE 3110–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42233A; File No. SR–NYSE–99–39]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Amending the Exchange's Audit Committee Requirements and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 1 and No. 2 Thereto

December 23, 1999.

Correction

In FR Document 99–33052, beginning on page 71529 for Tuesday, December 21, 1999, on page 71534 the first sentence of the first paragraph in Column 1 was incorrectly stated. The sentence should read as follows:

''Moreover, the Commission believes that the Exchange's decision not to exempt Small Business Filers is appropriate.[1]''

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–33907 Filed 12–29–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Lagos Airport Now Meets International Security Standards

SUMMARY: The Secretary of Transportation has now determined that Murtala Mohammed International Airport, Lagos, Nigeria, maintains and carries out effective security measures.

Notice

By Orders 92–10–17, issued October 8, 1992, and 93–8–15, issued August 11, 1993, the Secretary of Transportation made public his determinations that Murtala Mohammed International Airport did not maintain and carry out effective security measures. I now find that Murtala Mohammed International Airport maintains and carries out effective security measures. My determination is based on a recent Federal Aviation Administration (FAA) assessment which reveals that security measures used at the airport now meet or exceed the Standards established by the International Civil Aviation Organization. Accordingly, I am removing the prohibition on services between the United States and Murtala Mohammed International Airport imposed by Order 93–8–15 and the public notification requirements imposed by Order 92–10–17.

I have directed that a copy of this notice be published in the **Federal Register** and that the news media be notified of my determination. As a result of this determination, the FAA will direct that signs posted in the U.S. airports relating to the 1992 determination be removed.

Dated: December 22, 1999.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 99–33804 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–62–P

[1] *See* NVCA and Airlease Letters.

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4860]

Random Drug Testing Rate for Covered Crewmembers

AGENCY: Coast Guard, DOT.

ACTION: Notice of minimum random drug testing rate.

SUMMARY: The Coast Guard has set the calendar year 2000 minimum random drug testing rate at 50 percent of covered crewmembers. An evaluation of the 1998 Management Information System (MIS) data collection forms submitted by marine employers determined that random drug testing on covered crewmembers for the calendar year 1998 resulted in positive test results 1.68 percent of the time. Based on this percentage, we will maintain the minimum random drug testing rate at 50 percent of covered crewmembers for the calendar year 2000.

DATES: The minimum random drug testing rate is effective January 1, 2000 through December 31, 2000. You must submit your 1999 MIS reports no later than March 15, 2000.

ADDRESSES: You must mail your annual MIS report to Commandant (G–MOA), U.S. Coast Guard Headquarters, 2100 Second Street SW, Room 2403, Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Lieutenant Jennifer Ledbetter, Project Manager, Office of Investigations and Analysis (G–MOA), U.S. Coast Guard Headquarters, telephone 202–267–0684.

SUPPLEMENTARY INFORMATION: Under 46 CFR 16.230, The Coast requires marine employers to establish random drug testing programs for covered crewmembers on inspected and uninspected vessels. All marine employers are required to collect and maintain a record of drug testing program data for each calendar year, January 1 to December 31. You must submit this data to the Coast Guard in an annual MIS report (Form CG–5573 found in Appendix B of 46 CFR 16). You may either submit your own MIS report or have a consortium or other employer representative submit the data in a consolidated MIS report. The chemical drug testing data is essential to analyze our current approach for deterring and detecting illegal drug abuse in the maritime industry.

Since 1998 MIS data indicates that the positive random testing rate is greater than one percent industry-wide (1.68 percent), the Coast Guard announces that the minimum random drug testing rate is set at 50 percent of covered employees for the period of January 1, 2000 through December 31, 2000 in accordance with 46 CFR 16.230(e).

You must submit your MIS report to the Coast Guard no later than March 15 of each calendar year. Each year we will publish a notice reporting the results of the previous calendar year's MIS data, and the minimum annual percentage rate for random drug testing for the next calendar year.

Dated: December 21, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–33998 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee to discuss rotocraft issues.

DATES: The meeting will be held on January 27, 2000, 9 a.m. PST.

ADDRESSES: The meeting will be held at the Las Vegas Hilton, Conference Room

9, 3000 Paradise Road, Las Vegas, NV 89109, telephone (702) 732–5111.

FOR FURTHER INFORMATION CONTACT: Angela Anderson, Office of Rulemaking, ARM–200, FAA, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9681.

SUPPLEMENTARY INFORMATION: The referenced meeting is announced pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II).

The agenda will include:

Status reports for the following:

a. Performance and Handling Qualities Requirements.

b. Rotocraft-Load Combination Safety Requirements.

c. Normal and Gross Weight and Passenger Issues.

d. Critical Parts.

e. Harmonization Management Team Issues.

Attendance is open to the public but will be limited to the space available. The public must make arrangements to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies at the meeting. If you are in need of assistance or require a reasonable accommodation for the meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on December 22, 1999.

Florence L. Hamn,

Acting Assistant Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–33938 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–1999–6574]

Small-Scale Rockets

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA announces an on-line public forum on the Internet to solicit comments and information from the public on the regulation of launches of small-scale rockets. Based on information received, the FAA may initiate rulemaking to redefine the scope of launch activities that would not require FAA licensing. The FAA is also considering a simplified launch license (light-license) for designated classes of launch activities. This on-line public forum is intended to aid the FAA in its regulatory effort by receiving early input from the affected community.

DATES: The on-line public forum will begin on February 28, 2000, at 9 a.m. EST and end on March 10, 2000, at 4:30 p.m. EST. Written comments submitted to the docket must be received no later than March 24, 2000.

ADDRESSES: The on-line public forum can be reached by clicking the ''On-Line Public Forum'' hyperlink on the Associate Administrator for Commercial Space Transportation's (AST) Internet home page, *http://ast.faa.gov*, or going directly to *http://ast.faa.gov/publicforum*.

Persons who are unable to participate in the on-line public forum and wish to submit written comments may mail or deliver their comments in duplicate to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–6574, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may also be sent electronically to the Documents Management System (DMS) at the following Internet address: *http://dms.dot.gov/* no later than March 24, 2000. Written comments, other than those provided during the on-line public forum, may be filed and/or examined in Room PL 401 between 10 a.m. and 5 p.m. weekdays except Federal holidays. Written comments to the docket will receive the same consideration as statements made during the on-line public forum.

FOR FURTHER INFORMATION CONTACT: J. Randall Repcheck, Licensing and Safety Division, Commercial Space Transportation, (202) 267–8379, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; or Ms. Esta M. Rosenberg, Attorney-Advisor, Regulations Division, Office of the Chief Counsel, (202) 366–9320.

SUPPLEMENTARY INFORMATION: The on-line public forum will allow near real-time electronic discussion on the regulatory aspects of small-scale rockets. The discussion will allow a large cross-section of the interested public to share views with each other and the FAA, and assist the FAA in redefining the regulatory framework for small-scale rocket activities.

Background

Under 49 U.S.C. Subtitle IX, ch. 701, popularly referred to as the Commercial Space Launch Act of 1984, as amended (CSLA or the Act), any person proposing to launch a launch vehicle within the United States, and any U.S. citizen proposing to launch a launch vehicle outside the United States, must obtain a license authorizing the launch. 49 U.S.C. 70104(a). The FAA authorizes launches by the private sector to protect public health and safety, safety of property, and national security interests and foreign policy interests of the United States.

Regulations implementing the Act were issued in a final rule on April 4, 1988. The 1988 final rule, Commercial Space Transportation Licensing Regulations, 14 CFR Ch. III, exempted certain small-scale rocket activities from licensing requirements. In the preamble to the 1988 final rule, the Office of Commercial Space Transportation (OCST), the predecessor office within the Department of Transportation responsible for carrying out the authority of the Secretary under the Act, explained that Congress did not intend the CSLA to encompass small-scale rocket launches from private sites conducted for recreational or educational purposes. The OCST stated that these types of launches do not warrant licensing and regulatory oversight under the CSLA.[1]

In the 1988 final rule, launches of small-scale rockets of limited performance were termed ''amateur rocket activities.'' Under 14 CFR 401.5, a launch constituting an amateur rocket activity is one which takes place from a private site and involves a rocket that meets all three of the following criteria:

[1] As explained in the preamble of the 1988 final rule:

[OCST's] licensing policies and procedures have been developed for * * * commercial expendable launch vehicle (ELV) launches. However, consistent with the legislative history of the Act, the Office's regulatory guidance also provides adequate supervision for any other non-Federal launch activity. Thus, launch activities falling within the scope of the Office's authority may include activities conducted for experimental, developmental, or research purposes as well as those conducted without any apparent profit motive.

At the same time, neither the Act nor its legislative history evinces an intention to require licenses for small scale rocket launches conducted for recreational or educational purposes at private sites. These launches, which number annually in the millions, are currently subject to state and local regulation, self-regulation by the organizations sponsoring these activities, and Federal airspace requirements. These existing guidelines and requirements have been effective for purposes of protecting public safety and any other national interest that may be associated with these activities.

53 FR 11004, 11007.

- The rocket motor(s) has a total impulse of 200,000 pound-seconds or less; and
- The rocket motor(s) has a total burning time or operating time of less than 15 seconds; and
- The rocket has a ballistic coefficient—*i.e.*, gross weight in pounds divided by frontal area of rocket vehicle—less than 12 pounds per square inch.

Small-scale rocket technology has emerged since 1988 such that the regulatory definition of ''amateur rocket activities'' may inadequately define the full range of rocket activities that may be excluded from FAA launch licensing because they do not pose sufficient risk to public health and safety and safety of property to warrant FAA licensing. Conversely, the current definition may exclude from FAA licensing certain launch activities that pose sufficient risk to public health and safety and safety of property as to warrant FAA licensing. This mismatching of the definition of ''amateur rocket activities'' with current small-scale rocket activities is due to a number of development since 1988, including:

(1) Small-scale launch vehicles that meet the criteria listed under the definition of ''amateur rocket activities'' in 14 CFR part 401 have become more powerful and sophisticated. These vehicles can achieve higher performance levels than anticipated under the current definition of ''amateur rocket activity.'' Higher performance can lead to the ability to reach greater altitudes and travel greater distances resulting in greater risk to public health and safety and safety of property.

(2) A number of small-scale launch vehicles are being developed and launched using liquid propellants. Even though these vehicles may not have the size or power to warrant FAA licensing, they may have a burn time of 15 seconds or more and therefore do not meet a criterion of ''amateur rocket activities.'' Under the current regulations, a person wishing to launch a liquid-propelled launch vehicle with a burn time of 15 seconds or greater would require a license or would have to apply to the FAA to waive the requirement for a license.

(3) New commercial launch concepts often begin with developmental tests using prototypes or other test vehicles. Some test vehicles are relatively powerful, but have limited altitude or range capability. Launches of these vehicles may not meet the definition of amateur rocket activities. However, launch vehicles that have limited altitude and range can be contained within a controlled area without using a flight safety system. Thus, only minimal safety measures are needed to protect the public from launch hazards.

New Regulatory Initiative

The FAA is considering two issues. The first is the need to redefine the scope of small-scale launch activities that may be conducted without an FAA license. Small-scale rocket technology has advanced over the years beyond that contemplated in the existing definition. FAA licensing may be necessary for certain small-scale rocket activities not currently licensed under the CSLA. Conversely, certain launch activities that do not currently meet the definition of ''amateur rocket activity'' may not require FAA licensing for reasons previously explained.

The second issue the FAA is considering is whether to establish a new launch licensing procedure entailing fewer application requirements or licensee responsibilities than those currently codified as part of the FAA's launch licensing provisions. 14 CFR Parts 413 and 415. This ''light-license'' would be appropriate for certain small-scale rocket activities that pose unacceptable risk to persons and property absent the use of certain essential safety standards. A ''light-license'' would ensure, with minimal burden, that launch operators take appropriate safety precautions to protect public health and safety and the safety of property.[2]

Identifying activities within these two classes, unlicensed and ''light-licensed,'' is complicated because of the diversity of activities, the wide range of launch vehicles used, and the number and variety of launch sites used. The on-line public forum will enable the FAA to solicit information from hobbyists, educators, rocket organizations, launch companies with developmental or test vehicles, state and local government agencies that regulate various aspects of rocketry, private land owners whose land is used for rocket launches, and the general public.

The FAA hopes that an on-line public forum that allows the public to discuss diverse issues amongst themselves and with the FAA will provide the agency with information on which the FAA can formulate regulatory alternatives.

[2] The FAA has the authority to waive certain requirements for a license. Thus, today, the FAA can simplify the current licensing process on a case-by-case basis. However, ti would be more efficient for the FAA and the public if a streamlined licensing process can be established with requirements tailored to a clearly defined class of launch activity.

Information Requested

The FAA solicits on-line discussion and written comments on the questions below and any other ideas the public may have. Note that all of the FAA's regulatory decisions must be made with an understanding of the costs and benefits of its actions. Therefore, the FAA requests that commenters include estimates of costs for any proposal they recommend.

(1) What existing and future launch activities could be conducted without FAA licensing? What criteria could be used to define these activities? Possible criteria include—

- The total impulse of the rocket's motors;
- The maximum altitude the rocket can reach;
- The physical size of the rocket;
- The materials used to construct the rocket;
- Whether professionally manufactured rocket motors are used;
- Whether the rocket's propulsion system uses liquid, solid, or hybrid propellant;
- Whether toxic propellants are used;
- The size and location of the launch site; and
- Whether the rocket is launched from a balloon or other airborne platform.

(2) What existing and future launch activities would be appropriate for a ''light-license?'' What criteria could be used to define these activities? Should similar criteria be used as in question (1) but with higher thresholds?

(3) For launch activities that are appropriate for a ''light-license,'' what standards or safety measures should be required as a matter of FAA licensing requirements to ensure public health and safety and the safety of property? Possible safety measures include—

- The use of trajectory and dispersion analyses during the planning stages of a launch;
- Analyzing the risks to the public during the planning stages of a launch;
- Determining and establishing hazard areas to contain launch hazards; and
- Using ''wind weighting'' to ensure the launch vehicle flies within established hazard areas.

(4) What would be an appropriate application process for a ''light-license?'' Would standard forms be helpful? Would electronic submission be helpful?

(5) What else, not addressed above, should the FAA consider?

On-Line Public Forum

The public can join the on-line public forum by clicking the ''On-Line Public

Forum'' hyperlink on the Associate Administrator for Commercial Space Transportation's (AST) Internet home page, *http://ast.faa.gov,* or going directly to *http://ast.faa.govpublicforum*.

The FAA will monitor public comments throughout the two-week forum. The FAA may ask clarifying questions of commenters. The FAA will not make any commitments or draw any conclusions during the open docket period.

Issued in Washington, DC, on December 23, 1999.

Joseph A. Hawkins,

Acting Associate Administrator for Commercial Space Transportation.

[FR Doc. 99–33937 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

First Tier Environmental Impact Statement: Jackson, Lafayette, Saline, Pettis, Cooper, Boone, Callaway, Montgomery, Warren, Lincoln, and St. Charles Counties, Missouri

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a First Tier environmental impact statement (EIS) will be prepared for proposed improvements to Interstate 70 in Jackson, Lafayette, Saline, Pettis, Cooper, Boone, Callaway, Montgomery, Warren, Lincoln, and St. Charles Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Neumann, Programs Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101, Telephone: (573) 636–7104 or Mr. Bob Sfreddo, Director of Project Development, Missouri Department of Transportation, P.O. Box 270, Jefferson City, MO 65102, Telephone: (573) 751–4586.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare a First Tier EIS for a proposal to investigate improvements to Interstate 70 through Missouri, from the interchange with Interstate 470 in Independence, Missouri (Exit 15) to the interchange in Lake St. Louis, Missouri (Exit 214). The first tier EIS will involve the examination of transportation strategies for improvements to Interstate 70 for 199 miles access the state of Missouri. The study area will be about five (5) miles on each side of existing Interstate 70 across Missouri.

Strategies under consideration include: (1) Taking no action, (2) transportation system management, (3) other modes of transportation, (4) upgrading and improving the existing Interstate 70, (5) constructing a new limited-access highway on new or partially-new location, and (6) a combination of the above strategies. The First Tier EIS will be completed to a Record of Decision indicating a strategy and a broad corridor up to a mile wide for improvements to Interstate 70 across Missouri. The first tier EIS also will indicate an approach for subsequent NEPA work in the Second Tier(s) within the selected corridor. It will indicate specific projects having independent utility and logical termini for the Second Tier effort to progress to subsequent detailed design and construction of manageable projects in the future. The Second Tier will involve the detailed NEPA study for specific alignments within the broad corridor previously selected in the First Tier EIS.

The proposed First Tier EIS is the result of MoDOT's identification of Interstate 70 across Missouri for improvement as part of the future long range transportation plan. Given the current and projected traffic volumes, and the dated design of existing Interstate 70 (some portions dating from as early as 1956 as the first construction in the United States on the interstate highway system), improvements to the Interstate 70 corridor are considered critical to provide for a safe, efficient, and economical transportation network that will meet traffic demands in the state and for national travelers. The proposed improvements are also intended to be environmentally sound. System improvements will be examined based on the purposes of reducing traffic congestion, addressing roadway deficiencies, improving safety, reducing traffic congestion, and enhancing system linkage.

A scoping process has been initiated that involves all appropriate federal and state agencies. This will continue throughout the study as an ongoing process. An intensive public information effort will be initiated in January 2000 to include those agencies, local agencies, and private organizations and citizens who have previously expressed, or are known to have, interest in this proposal. This effort also will inform the public living in the study area and those who travel on Interstate 70 from across the nation with the interest of capturing their comments for and about the study. Public informational meetings will be held across the study area to engage the regional community in the decision making process and to obtain public comment. In addition, public hearings will be held to present the findings of the First Tier Draft EIS (DEIS). Public notice will be given concerning the time and place of informational meetings and public hearings. The First Tier DEIS will be available for public and agency review and comment prior to the public hearings.

To ensure the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the First Tier EIS should be directed to the FHWA or MoDOT at the addresses previously provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 16, 1999.

Donald L. Neumann,

Programs Engineer, Jefferson City.

[FR Doc. 99–33925 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Raleigh County, WV

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that it is revising the original notice of intent published in the **Federal Register** on August 28, 1997 (Volume 62, Number 167, Page 45695). The original notice stated that an environmental impact statement would be prepared for a proposed highway improvement project in Raleigh County, West Virginia. After further analysis, it has been determined there will be no significant environmental impacts and the appropriate NEPA document would be an environmental assessment.

FOR FURTHER INFORMATION CONTACT: Henry E. Compton, Division Environmental Coordinator, Federal Highway Administration, West Virginia Division, Geary Plaza, Suite 200, 700 Washington Street East, Charleston,

West Virginia, 25301, Telephone: (304) 347–5268.

SUPPLEMENTARY INFORMATION: In lieu of preparation of an environmental impact statement, the FHWA, in cooperation with the West Virginia Division of Highways (WVDOH) will prepare an environmental assessment for the proposed East Beckley Transportation Improvement Project. The project begins at the intersection I–64 just east of Beckley, and extends northward to connect with Appalachian Corridor L (US 19), a distance of approximately 7 miles. This project is considered necessary to provide for the existing and projected traffic demand. Alternatives under consideration include (1) taking no action; (2) using alternate traffic modes; (3) improve the existing system by constructing a four lane, limited access highway on new location. Incorporated into the study with the various building alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have expressed or are known to have an interest in this proposal. A public meeting will be held in Beckley when appropriate. Public notice will be given of the time and place of the meeting. A draft environmental assessment will be available for public and agency review and comment prior to the public meeting.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited. Comments or questions concerning this proposed action or the modification of environmental document type should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: December 16, 1999.

Henry E. Compton,

Environmental Coordinator, Charleston, West Virginia.

[FR Doc. 99–33989 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–99–6466]

Specialized Hauling Vehicle (SHV) Study

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of study; request for comments.

SUMMARY: The FHWA is announcing the initiation of a study required by Congress in the Transportation Equity Act for the 21st Century (TEA–21). Section 1213(f) of the Act directs the Secretary to examine the economic, safety and infrastructure impacts of truck weight standards on specialized hauling vehicles (SHVs). The Secretary is to report the results of the study to Congress and make any recommendations he determines appropriate as a result of the study, by June 9, 2000.

SHV's are generally single-unit trucks that have high tare (empty) weights from heavy-duty cargo-carrying bodies and special equipment to help load or unload their cargoes. They often require short wheelbases in order to access and maneuver safely at the types of loading and/or unloading facilities they serve. Because of the short wheelbase, the maximum legal weight for an SHV as determined by the federal bridge formula is often below the vehicle's gross weight limit as determined by individual single and tandem axle limits. SHV's are commonly considered to include: solid waste removal trucks, home fuel oil delivery trucks, construction material dump trucks, and cement transit mixers. Certain tractor-semitrailer dump vehicles hauling bulk construction materials might also be considered SHVs.

To gather data for this study, the FHWA requests information from State DOT officials, vehicle manufacturers, SHV operators, and other interested parties having knowledge of the weights and dimensions of the various types of SHVs, how these vehicles are used in various operations (trash removal, fuel oil delivery, hauling of construction/building materials), and the effects of truck size and weight limits on the productivity, safety and infrastructure impacts of those operations. The Agency is particularly interested in what provisions, if any, each State has excepting or permitting these vehicles to operate at weights above standard weight limits.

DATES: In order to be fully considered in the study, comments are requested by February 28, 2000. The docket will remain open for comments until the study is completed, but the study schedule may not allow full consideration of comments received after February 28, 2000.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William P. Linde, Office of Transportation Policy Studies, HPTS, (202) 493–0173, or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354. FHWA, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this 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 Office of 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*.

Background

SHVs are generally single-unit trucks that, along with special cargo-carrying bodies, have equipment to help load and/or unload their cargoes. These specially equipped vehicles typically have high tare (empty) weights. SHVs are commonly considered to include: trash removal, home fuel oil delivery, dump, and cement transit mixers. Their operations often involve travel in inner city business districts, residential areas, or construction sites to load or unload. In these environments, SHVs require

short wheelbases in order to access and maneuver safely at the facilities they serve.

For several reasons, the specialized characteristics of these vehicles result in high ratios of transport costs to commodity values relative to those of general freight commodities. First, the specially equipped cargo-carrying bodies are generally used to haul low-value, bulk commodities and typically have high tare weights. When considered with the Federal weight standard applied to the short wheelbase of these vehicles, the high tare weight and high density of the commodities hauled generally restrict the legal payload well below the cargo capacity of the vehicle. Second, given the specialized characteristics of the cargo-carrying body of the vehicle, backhaul, or reload, opportunities are limited or nonexistent, resulting in a high percentage of empty miles. These vehicles' commodity and transport operating characteristics result in relatively high transport costs per ton-mile of cargo carried.

In order to accommodate vehicle operators' desire to utilize more of the cargo carrying capacity of the vehicle and reduce transportation costs, many States allow higher axle and gross weights off the Interstate Highway System than are allowed under Federal weight limits that apply to Interstate Highways. A 1993 study of dump vehicles conducted for the State of Maryland showed that 15 states and the District of Columbia allowed three-axle single-unit dump vehicles to operate on non-Interstate roads at gross weights above the maximum allowed under Federal axle-weight limits. In many cases these higher limits were also allowed on the Interstate Highway System through grandfather rights that allow States to retain weight limits that were higher than Federal limits when the Federal limits went into effect.

The increased productivity of higher weights comes at a price in terms of increased infrastructure deterioration and potential degradation to vehicle handling and stability. When loaded to higher weights, these vehicles cause disproportionate wear to pavements and bridges relative to those operating at Federal weight limits. In addition, the higher weights coupled with short cargo-carrying bodies typical of SHVs make them less stable than trucks of the same dimensions carrying less weight or trucks of greater length carrying the same weight.

Study Approach

The FHWA proposes to proceed with the study in three phases: (1) Outreach to understand views on SHV weights held by various interested groups and to gather information on vehicle dimensions, costs, and operating characteristics including trip patterns, areas of operation, roadway classes traveled, operating weights and annual mileage; (2) analysis of current SHV operations including economic, safety and infrastructure impacts; (3) identification of changes that have the potential to improve productivity and safety while minimizing infrastructure impacts.

Phase 1: Public Outreach

The FHWA is soliciting public input on all aspects of SHV operations as well as on the general study approach described in this notice. The Agency is particularly interested in participation by State DOT officials, vehicle manufacturers, and SHV operators and each group's perspectives on the effects of truck size and weight limits on the productivity, safety, and infrastructure impacts of SHVs. Previous studies of SHV impacts prepared for individual States are also of interest and the FHWA requests that States having undertaken such studies send a copy of the study report to the docket.

The Agency is seeking information on: (1) The segments of the trucking industry that use SHVs, (2) current size and weight limits, including exceptions and permitting, for SHVs by State, (3) vehicle characteristics, (4) operating costs, and (5) trip characteristics. This information is needed for all types and sizes of SHVs.

Request for Information: Respondents to this notice are requested to address the following items or questions in comments to the docket. The responses to these questions will be used to perform the impact analyses of Phases 2 and 3 of the study.

Segments of the Trucking Industry Utilizing SHVs

1. Specialized hauling vehicles are generally considered those vehicles with operating characteristics requiring short wheelbases for accessing, and maneuvering safely in, loading and unloading locations. They also have specialized equipment for loading/unloading, carry bulk commodities, and tend to have relatively short trip lengths with empty backhauls. Vehicles commonly considered SHVs include dump trucks, solid waste haulers, home fuel delivery trucks, and cement transit mixers. What other specific types of trucks meet these general criteria and should be included when considering policy issues related to specialized hauling vehicles?

Vehicle Characteristics

2. What are the current tare (empty) weights and dimensions of various types of SHVs? The following dimensions are important for the study:

- Vehicle width.
- Track width.
- Wheelbase.
- Chassis height.
- Axle spreads between axle groups and within axle groups.
- Height of center of gravity for cab, chassis, and cargo space.
- Cargo space dimensions or cargo capacity.

How have vehicle weights and dimensions changed in recent years? Are changes in vehicle weights and dimensions anticipated in the future?

3. What is the typical horsepower of various SHVs?

Trip Characteristics

4. What is the payload—the difference between the maximum allowable vehicle weight and the empty weight—of various SHVs? What is the density of the commodity hauled (pounds per cubic foot)?

5. What are the typical usage patterns of various SHVs? What is the average trip length? If there are large variations in trip length from day to day or season to season, what is the distribution of trip lengths during the year? What percentage of mileage is operated while fully loaded? Partially loaded? Empty? What percentage of mileage is operated on Interstate Highways? On other limited access highways? On other arterial roads? On local roads? What is the average annual mileage for different types of SHVs?

Operating Costs

6. For purposes of estimating economic impacts of changes in vehicle weight limits, what are the average hourly wages for operators of various types of SHVs? What is the cost and the expected useful life (in years and mileage) of the various types of SHVs? What is the fuel consumption when empty and when loaded of the various types of SHVs?

7. What operating taxes and user fees do the various types of SHVs pay by State? At what weights in excess of Federal standards are SHVs allowed to operate and does operating at those weights require a special permit or additional fee? If so, what is the weight/fee schedule?

Size and Weight Regulations

8. How do Federal weight limits affect operations of various SHVs? Which weight limits (axle load, bridge formula,

or gross vehicle weight) have the most significant impact and why?

9. How do Federal divisible load regulations affect SHV operations?

10. How do Federal weight limits affect the safety of SHVs? What would be the impacts of changes in weight limits on safety?

11. How do Federal weight limits affect infrastructure costs? What would be the impacts of changes in weight limits on pavement and bridge costs?

12. Are there any operating restrictions (speed, time of day, route) on SHVs operating under excess weight permits that would not apply to the same vehicle operating within Federal weight standards?

13. What opportunities exist to improve productivity while also improving safety and minimizing adverse impacts on pavements and bridges?

Phase 2: Analysis of Current SHV Operations

Many States have special weight provisions on non-Interstate highways for specific trucking operations such as dump trucking. Although not always the case, these special weight provisions are often extended to the Interstate System through grandfather rights. The analysis undertaken in this phase of the study will examine the economic, safety and infrastructure impacts of the current set of truck size and weight limits for SHVs, including divisible and non-divisible overweight permit provisions of the various States. This will be accomplished utilizing data gathered in the Phase I Outreach, as well as established data sources including the Truck Inventory and Use Survey (TIUS) collected by the Department of Commerce, and Trucks Involved in Fatal Accidents (TIFA), an enhancement of National Highway Traffic Safety Administration safety data compiled by University of Michigan Transportation Research Institute. Analytical tools used in the Department of Transportation's Comprehensive Truck Size and Weight Study will be used to assess infrastructure and safety issues.

State provisions for higher operating weights allow SHV operators to carry a given volume of commodity in fewer trips. This increase in productivity has the positive effects of reduced truck travel, which decreases fuel consumption and related emissions, and lower transportation costs per ton-mile.

Higher allowable operating weights of SHVs also impact the condition of highway infrastructure. Pavement damage per SHV vehicle mile traveled increases due to heavier axle loadings. Bridge stresses per SHV loading also increase with the higher weights. Bridge stressed depend not only on the gross weight of the vehicle, but on the concentration of the load, or the bridge area supporting the load. Thus, a short wheelbased SHV will generally cause more bridge stress than longer wheelbased vehicles of the same gross weight and lower gross weight vehicles of the same wheelbase.

Increased SHV weights may also impact highway safety. Because they generally haul dense, bulky commodities on short wheelbases, vehicle handling characteristics may be affected. At higher weights, there may be an increase in rollover propensity from a higher center of gravity and reduced braking capability from a high gross weight to braking axle ratio.

This phase of the study will provide illustrative examples of the operational economics, infrastructure and safety impacts for States where SHVs routinely operate legally at weights in excess of the Federal standard. The effectiveness of various permit program fee structures in recovering additional infrastructure cost will be assessed and to the extent practical, the impact of these programs on illegal overweight operations. The analysis will utilize information collected during Phase 1 of the study supplemented with data from TIUS and TIFA and other analytical tools developed for the Comprehensive Truck Size and Weight Study.

Phase 3: Analysis of Weight Standards for SHVs

Based on the Phase 2 assessment of Federal and State weight limits and permitting practices and the current usage of SHVs, Phase 3 of the study will analyze the implications of alternative Federal axle load, gross vehicle weight, and bridge formula weight limits and alternative permitting practices as they apply to SHVs. Factors to be considered shall include transportation costs and other economic impacts, safety, and pavement, bridge, and other infrastructure impacts.

The method for Phase 3 analysis will be similar to that used in Phase 2, an illustrative case study of potential economic, infrastructure and safety impacts from increased weights for various types of SHVs in States where weights are currently determined by the Federal Bridge Formula and Federal axle limits. Many of the analytical tools developed for the Comprehensive Truck Size and Weight Study will be used in assessing impacts of alternative weight limits and permitting practices.

Authority: 23 U.S.C. 315; 23 U.S.C. 217 note; 49 CFR 1.48.

Issued on: December 16, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 99–33859 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–1999–6404]

Extension of Comment Period; Petition for Grandfathering of Non-Compliant Equipment National Railroad Passenger Corporation

On October 18, 1999, the National Railroad Passenger Corporation (Amtrak) petitioned the Federal Railroad Administration (FRA) for grandfathering of non-compliant passenger equipment manufactured by Renfe Talgo of America (Talgo) for use on rail lines between Vancouver, British Columbia and Eugene, Oregon; between Las Vegas, Nevada and Los Angeles, California; and between San Diego, California and San Luis Obispo, California. Notice of receipt of such petition was published in the **Federal Register** on November 2, 1999, at 64 FR 5920. Interested parties were invited to comment on the petition before the end of the comment period of December 2, 1999.

On December 2, 1999, FRA extended the comment period in this proceeding until December 15, 1999, following a Freedom of Information Act (FOIA) request that certain items in FRA files referenced in Amtrak's petition be made available for review (see 64 FR 68195; Dec. 6, 1999). Talgo has objected to released of certain of the requested information under FOIA exemption 4 (5 U.S.C. 552(b)(4)), which exempts from release trade secrets and commercial or financial information obtained from a person that is privileged or confidential. On December 15, 1999, FRA further extended the comment period in this proceeding until 10:00 a.m. on December 27, 1999 to enable FRA to finalize its response to the FOIA request, and to permit the responder time to analyze the documents released by FRA (see 64 FR 71846; Dec. 22, 1999). Unfortunately, processing the FOIA request has taken longer than anticipated; FRA released documents on November 30, December 10, and December 21. FRA has redacted from the documents released information that is protected under FOIA exemption 4. On December 13, the FOIA requester again asked FRA to further extend the comment period so that the requester would have 15 days after receipt of all

of the requested documents to analyze the documents and prepare comments on the grandfather petition. FRA has agreed to this request and has extended the comment period to the close of business on January 10, 2000. FRA expects that further extensions of the comment period will not be necessary.

FRA has placed in the docket a copy of all the documents provided to the FOIA requester. FRA has also placed in the docket several documents that it received from Talgo that are relevant to the Amtrak petition. Two of these documents contain comments or corrections to the minutes of the June 17, 1999 meeting between FRA, Amtrak and Talgo; the minutes of this meeting was one of the documents released to the FOIA requester. Another document contains weld information pertaining to the Talgo equipment. The remaining documents contain design changes to the Talgo equipment requested by FRA. Talgo has requested confidential treatment, under exemption 4 of FOIA, for certain information in the documents. FRA has redacted from the Talgo documents information that is protected by exemption 4. Unredacted versions of all of the documents placed in the docket are available to agency staff and will be used in the agency's review of the Amtrak petition to the extent deemed necessary.

Comments received after January 10, 2000 will be considered to the extent possible.

Comments received after January 10, 2000 will be considered to the extent possible. Amtrak's petition, documents inserted in the docket, and all written communications concerning this proceeding are available for examination during regular business hours (9:00 a.m. to 5:00 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh, S.W., Washington, D.C. 20590–0001. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov*.

Issued in Washington, DC, on December 23, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–33926 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket MARAD–1999–6704]

Matson Navigation Company—Application for Approval of a Proposed Ocean Freight Service under the Fourth Exception to Section 506 of the Merchant Marine Act, 1936, as Amended.

Notice is hereby given that Matson Navigation Company (Matson) has requested approval of the Maritime Administration that a proposed ocean freight service is permitted under the Fourth Exception to Section 506 of the Merchant Marine Act, 1936, as amended, 46 App. U.S.C. 1156. The proposed service would use two of the following C–9 class vessels, MAHIMAHI, MANOA, and MOKIHANA, which were built with the aid of construction-differential subsidy. As a result of receiving such assistance, those vessels must be operated in the U.S. foreign trade, except that the vessels may be operated ''on a voyage in foreign trade on which the vessel may stop at the State of Hawaii.'' Matson proposes to operate the vessels in an itinerary which includes stops at Vancouver, B.C., Seattle, Oakland, and Honolulu, with no coastwise cargo to be carried between Seattle and Oakland. The C–9 vessels would be substituted for two of the six vessels Matson presently operates in its Hawaii service. Matson also operates a Pacific Coast Shuttle service with calls at Los Angeles, Seattle and Vancouver.

A redacted copy of the application will be available for inspection at the Department of Transportation (DOT) Dockets Facility and on the DOT Dockets website (address information follows). Any person, firm, or corporation having an interest in this proposal, and desiring to submit comments concerning the application, may file comments as follows. You should mention the docket number that appears at the top of this notice. You should submit your written comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590. Comments may also be submitted by electronic means via the internet at *http://dmses.dot.gov/submit*. You may call Docket Management at (202) 366–9324. You may visit the docket room to inspect and copy comments at the above address between 10 a.m. and 5 p.m., EST, Monday through Friday, except holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*. Comments must be received no later than the close of business on (15 days from publication), 2000.

This notice is published as a matter of discretion, and the fact of its publication should in no way be considered a favorable or unfavorable decision on the application, as filed, or as may be amended. MARAD will consider any comments timely submitted, and take such action with respect thereto as may be deemed appropriate.

By Order of the Maritime Administration.

Dated: December 27, 1999.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–33934 Filed 12–29–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33837]

CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk Southern Railway Company

Norfolk Southern Railway Company (NS) has agreed to grant overhead trackage rights to CSX Transportation, Inc. (CSXT), to operate its trains, locomotives, cars and equipment with CSXT's own crews over NS's Track #A1 at Petersburg, VA, from the connection between CSXT and NS at or near milepost P004.85 to the connection with the industrial trackage of Chaparral Steel Corporation (CSC).

The transaction is scheduled to be consummated on or shortly after December 27, 1999.

The purpose of the trackage rights is to allow CSC to have two rail carriers serve its Petersburg facility. CSXT's trackage rights will be restricted to service to CSC, its existing and future subsidiary companies, or other supporting companies located on the industrial trackage of CSC, and the successor and assigns of those companies.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d)

may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33837, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: December 22, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–33832 Filed 12–29–99; 8:45 am]

BILLING CODE 4915–00–P

Federal Register

Thursday
December 30, 1999

Part II

Department of Transportation

Federal Highway Administration

23 CFR Parts 655 and 945

Revision of the Manual on Uniform Traffic Control Devices: Temporary Traffic Control and General Provisions, Markings, and Signals; Proposed Rules

Dedicated Short Range Communications in Intelligent Transportation Systems (ITS) Commercial Vehicle Operations; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–99–6576]

RIN 2125–AE72

Revision of the Manual on Uniform Traffic Control Devices; Temporary Traffic Control

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134.

This document proposes new text for the MUTCD in Part 6—Temporary Traffic Control. The purpose of this rewrite effort is to reformat the text for clarity of intended meanings, to include metric dimensions and values for the design and installation of traffic control devices, and to improve the overall organization and discussion of the contents in the MUTCD. The proposed changes included herein are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

DATES: Submit comments on or before June 30, 2000.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding the notice of proposed amendments contact Mr. Charlie L. Sears, Office of Transportation Operations, Room 3408, (202) 366–1555, or Mr. Raymond Cuprill, Office of the Chief Counsel, Room 4217, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL 401, by using the universal resource locator (URL): *http//dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this notice of proposed amendment 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 Office of 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 text for the proposed sections of the MUTCD is available from the FHWA Office of Transportation Operations (HOTO–1) or from the FHWA Home Page at the URL: *http://www.ohs.fhwa.dot.gov/operations/mutcd*. Please note that the proposed rewrite sections contained in this docket for MUTCD Part 6 will take approximately 8 weeks from the date of publication before they will be available at this web site.

Background

The 1988 MUTCD with its revisions is available for inspection and copying as prescribed in 49 CFR part 7. It may be purchased for $57.00 (Domestic) or $71.25 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This notice is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments received and its own experience, the FHWA may issue a final rule concerning the proposed changes included in this notice.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has taken the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices. The NCUTCD voluntarily assumed the arduous task of rewriting and reformatting the MUTCD. The NCUTCD proposal is available from the U.S. DOT Dockets (see address above). Pursuant to 23 CFR part 655, the FHWA is responsible for approval of changes to the MUTCD.

Although the MUTCD will be revised in its entirety, it is being completed in phases due to the enormous volume of text. The FHWA reviewed the NCUTCD's proposal for MUTCD Part 3—Markings, Part 4—Signals, and Part 8—Traffic Control for Highway-Rail Intersections. The summary of proposed changes for Parts 3, 4, and 8 was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997, at 62 FR 691. The FHWA reviewed the NCUTCD's proposal for Part 1—General Provisions and Part 7—Traffic Control for School Areas. The summary of proposed changes for Parts 1 and 7 was published as phase 2 of the MUTCD rewrite effort in a previous notice of proposed amendment dated December 5, 1997, at 62 FR 64324. The FHWA reviewed the NCUTCD's proposal for Chapter 2A— General Provisions and Standards for Signs, Chapter 2D—Guide Signs for Conventional Roads, Chapter 2E—Guide Signs for Expressways and Freeways, Chapter 2F—Specific Service Signs, and Chapter 2I—Signing for Civil Defense. The summary of proposed changes for Chapters 2A, 2D, 2E, 2F, and 2I was published as Phase 3 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 11, 1998, at 63 FR 31950. The summary of proposed changes for Chapters 2G—Tourist Oriented Directional Signs, Chapter 2H—Recreational and Cultural Interest Signs, and Part 9—Traffic Control for Bicycles was published as Phase 4 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 24, 1999, at 64 FR 33802. The summary of proposed changes for Chapter 2C—Warning Signs and Part 10—Traffic Control for Highway-Light Rail Transit Grade Crossings was published as Phase 5 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 24, 1999, at 64 FR 33806. The summary of proposed changes for Chapter 2B—Regulatory Signs, Part 5—Traffic Control for Low-Volume Rural roads, and update information for Part 8—Traffic Control at Highway-Rail Grade Crossings was published as Phase 6 of the MUTCD rewrite effort in a

previous notice of proposed amendment. The summary of proposed new changes for Part 1—General Provisions, Part 3—Markings, and Part 4—Signals was published as Phase 7 of the MUTCD rewrite effort in a previous notice of proposed amendment. This notice of proposed amendment is Phase 8 of the MUTCD rewrite effort and includes the summary of proposed changes for MUTCD Part 6.

The proposed new style of the MUTCD would be a 3-ring binder with 8–1/2 x 11 inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing ''shall'' conditions; (2) Guidance—representing ''should'' conditions; (3) Options—representing ''may'' conditions; and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance, and optional conditions for the design, placement, and application of traffic control devices. The adopted final version of the new MUTCD will be in metric and english units. Dual units will be shown in the MUTCD particularly for speed limits, guide sign distances, and other measurements which the public must read.

The FHWA invites comments on the proposed text for MUTCD Part 6. A summary of the proposed significant changes contained in these sections are included in the following discussion:

Discussion of Proposed Amendments to Part 6—Temporary Traffic Control

The following items are the most significant proposed revisions to Part 6:

1. The FHWA proposes to change the title of Part 6 from ''Standards and Guides for Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations'' to ''Temporary Traffic Control.'' This title better explains the contents of this section.

2. In Section 6A, paragraph 4, the FHWA proposes to delete the word ''must'' from the second and third sentences. This deletion is proposed because temporary traffic control does not guarantee the safety or efficient completion of a work activity.

3. In Section 6A, in the second sentence of paragraph 5, the FHWA proposes to revise the sentence to read ''A concurrent objective of the traffic control is the efficient construction and maintenance of the roadway.'' This change is proposed because it clarifies the objective of proper traffic control.

4. In Section 6B.3c, the FHWA proposes to revise the first sentence to read, ''Flagging procedures when used, should provide positive guidance to drivers * * *.'' This change was suggested by the National Committee on Uniform Traffic Control Devices. The FHWA agrees with this suggestion because it will provide positive guidance to drivers to safely travel through temporary traffic control area.

5. In Section 6B.4a, the FHWA proposes to revise the second sentence to read, ''The most important duty of these individuals should be to ensure that all traffic control elements of the project are consistent with the traffic control plan * * *.'' This change will help ensure that proper traffic control measures are being carried out.

6. In Section 6B, in the second paragraph of the STANDARD, the FHWA proposes to change the following recommended condition to a STANDARD: ''All traffic control devices shall be removed when no longer needed.'' This change would ensure that all traffic control devices are removed when no longer required.

7. In Section 6B.7, the FHWA proposes to revise the first sentence to read, ''Good public relations should be maintained.'' This sentence would be revised from a mandatory statement to GUIDANCE.

8. In Section 6C.1, the FHWA proposes to revise the third GUIDANCE paragraph concerning traffic control plans for transit from mandatory shall statements to recommended GUIDANCE.

9. In Section 6C.2, the FHWA proposes to add a new definition for a Temporary Traffic Control Zone. A Temporary Traffic Control Zone is now defined as including a Work Zone and/or an Incident Area. There currently is no uniform definition of a work zone. As a result, work zone crash data collection is not uniform.

10. In Section 6C.3, paragraph 3, the FHWA proposes to revise the discussion on advance warning area from a mandatory condition to GUIDANCE as follows:

''(A) On urban and rural two-lane roadways, effective placement of warning signs should be as follows:

(1) Urban: Warning sign spacings in meters (feet) in advance of the transition area normally should range from .75 (4) to 1.5 (8) times the speed limit, in km/h, (mph) in meters (feet), with the high end of the range being used when speeds are relatively high.

(2) Rural: Rural roadways are characterized by higher speeds. The spacing, in meters (feet), for the placement of warning signs should be substantially longer—from 1.5 (8) to 2.25 (12) times the speed limit, in km/h, (mph).''

The above proposed changes will provide clearer guidance on warning sign placement.

11. In Section 6C.3, paragraph 4, the FHWA proposes to revise the following sentences from a permissive condition to GUIDANCE: ''Typical distances for placement of advance warning signs on freeways and expressways are longer because drivers are conditioned to uninterrupted flow. Therefore, the advance warning signs should extend on these facilities as far as 800m (one-half mile) or more.''

12. In Section 6C.5, paragraph 9, the FHWA proposes to change the following discussion on an activity area from a recommended condition to an Option: ''(a) Longitudinal Buffer Space: The Longitudinal buffer space may also be used to separate opposing traffic flows that utilize portions of the same traffic lane, as depicted in Figure 6–2.''

This change is proposed because buffer spaces are optional.

13. In Section 6C.7, paragraphs 6 and 7, the FHWA proposes to clarify some of the discussion on tapers and make it GUIDANCE:

(A) ''Taper lengths shown in Table 6–2 should be the minimum used.'' This change would require that tapers be calculated a certain way unless proper justification is given.

(B) ''When using metric units, the maximum distance in meters between devices in a taper should not exceed 1/5 times the speed limit in kilometers per hour. When engineering judgment shows that there is a special need for a speed reduction, the maximum distance in kilometers between devices may be 1/10 of the speed limit in kilometers per hour. When using English units, the maximum distance in feet between devices in a taper should not exceed the speed limit in miles per hour. When engineering judgment shows there is a special need for speed reduction, the maximum distance in feet between devices may be one-half the speed limit in mph.''

This proposed clarification requires a certain spacing between channelizing devices unless proper justification is given. Also, the option for the one-half spacing is in response to recommendations contained in the

''Older Driver Highway Design Handbook''.[1]

14. In Section 6C.7 , paragraph 12, the FHWA proposes to clarify the discussion on shifting tapers and make it GUIDANCE: ''A shifting taper should have a length of about one-half ''L.'' '' This clarification will require a certain length for shifting tapers unless proper justification is given. This proposed change is in response to recommendations contained in the ''Older Driver Highway Design Handbook''.

15. In Section 6C.9 A, paragraph 2, the FHWA proposes to change the discussion of the flagger method from an Option to GUIDANCE. ''When good visibility and traffic control cannot be maintained by one flagger station, traffic should be controlled by a flagger at each end of the section.'' This proposed change recommends two flaggers in one-lane, two-way traffic operation.

16. In Section 6D.1, paragraph 2, the FHWA proposes to add a new GUIDANCE discussion on the staging of equipment and work vehicles, barrier installation and regular inspections of work sites. These additions will provide additional guidance for and increase safety of pedestrians.

17. In Section 6D.1, paragraph 16, the FHWA proposes to clarify the following sentence and make it GUIDANCE: ''At fixed work sites of significant duration, especially in urban areas with high pedestrian volumes, a canopied walkway may be used to protect pedestrians from falling debris.'' In the existing MUTCD the intent of the sentence was to provide safety to pedestrians by providing a canopied walkway. This proposed change would provide an increased emphasis on pedestrian safety.

18. In Section 6D.2, paragraph 3, the FHWA proposes to add the following new Option: Shadow Vehicle—in the case of mobile and constantly moving operations, such as pothole patching and striping operations, a shadow vehicle, equipped with appropriate lights, warning signs and/or a rear-mounted impact attenuator may be used to provide additional safety for the workers from impacts by errant vehicles.

19. In Section 6E.2, paragraph 1, the FHWA proposes to revise the fourth sentence to read, '' The retroreflective clothing shall be designed to identify clearly the wearer as a person.'' This change is proposed to delete the phase ''and be visible through the full range of body motions '' because a flagger visibility is the most important issue.

20. In Section 6E.4, paragraph 2, the FHWA proposes to revise the sentence to read: ''When used at nighttime, flags shall be retroreflectorized .'' Illuminating the flag would improve the visibility of the flag for the warning of motorists.

21. In Section 6E.4, paragraph 2, the FHWA proposes to change the following sentence from a recommended condition to a STANDARD: ''The following methods of signaling with sign paddles shall be used.''

22. Throughout Section 6F, the FHWA proposes to add a description of the following signs: STAY IN LANE, PEDESTRIAN CROSSWALK, SIDEWALK CLOSED (AHEAD) CROSS HERE, RIGHT TWO LANES CLOSED 0.8 KILOMETERS (½ MILE), CENTER LANE CLOSED AHEAD, THRU TRAFFIC MERGE RIGHT (LEFT), EXIT OPEN, ON RAMP, RAMP NARROWS, SLOW TRAFFIC AHEAD, SHOULDER WORK, RIGHT SHOULDER CLOSED, UTILITY WORK AHEAD, Lane Reduction Transition.

Several signs were in the Typical Application diagrams in the 1993 Edition of MUTCD, part 6 but there was no discussion as to their proper use.

23. In Section 6F.2, in the third sentence of paragraph 2, the FHWA proposes to add the following sentence as a STANDARD because mandatory ''shall'' is implied through the context of the sentence. ''Colors for guide signs shall follow the standard in Chapter 2A, Table 2A.5, and Chapter 2D, except for special information signs as noted below in Section 6F.51.'' A second sentence is added to the sixth paragraph as a STANDARD to clarify that ''red'' flags shall not be used on warning signs.

24. In Section 6F.3, paragraphs 4, 6, 7 and 8 the FHWA proposes to modify the mounting height discussion from recommended GUIDANCE to mandatory STANDARD and added an Option condition to change the mounting height requirement for signs in work zones.

There is an existing FHWA/NHTSA National Crash Analysis Study, Contract DTFH61–97–X00015, on 1.5 m (5 ft) versus 2.1 m (7 ft) sign mounting height. This study does not show a need to raise the sign height to 2.1 m (7 ft). For all rural post-mounted signs, a 1.5 m (5 ft) minimum mounting height is appropriate for crashworthiness. If, however, there is an operational need (visibility, etc.) to have a higher mounting height, it may be used.

25. In Section 6F.3, paragraph 8, the FHWA proposes to change the requirement for the amount of days that signs mounted on portable supports may be used. The FHWA is also proposing to list the types of signs to be used on portable supports for more than three days. Methods of mounting signs other than on posts are illustrated in Figure 6–6. Signs mounted on portable supports may be used for a duration of three days or less (intermediate term stationary). The R11 series, W1–6 through W1–8, M4–10, E5–1 or similar type signs may be used on portable supports for more than three days.

26. In section 6F.3, paragraph 10, the FHWA proposes to change the following sentence from recommended condition to a STANDARD: ''Unshielded sign supports shall be designed to breakaway or yield on impact to minimize hazards to motorists.'' The FHWA is proposing to change this sentence to a STANDARD because devices, according to National Cooperative Highway Research Program Report 350, are required to be crashworthy. The FHWA is proposing to add the word ''breakaway'' because it better explains what a sign does on impact. Also, the FHWA is proposing to add the following sentence to explain the requirements for signs mounted on multiple signs supports: ''Signs erected on multiple breakaway posts shall be mounted a minimum of 2.1 m (7ft) above the ground so as to permit an errant vehicle to pass under the sign panel if all posts are not struck.''

27. In Section 6F.4, the FHWA proposes to change the text from a recommended condition to a STANDARD. FHWA feels that this would increase visibility and safety.

28. In Section 6F.8, paragraph 1, the FHWA proposes to change the following sentence from a permissive condition to GUIDANCE: ''The ROAD (STREET) CLOSED sign (R11–2) should be used where the roadway is closed to all traffic except contractors' equipment or officially authorized vehicles and should be accompanied by appropriate detour signing.'' Also, there is information on the use of these signs in both rural and urban areas.

29. In Section 6F.9, paragraph 2, the FHWA proposes to add the following new mandatory STANDARD sentence for rural areas: ''In rural applications, the LOCAL TRAFFIC ONLY sign shall have the legend ROAD CLOSED (XX) KILOMETERS (MILES) AHEAD–LOCAL TRAFFIC ONLY.''

30. In Section 6F.16, paragraphs 14, 15, and 16, the FHWA proposes to add the following STANDARD and GUIDANCE regarding the proper use of flexible signs: ''Flexible warning signs for nighttime use shall have a black legend on a retroreflectorized orange or

[1] ''Older Driver Highway Design Handbook,'' Report No. FHWA–RD–99–045, available from the FHWA Research and Technology report Center, 9701 Philadelphia Court, Unit Q, Lanham, Maryland 20706.

retroreflectorized flourescent orange background. The mounting height of flexible signs shall conform to the same requirements as rigid signs. A 300 mm (1 foot) mounting height is allowable for flexible signs, but they should normally be mounted higher in order to provide improved visibility.''

The FHWA proposes to add the above sentences because of the increased use of flexible signs in work zones.

31. In Section 6F.55C, paragraph 4, the FHWA proposes to add a message format for Portable Changeable Message Signs. This format indicates the following: line 1 should present the problem, line 2 should present the location or distance ahead, and line 3 should present the recommended driver action. This addition is in response to recommendations contained in the ''Older Driver Highway Design Handbook'' which shows that motorists may benefit by having a message in a logical sequence.

32. In Section 6F.56A, paragraphs 2 and 4, the FHWA proposes to add SUPPORT and STANDARD conditions on TYPE D arrow panels to explain how this type of arrow panel should be used.

33. In Section 6F.58E, the fourth sentence of paragraph 1, the FHWA proposes to require the top stripe on all drums to be orange to allow for better uniformity. The text will read as follows: ''Each drum shall have a minimum of two orange and two white stripes with the top stripe being orange.''

34. In Section 6F.58I, paragraph 4, the FHWA proposes to add under GUIDANCE four paragraphs on two-way two-lane operations concerning speed, traffic volumes, geometrics and intersections.

35. In Section 6F.59B, paragraph 1, the FHWA proposes to change the minimum length of interim pavement marking from 1.2 m (4 ft) to 0.6 m (2 ft). Texas Transportation Institute Research Record 1160, Field Studies of Temporary Pavement Markings at Overlay Project work Zones on Two-Lane, Two-Way Rural Highways, indicates that there is no significant difference between the performance of the 1.2 m (4 ft) broken line or the 0.6 m (2 ft) broken line.

36. In Section 6F.59C, paragraph 1, the FHWA proposes to add the following new STANDARD wording: ''If raised pavement markers are used to substitute for a broken line segment, at least two retroreflective markers shall be placed, one at each end of a segment of 0.6 m (2 ft) to 1.5 m (5 ft). For segments over 1.5 m (5 ft), a group of at least three retroreflective markers shall be equally spaced at no greater than N/8.'' This proposed change allows fewer raised pavement markings for a broken line segment.

37. In Section 6F.60D(3), paragraph 2, the FHWA proposes to add the new GUIDANCE discussion to ensure lights are put on the outside of the curve to improve delineation of the curve.

38. In Section 6F.61, paragraph 3, the FHWA proposes to allow the use of temporary traffic signals other than those controlled by hard wire. This was included in the February 19, 1998, Final Rule.

39. In Section 6F.66, the FHWA proposes to add a new GUIDANCE that the spacing of screens should not be more than 0.6 m (2 ft). This addition is in response to recommendations contained in the ''Older Driver Highway Design Handbook'' which shows that motorists may benefit by having screens at this spacing.

40. The FHWA proposes to add a new Section 6F.68, FUTURE AND EXPERIMENTAL DEVICES to Part 6. This section provides information on the use of experimental products.

41. In Section 6G.2, the FHWA proposes to add the following words to the second bullet of the second paragraph, ''or nighttime work lasting more than one hour.'' The FHWA believes that the above information is helpful to further explain intermediate-term stationary work at night.

42. In Section 6G.2B, paragraph 2, the FHWA proposes to add the following STANDARD statement: ''Since intermediate-term operations extend into nighttime, retroreflective and/or illuminated devices shall be used.'' This STANDARD is proposed because a good safety design feature for any/all nighttime work is one that is properly delineated with retroreflective signs and/or illuminated devices.

43. In Section 6G.10, the second sentence of paragraph 5, the FHWA proposes to add a new STANDARD statement to read as follows: ''For lane closures, the merging taper shall utilize channelizing devices and the barrier shall be placed beyond the transition area.'' This proposed change would provide proper delineation of a lane closure to the road user. Also, this proposed change would delete the last sentence of the second paragraph of Section 6G–7 of the Part VI of the 1993 Edition of the MUTCD and Section 6G–7 would be transferred and renumbered as Section 6G.10.

44. In Section 6G.10 B, paragraph 2, the FHWA proposes to change the second sentence from a recommended condition to a STANDARD. This proposed change would provide the road user with better delineation of the left lane closure.

45. In Section 6G.10 D, the FHWA proposes to transfer to this Section old Section 6G–7c of Part VI of 1993 Edition of the MUTCD. The FHWA also proposes to change the sixth sentence of the existing Section 6G–7c from a recommended condition to a STANDARD. The proposed sentence would read as follows: ''When a directional roadway is closed, inapplicable WRONG WAY signs and markings, and other existing traffic control devices at intersections within the temporary two-lane two-way operations section, shall be covered, removed or obliterated.'' The proposed sentence change would provide the road user with accurate information on whether the road is open or closed.

46. In Section 6H.2, Notes for Figure TA–7, the FHWA proposes to add the following sentence to note 1: ''Devices similar to those depicted shall be placed for the opposite direction of travel.'' This proposed change is very important to motorists traveling in the opposite direction to inform them of the temporary traffic control condition ahead.

47. In Section 6H.2, Notes for Figure TA–7 (Note 3) and Notes for Figure TA–31 (Note 7), the FHWA proposes to change Note 3 for Figure TA–7 and Note 7 for Figure TA–31 to read as follows: ''If the tangential distance along the temporary diversion is less than 180 m (600 feet), the winding road sign should be used at the location of the first Reverse Curve sign. The second Reverse Curve sign should be omitted.'' This proposed GUIDANCE statement would be in compliance with Section 2C–8, Winding Road Sign, page 2C–4 of the 1988 Edition of the MUTCD which describes the circumstances when the Winding Road sign should be used.

48. In Section 6H.2, the FHWA proposes to add new Notes 7 and 8 to Figure TA–10 on the use of the BE PREPARED TO STOP sign.

49. In Section 6H.2, the FHWA proposes to add new notes for Figure TA–10 (Notes 9, 10, 11, and 12), a new note for Figure TA–30 (Note 4), new notes for TA–32 (Notes 4, 5, and 6), new notes for TA–39 (Notes 11 and 12), and a new Figure TA–45 to provide additional information concerning work zone treatments near highway-rail grade crossings.

On March 17, 1993, a tractor-semitrailer hauling gasoline was struck by a National Railroad Passenger Corporation (Amtrak) train resulting in the truck driver and five occupants of three stopped vehicles being killed. The truck driver was attempting to cross a

highway-rail grade crossing on Cypress Creek in Fort Lauderdale, Florida and traffic in the area of the crossing was congested because the left and center lanes were closed just beyond the crossing. As a result of the investigation of the crash, the National Transportation Safety Board (NTSB) recommended that the FHWA provide information on channelization of traffic at work zones to minimize traffic congestion over highway-rail grade crossings. The above mentioned notes and figure are in compliance with the NTSB's recommendation. The above proposed changes would be added to provide information for safe and efficient operation of both highway and rail traffic at highway-rail grade crossings within construction and maintenance work zone limits.

50. In Section 6H.2, the FHWA proposes to modify the first sentence of Note 4 of Figure TA–12 to read as ''Stop lines shall be installed with temporary traffic signals.'' The FHWA proposes to add the same sentence to a new Note 9 for Figure TA–14. The proposed changes will be in compliance with Part 4, Chapter 4D, of the Notice of Proposed Amendments to the Manual on Traffic Control Devices dated January 7, 1997, which discuss the location of stop lines with respect to traffic signals.

51. In Section 6H.2, for Figure TA–12, the FHWA proposes to move Note 7 from a permissive condition to Note 11 as GUIDANCE. The FHWA believes that changing the condition from a permissive condition to GUIDANCE would provide the State and local agencies, and contractors with additional guidance for making safe traffic operations' decisions.

52. In Section 6H.2, the FHWA proposes to add a new Note 8 for Figure TA–14 which states ''Traffic control signal timing shall be established by authorized personnel.'' This proposed change is in compliance with Part 4, Chapter 4D, of the Notice of Proposed Amendments to the Manual on Uniform Traffic Control Devices dated January 7, 1997, which states the responsibility for operation and maintenance of traffic control signals and all of its appurtenances.

53. In Section 6H.2, Figure TA–14, under the signalized method, the FHWA proposes to delete the requirement to remove any double yellow pavement marking and add skip line pavement markings along the northbound lanes because there is no reason to prohibit passing for traffic leaving the intersection.

54. In Section 6H.2, the FHWA proposes to modify existing Note 4 for Figure TA–16 and to add a new Note 11 which would states, ''For a survey along the edge of the road or along the shoulder, cones should be placed along the edge line.'' The FHWA also proposes to add a new Note 10 to read, ''If the work is along the shoulder, the flagger may be omitted.''

55. In Section 6H.2, for Figure TA–17, the FHWA proposes to move the second sentence of Note 5 from a recommended condition to Note 2 as a STANDARD. It would read, ''Shadow and work vehicles shall display flashing or rotating beacons visible in all directions.'' The FHWA believes that flashing or rotating beacon visibility will help improve the safety and visibility of the shadow and work vehicles resulting in a reduction in work zone crashes. Also, the FHWA proposes to change the wording ''protection vehicle'' to ''shadow vehicle'' to be in compliance with the AASHTO Roadside Design Guide Book, Chapter 9.1.2.2, Truck-Mounted Attenuators.

56. In Section 6H.2, Figure TA–17, the FHWA proposes to add a CAUTION arrow board to be in compliance with Section 6F–55 B.

57. In Section 6H.2, Notes for Figure TA–17, the FHWA proposes to delete the note on ''Optional Signs for Short Duration Operation'' because TA–17 is not for Short Duration work.

58. In Section 6H.2, the FHWA proposes to modify the first sentence of Note 1 for Figure TA–18 to read as follows: ''The traffic control procedures shall be used only for low-volume, low-speed facilities.'' This proposed change simplifies the STANDARD condition statement.

59. In Section 6H.2, the FHWA proposes to add a new Note 4 for Figure TA–18 to read, ''Where traffic cannot effectively self-regulate, one or two flaggers shall be used as illustrated in Figure TA–10.'' The purpose is to improve the movement of traffic around the lane closure.

60. In Section 6H.2, the FHWA proposes to change Note 2 for Figure TA–21 from a permissive condition to a STANDARD. This proposed change is to provide for the direction of traffic around lane closures.

61. In Section 6H.2, the FHWA proposes to add a new Note 4 (GUIDANCE) and a new Note 5 (Option) to Figure TA–21 concerning flashing or rotating lights on work vehicles. These proposed new notes will assist in providing warning to road users and workers.

62. In Section 6H.2, the FHWA proposes to add a new Note 7 for Figure TA–21 for the optional use of a truck-mounted attentuator on shadow vehicles. This Option statement is proposed to provide safety to road users and workers.

63. In Section 6H.2, the FHWA proposes to add a new Note 2 (GUIDANCE) for Figure TA–24 to provide for turn prohibition signs. This GUIDANCE statement is being proposed to give road users addition warning that turns are prohibited.

64. In Section 6H–2, the FHWA proposes to delete Note 2 (mandatory condition) of Figure TA–26 concerning channelizing devices on tapers. This proposal will make this in compliance with Section 6F.59, CHANNELIZING DEVICES. That section recommends using a formula based on speed, rather than a set number of channelizing devices.

65. In Section 6H.2, the FHWA proposes to change Note 2 for Figure TA–27 on the use of uniformed law enforcement officers from a permissive condition to GUIDANCE. The proposed GUIDANCE is to provide for a person with recognized authority which should improve the safe movement of traffic through the intersection.

66. In Section 6H.2, the FHWA proposes to add a new Note 6 for Figure TA–27 which reduces the need for channelization for short-duration work operations. We propose to add Note 6 to be in compliance with Section 6G.2(1) which states that a reduction in the number of devices may be offset by the use of other more dominant devices such as flashing or rotating beacons on work vehicles.

67. In Section 6H.2, the FHWA proposes to add a new Note 1 (STANDARD) for Figure TA–28 to read as follows: ''Where sidewalks exist, provisions shall be made for disabled pedestrians.'' The FHWA also proposes to add this note as Note 1 (STANDARD) for Figure TA–29. We propose to add this Note 1 to provide additional safety for disabled pedestrians and to be in compliance with the Americans with Disabilities Act Standards for Accessible Design.[2]

68. In Section 6H.2, the FHWA proposes to add a new Note 2 (STANDARD) for Figure TA–29 on curb parking restrictions in advance of mid-block crosswalks to provide additional safety for pedestrians. The proposed STANDARD statement provides additional safety for pedestrians.

69. In Section 6H.2, the FHWA proposes to add a second sentence to Note 3 (GUIDANCE) for Figure TA–30 providing for additional signing for

[2] *Americans with Disabilities Act Handbook*, U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice, EEOC–BK–19, Appendix B, ''ADA Accessibility Guidelines,'' December 1991.

higher speed and higher volume roads. The proposed GUIDANCE is added to provide safety instruction for the road users traveling at higher speeds.

70. In Section 6H.2, the FHWA proposes to add new Notes 6, 7, 8, 9, and 10 for Figure TA–34 concerning the use of traffic control devices with movable barriers.

71. In Section 6H.2, the FHWA proposes to add a new Note 7 for Figure TA–35 and a new Note 3 for Figure TA–37 to provide optional use of truck-mounted attenuators on shadow vehicles. This is proposed because truck-mounted attenuators attached to the rear of shadow vehicles can reduce the severity of rear-end crashes.

72. In Section 6H.2, the FHWA proposes a new Note 6 for Figure TA–35 to allow optional use of a shadow vehicle. Existing Note 6 would be renumbered as Note 8.

73. In Section 6H.2, the FHWA proposes a new Note 5 for Figure TA–35 to provide for the optional use of a shadow vehicle on the shoulder. Note 5 will be renumbered as Note 9.

74. In Section 6H.2, the FHWA proposes to add a new Note 10 for Figure TA–35 (GUIDANCE) on work vehicles and shadow vehicle locations. This note is proposed to provide information and guidance to road users of work ahead.

75. In Section 6H.2, the FHWA proposes to add a new Note 4 for Figure TA–37 and a new Note 10 for Figure TA–38 to indicate where that traffic may be redirected around the work area. These notes provide additional information for the movement of traffic along the right shoulder because the shoulder width is wide enough to safely accommodate traffic.

76. In Section 6H.2, the FHWA proposes to add a new Note 6 for Figure TA–39 which will address a problem of poor guidance for traffic traveling through a two-lane, two-way operation at the end of the construction zone. Consequently, truck drivers with driver eye heights substantially above the road cannot see well enough through adverse weather conditions (fog, heavy rain, snow squalls, *etc.*) to find anything except the barrels leading back across the median. They too often follow the backside of those barrels into the median, resulting in crossover embankment collision, median side slope rollover, and bridge rail impact. If we are going to use delineators to separate two-lane, two-way traffic in construction zones, provisions should be made to extend the line of delineation well beyond the end of two-lane, two-way traffic in order to achieve ''continuity'' and to fulfill ''driver expectancy'' under low visibility conditions.

77. In Section 6H.2, the FHWA proposes to add a new Note 7 for Figure TA–39 concerning channelizing devices and signing for two-way traffic. This new note is GUIDANCE to warn motorists that the roadway is two-way traffic within a single lane, with flaggers.

78. In Section 6H.2, the FHWA proposes to change the third sentence of Note 1 for Figure TA–40 from a permissive condition to GUIDANCE. ''A temporary acceleration lane should be used to facilitate merging.'' The proposed changed note will be renumbered Note 3 of the new Part VI.

79. In Section 6H.2, the FHWA proposes to add a STANDARD for Figure TA–41 (Note 5) and for Figure TA–42 (Note 3) concerning the mounting height for temporary EXIT signs in the temporary gore. The mounting height noted in the above notes will be in compliance with Section 6F–1, page 31, paragraph 6 of the Part 6 of 1993 Edition of MUTCD, Revision 3.

80. In Section 6H.2, the FHWA proposes to add a new Figure TA–46, Temporary Reversible Lane Using Moveable Barriers. Many jurisdictions are using movable barriers. However, guidance for these devices is not currently included in the MUTCD.

81. The FHWA proposes to add a new Figure TA–47, Variable Message Sign Abbreviations. This proposed change is in response to recommendations contained in the ''Older Driver Highway Design Handbook'' as it will provide for uniformity in messages.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures.

The FHWA has determined preliminarily that this action will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and safety, and provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to improve traffic operations and safety, expand guidance, and clarify application of traffic control devices. The FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting 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 (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on

Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32; 49 CFR 1.48)

Issued on: December 17, 1999.

Kenneth R. Wykle,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. FHWA–99–6575]

RIN 2125–AE71

Revision of the Manual on Uniform Traffic Control Devices; General Provisions, Markings, and Signals

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed amendments to the Manual on Uniform Traffic Control Devices (MUTCD); request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, approved by the Federal Highway Administrator, and recognized as the national standard for traffic control on all public roads. The FHWA announced its intent to rewrite and reformat the MUTCD on January 10, 1992, at 57 FR 1134. The purpose of this rewrite effort is to reformat the text for clarity of intended meanings, to include metric dimensions and values for the design and installation of traffic control devices, and to improve the overall organization and discussion of the contents in the MUTCD.

This document proposes new text for the MUTCD in Part 1—General Provisions, Part 3—Markings, and Part 4—Signals. The proposed changes included herein are intended to expedite traffic, promote uniformity, improve safety, and incorporate technology advances in traffic control device application.

DATES: Submit comments on or before June 30, 2000.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: For information regarding the notice of proposed amendments contact Ms. Linda Brown, Office of Transportation Operations, Room 3408, (202) 366–2192, or Mr. Raymond Cuprill, Office of Chief Counsel, Room 4217, (202) 366–0834, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): see ''Addresses'' *http:/dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help. An electronic copy of this notice of proposed amendment 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 Office of 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 text for the proposed sections of the MUTCD is available from the FHWA Office of Transportation Operations (HOTO–1) or from the FHWA Home Page at the URL: *http://www.ohs.fhwa.dot.gov/operations/mutcd*. Please note that the proposed rewrite sections contained in this docket for the MUTCD Part 1, Part 3, and Part 4 will take approximately 8 weeks from the date of publication before they will be available at this web site.

Background

The 1988 MUTCD with its revisions are available for inspection and copying as prescribed in 49 CFR part 7. It may be purchased for $57.00 (Domestic) or $71.25 (Foreign) from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, Stock No. 650–001–00001–0. This notice is being issued to provide an opportunity for public comment on the desirability of proposed amendments to the MUTCD. Based on the comments received and its own experience, the FHWA may issue a final rule concerning the proposed changes included in this notice.

The National Committee on Uniform Traffic Control Devices (NCUTCD) has taken the lead in this effort to rewrite and reformat the MUTCD. The NCUTCD is a national organization of individuals

from the American Association of State Highway and Transportation Officials (AASHTO), the Institute of Transportation Engineers (ITE), the National Association of County Engineers (NACE), the American Public Works Association (APWA), and other organizations that have extensive experience in the installation and maintenance of traffic control devices. The NCUTCD voluntarily assumed the arduous task of rewriting and reformatting the MUTCD. The NCUTCD proposal is available from the U.S. DOT Dockets (see address above). Pursuant to 23 CFR part 655, the FHWA is responsible for approval of changes to the MUTCD.

Although the MUTCD will be revised in its entirety, it is being completed in phases due to the enormous volume of text. The FHWA has reviewed the NCUTCD's proposals for the MUTCD. The summary of proposed changes for Parts 3, 4, and 8 was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997, at 62 FR 691. The summary of proposed changes for Parts 1 and 7 was published as phase 2 of the MUTCD rewrite effort in a previous notice of proposed amendment dated December 5, 1997, at 62 FR 64324. The summary of proposed changes for Chapters 2A, 2D, 2E, 2F, and 2I was published as Phase 3 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 11, 1998, at 63 FR 31950. The summary of proposed changes for Chapters 2G—Tourist Oriented Directional Signs, Chapter 2H—Recreational and Cultural Interest Signs, and Part 9—Traffic Control for Bicycles was published as Phase 4 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 24, 1999, at 64 FR 33802. The summary of proposed changes for Chapter 2C—Warning Signs and Part 10—Traffic Control for Highway-Light Rail Transit Grade Crossings was published as Phase 5 of the MUTCD rewrite effort in a previous notice of proposed amendment dated June 24, 1999, at 64 FR 33806. The summary of proposed changes for Chapter 2B—Regulatory Signs, Part 5—Traffic Control for Low-Volume Rural roads, and update information for Part 8—Traffic Control at Highway-Rail Grade Crossings was published as Phase 6 of the MUTCD rewrite effort in a previous notice of proposed amendment.

The summary of proposed changes for Part 6—Traffic Controls for Street and Highway Construction, Maintenance, Utility, and Incident Management Operations will be published as Phase 8 of the MUTCD rewrite effort in a future notice of proposed amendment. This notice of proposed amendment is Phase 7 of the MUTCD rewrite effort and includes the summary of proposed changes for MUTCD Part 1—General Provisions, Part 3—Markings, and Part 4—Signals.

The proposed new style of the MUTCD would be a 3-ring binder with 8½ x 11 inch pages. Each part of the MUTCD would be printed separately in a bound format and then included in the 3-ring binder. If someone needed to reference information on a specific part of the MUTCD, it would be easy to remove that individual part from the binder. The proposed new text would be in column format and contain four categories as follows: (1) Standards—representing ''shall'' conditions; (2) Guidance—representing ''should'' conditions; (3) Options—representing ''may'' conditions; and (4) Support—representing descriptive and/or general information. This new format would make it easier to distinguish standards, guidance, and optional conditions for the design, placement, and application of traffic control devices. The adopted final version of the new MUTCD will be in metric and English units. Dual units will be shown in the MUTCD particularly for speed limits, guide sign distances, and other measurements which the public must read.

The FHWA invites comments on the proposed new text for the MUTCD Part 1, Part 3, and Part 4. Summaries of the proposed significant changes contained in these parts are included in the following discussions:

Discussion of Proposed Amendments to Part 1—General Provisions

The summary of proposed changes for Part 1 was published as Phase 2 of the MUTCD rewrite effort in a previous notice of proposed amendment dated December 5, 1997. Since that time, several more Phases were published with additional definitions. The following are the most significant proposed revisions to Part 1:

1. In Section 1A.11, paragraph 3, the FHWA proposes to include a flow chart diagram showing the process for changes to the MUTCD and for experimentation with new traffic control devices and their application.

2. In Section 1A.14, the definitions for the following terms apply only to Part 4—Signals. Therefore, the FHWA proposes to delete them from Part 1—General Provisions and discuss them in Part 4 only. The terms are: actuated operation, actuation, backplate, conflict monitor, controller assembly, controller unit, coordination, cycle length, dark mode, detector, flasher, full-actuated operation, interval, interval sequence, louver, pedestrian change interval, pedestrian clearance time, pedestrian signal head, permitted mode, preemption control, priority control, protected mode, ramp control signal, red clearance interval, signal lens, signal phase, signal section, signal system, signal visor, signal warrant, steady mode, visibility-limited signal indication, and yellow change interval. The FHWA proposes to only include definitions in Part 1A.14 for terms that are used in more than one specific part of the MUTCD.

3. In Section 1A.14, the FHWA proposes to add the following definitions which appear in various sections of the MUTCD: Paved—A bituminous surface treatment, mixed bituminous concrete, or portland cement concrete roadway surface which has both a structural (weight bearing) and a sealing purpose for the roadway. Rural—A type of roadway as defined by the jurisdictions in compliance with their legislation, statute, regulations, and policies. Urban—A type of roadway as defined by the jurisdictions in compliance with their legislation, statute, regulations, and policies.

4. The FHWA proposes to add a new Section 1A.15 entitled, ''Abbreviations.'' This section will list the standard abbreviations for word messages used in connection with traffic control devices.

Discussion of Proposed Amendments to Part 3—Markings

The summary of proposed changes for part 3 was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997. Since that time, a number of changes have been suggested to FHWA by the NCUTCD and others, and a number of applicable recommendations were made in the ''Older Driver Highway Design Handbook.'' [1] Section numbers used herein refer to the proposed text in the notice of proposed amendments dated January 6, 1997.

The FHWA has included Sections 3B.1, 3B.2, and 3B.3 in this notice so that those reviewing the following part 3 sections are aware of the Final Rule wording of these sections with regards to center lines and edge lines.

1. In Section 3B.2, the FHWA proposes to add a standard, which was inadvertently omitted from the proposed amendment dated January 6,

[1] ''Older Driver Highway Design Handbook,'' Report No. FHWA–RD–99–045, available from the FHWA Research and Technology Report Center, 9701 Philadelphia Court, Unit Q, Lanham, Maryland 20706.

1997, at 62 FR 691. The standard is that lane line markings shall be used on all Interstate highways and freeways.

2. In Section 3B.4, paragraph 2, the FHWA proposes to add Figure 3–9a to show more examples of using dotted line markings in intersections to extend longitudinal line markings. This proposed Figure is in response to older driver research that shows that motorists may benefit by having these additional markings.

3. In Section 3B.9, paragraphs 2, 4, and 6, the FHWA proposes to add a ''Yield Line'' marking as an optional marking where it is important to indicate the point behind which vehicles are required to yield. The proposed Figure 3–24 provides an illustration of these markings.

4. In Section 3B.12, paragraph 19, the FHWA proposes to add a ''Yield Ahead'' triangle symbol marking for optional use in advance of intersections where approaching traffic will encounter a YIELD sign. The proposed Figure 3–25 provides an illustration of these markings.

5. In Section 3B.13, the FHWA proposes to differentiate between types of preferential lanes. The diamond pavement marking symbol is proposed for exclusive HOV lane use. In situations where a preferential lane is not an HOV lane, then the word message (Bus, Taxi, etc.) or symbol (Bike, etc.) for the type of traffic allowed would be used.

6. In Section 3B.15, paragraph 5, the FHWA proposes to add ''paved median noses'' to the locations that should have retroreflective solid yellow markings. This addition is in response to recommendations contained in the ''Older Driver Highway Design Handbook'' (see footnote 1) which shows that motorists may benefit by having these additional markings.

7. The FHWA proposes to add a new Section 3B.16 to provide standards for the longitudinal lane line markings for the various types of physically separated, reversible, non-reversible, and left and right side concurrent flow preferential lanes for motorized vehicles. The proposed Figure 3–23 provides an illustration of these markings. Furthermore, there is guidance on marking the neutral area between a preferential use lane and a regular traffic lane when the distance between them is greater than 1.2 m (4 ft).

8. The FHWA proposes to add a new Section 3B.17 to incorporate standard markings for roundabouts since roundabouts are becoming more commonly used. The proposed Figure 3–26 provides an illustration of typical roundabout markings.

9. The FHWA proposes to add a new Section 3B.18 to incorporate optional standard markings for other circular intersections including rotaries, traffic circles, and residential traffic calming designs. The proposed Figure 3–26a provides an illustration of typical markings for other circular intersections.

10. The FHWA proposes to add a new Section 3B.19 to provide pavement markings to assist motorists in identifying the locations of speed humps. The proposed Figure 3–27 and Figure 3–28 provide illustrations of typical speed hump markings.

11. The FHWA proposes to add a new Section 3B.20 to provide for pavement markings in advance of a speed hump where added visibility is desired or where a speed hump may not be expected. The proposed Figure 3–29 provides an illustration of a typical advanced speed hump marking.

Discussion of Proposed Amendments to Part 4—Signals

The summary of proposed changes for Part 4 was published as Phase 1 of the MUTCD rewrite effort in a previous notice of proposed amendment dated January 6, 1997. Since that time, a number of changes have been suggested to FHWA, and a number of applicable recommendations were made in the ''Older Driver Highway Design Handbook'' (see footnote 1). Section numbers used herein refer to the proposed text in the notice of proposed amendments dated January 6, 1997.

1. The FHWA proposes to change the name of Section 4B.2 to ''Basis of Installation or Removal of Traffic Control Signals'' to reflect that the section addresses both the installation and removal of traffic control signals. Under OPTION, a series of steps that may be considered in removing a traffic control signal is proposed.

2. In Section 4C.1, paragraph 12, the category OPTION is added and a new paragraph (d) is proposed for the various data that may be included in the engineering study for determining whether a traffic control signal is needed: ''Information about nearby facilities and activity centers that serve the elderly, people with disabilities, and/or requests from people with disabilities for accessible crossing improvements along this route. These people may not be adequately reflected in the pedestrian volume count if the lack of a signal restrains their mobility.'' The FHWA is withdrawing the proposal that was made in the January 6, 1997, notice of proposed amendments to move the School Crossing Warrant from Part 4 to Section 7D.4. (See 62 FR 691, FHWA Docket No. 96–47 scanned into DOT's Document Management System as Docket No. 97–2295.) The FHWA proposes to keep it as Warrant 5 in Section 4C.1. However, the FHWA proposes to include a reference in Chapter 7D.

3. In Section 4D.3, paragraph 3, a new GUIDANCE is proposed: ''Safety considerations should include the installation, where appropriate, of accessible pedestrian signals that provide information in nonvisual format (including audible tones, verbal messages, and/or vibrotactile information). Provisions for accessible signals are presented in Sections 4E.6 and 4E.8.'' This proposed change reflects the intent of language on Bicycle Transportation and Pedestrian Walkways contained in section 1202 of the Transportation Equity Act for the 21st Century, Public Law 105–178, 112 Stat. 107 (1998).

4. In Section 4D.4, paragraph 2, the FHWA is withdrawing its proposal (See 62 FR 691, FHWA Docket No. 96–47 scanned into DOT's Document Management System as Docket No. 97–2295) to delete the phrase ''Unless otherwise determined by law'' relative to the meaning of signal indications. The FHWA proposes to keep this statement because it encourages State and local entities to achieve uniform rules of the road that are in accord with Chapter 11, Rules of the Road, in the ''Uniform Vehicle Code and Model Traffic Ordinance,'' (UVCMTO), Revised 1992, published by the National Committee on Uniform Traffic Laws and Ordinances in Evanston, Illinois.

5. In Section 4D.4, the FHWA proposes to revise paragraph 2c(1), paragraph 2, to delete the words, ''or a RED ARROW indication is displayed.'' This proposed deletion is in response to recommendations contained in the ''Older Driver Highway Design Handbook'' (see footnote 1) which shows motorist confusion as to the meaning of the red arrow indication. In Figure 4–7 in Section 4D.16, the typical arrangement of lenses c and d are appropriately changed to eliminate the RED ARROW and to replace it with the CIRCULAR RED.

6. The FHWA proposes to delete Section 4D.4, paragraph 2c(2). This proposed deletion is in response to recommendations contained in the ''Older Driver Highway Design Handbook'' (see footnote 1) which shows motorist confusion as to the meaning of the red arrow indication.

7. In Section 4D.4, the FHWA proposes to revise paragraph 2c(3) to

delete ''or RED ARROW.'' This proposed deletion is in response to recommendations contained in the ''Older Driver Highway Design Handbook'' (see footnote 1) which shows motorist confusion as to the meaning of the red arrow indication.

8. In Section 4D.4, the FHWA proposes to revise paragraph 2d(3) to delete ''Flashing RED ARROW and.'' This proposed deletion is in response to recommendations contained in the ''Older Driver Highway Design Handbook'' (see footnote 1) which shows motorist confusion as to the meaning of the red arrow indication.

9. In Section 4D.5, the FHWA proposes to delete paragraph 3(d) that reads, ''A steady RED ARROW indication shall be displayed when it is intended to prohibit traffic, except pedestrians directed by a pedestrian signal head, from entering the intersection or other controlled area to make the indicated turn. Turning on a steady RED ARROW indication shall not be permitted.'' This deletion would require a CIRCULAR RED signal indication to be used instead of a RED ARROW for right and left-turn indications. This is in response to recommendations contained in the ''Older Driver Highway Design Handbook'' (see footnote 1) which shows motorist confusion as to the meaning of the red arrow indication. The compliance date proposed by FHWA for this change is 3 years after the effective date of the final rule. This would allow State and local agencies time to implement this proposed change.

10. The FHWA proposes to delete Section 4D.5, paragraph 3(e)(2) that reads, ''Shall not be displayed in conjunction with the change from a RED ARROW indication to a GREEN ARROW indication.'' This would delete the reference to the RED ARROW since the FHWA proposes to no longer use RED ARROWS in the MUTCD.

11. In Section 4D.5, the FHWA proposes to revise paragraph 3(e)(4) to read, ''Shall be terminated by a CIRCULAR YELLOW indication or a CIRCULAR RED indication except.'' This would delete the reference to the RED ARROW since the FHWA proposes to no longer use RED ARROWS in the MUTCD.

12. In Section 4D.5, the FHWA proposes to revise paragraph 4, OPTION, to delete the words, ''RED ARROW.'' This would delete the reference to the RED ARROW since the FHWA proposes to no longer use RED ARROWS in the MUTCD.

13. In Section 4D.6, paragraph 2, the FHWA proposes to add a new STANDARD which defines a leading protected-only left turn phase as one in which the GREEN ARROW, YELLOW ARROW, and CIRCULAR RED is given to vehicles turning left from a particular street before the CIRCULAR GREEN indication is given to the through movement on the same street. This proposed addition to the MUTCD is currently used in the field and is recommended in the ''Older Driver Highway Design Handbook'' (see footnote 1).

14. In Section 4D.6, paragraph 3, the FHWA proposes to add a new OPTION to read, ''A leading protected-only left turn phase may be considered if there is not a sufficient number of acceptable gaps for the left-turning movement.'' This proposed addition to the MUTCD is based on recommendations contained in the ''Older Driver Highway Design Handbook'' (see footnote 1) which shows a crash reduction with the use of a leading protected-only left-turn phase.

15. In Section 4D.6, the FHWA proposes to delete paragraph 2b(1) which reads, ''RED, YELLOW, and GREEN left-turn ARROW indications only. Only one of the three lenses shall be illuminated at any given time. A signal instruction sign shall not be required with this set of signal indications. If used, it shall be a LEFT ON GREEN ARROW ONLY sign (R10–5) or.'' This deletion would require a CIRCULAR RED signal indication to be used instead of a RED ARROW for left-turn indications. This is in response to recommendations contained in the ''Older Driver Highway Design Handbook'' (see footnote 1) that shows confusion as to the meaning of the red arrow indication. The compliance date for this change is proposed to be 3 years after the effective date of the final rule. This would allow State and local agencies time to implement this proposed change.

16. In Section 4D.7, the FHWA proposes to revise paragraph 2(a) to replace ''RED ARROW'' with ''CIRCULAR RED,'' and add ''along with a RIGHT TURN SIGNAL sign, R10–10'' at the end of the sentence. This would delete the reference to the RED ARROW since the FHWA proposes to no longer use RED ARROWS in the MUTCD.

17. In Section 4D.7, the FHWA proposes to delete paragraph 2 (1) that reads, ''RED, YELLOW, and GREEN right-turn ARROW indications only. One of the three lenses shall be illuminated at any given time. A signal instruction sign shall not be required with this set of signal indications. If used, it shall be a RIGHT ON GREEN ARROW ONLY sign (R10–5a); or.'' The purpose of this proposed change is to require a CIRCULAR RED instead of a RED ARROW for right-turn indications.

18. In Section 4D.8, the FHWA proposes to revise paragraph 3 to no longer allow the display of red arrows on any signal face. The compliance date for this change is proposed to be 3 years after the effective date of the final rule. This would allow State and local agencies time to implement this proposed change.

19. In Section 4D.11, the FHWA proposes to revise paragraphs 3 (b) and 3 (c) to delete the reference to red arrows.

20. In Sections 4D.15 and 4D.17, the FHWA proposes to revise these sections to be consistent with a new maximum vertical viewing angle of 20 degrees. In Section 4D.15, paragraph 1d (2) and Section 4D.17, new paragraph 5, the FHWA proposes to require a maximum height of 7.8 m (25.6 ft) to the top of signal housings mounted above the pavement with a sliding scale of 6.4 m to 7.8 m (21 to 25.6 ft) maximum height for viewing distances between 12 m and 16 m (40 and 53 ft). Vertical viewing angles of as high as 23.8 degrees are implicitly allowed via the present wording of the MUTCD. This has been identified as a problem area. Ergonomic statistics demonstrated that tall motorists, with these extreme vertical angle placements, are unable to view the top of the signal face due to the blockage from the vehicle ceiling line. Therefore the FHWA proposes a maximum vertical viewing angle of 20 degrees.

21. In Section 4D.16, the FHWA proposes to revise paragraph 9 (a) and (b) to delete the words, ''Left-turn RED ARROW,'' and ''Right-turn RED ARROW.'' This would delete the reference to the RED ARROW since FHWA proposes to no longer display red arrows on any signal face.

22. In Section 4D.16, the FHWA proposes to insert a new paragraph 15 at the end of the section to provide supporting information for 300 mm (12-in) signals. The new paragraph will read, ''The use of 300 mm (12-in) lenses or higher intensity 200 mm (8-in) lenses can be used to assist older drivers in decisionmaking tasks further from the intersection where traffic density is lower and there are fewer potential conflicts with other vehicles.'' The FHWA believes this proposed change will assist older drivers in the decisionmaking tasks encountered at roadway intersections.

23. In Section 4D.17, the FHWA proposes to add a new paragraph 16 to explain the benefits of using a backplate on signals. The FHWA believes the use of a backplate will help older drivers and enhance the signal conspicuity.

24. In Section 4E.4, paragraph 8, the FHWA proposes to revise the GUIDANCE as follows: ''For crosswalks where the pedestrian enters the crosswalk more than 30 m (100 ft) from the pedestrian signal head indications, the symbols should be at least 225 mm (9 in) high.'' The MUTCD presently provides that where the pedestrian enters the crosswalk more than 20 m (60 ft) from the pedestrian signal head indication, the pedestrian symbols should be at least 225 mm (9 in) high. However research has found that the lesser, 150 mm (6 in) pedestrian symbols, are adequate for distances of up to 30 m (100 ft). The subjects used in the research included 48 seniors age 62 and older. The research included incandescent, light emitting diode (LED) and Fiber-optic pedestrian signals.

25. The FHWA proposes to add a new Section 4E.6, Accessible Pedestrian Signals and a new Section 4E.8, Accessible Pedestrian Detectors. In these new sections SUPPORT information would be provided on the primary techniques that pedestrians who have visual disabilities use to cross the street at signalized intersections. Information would also be provided on the availability of local organizations that can act as advisors to engineers when consideration is being given to the installation of accessible pedestrian signals. GUIDANCE would be provided on factors to consider in the engineering study to decide whether to install an accessible pedestrian signal. Finally, STANDARDS and GUIDANCE would be provided for such installations (if used). These would be useful to engineers in designing installations, to suppliers by providing a degree of standardization for these devices, and to pedestrians who have visual disabilities in assuring that their needs are met and that installations of accessible pedestrian signals are standardized. Based on this change, the section numbers for 4E.6, Pedestrian Signal Timing, would be renumbered as Section 4E.7. Section 4E.7, Pedestrian Intervals and Phases, would be renumbered as Section 4E.9.

26. In redesignated Section 4E.9 (formerly 4E.7), paragraph 4, the FHWA proposes to revise the GUIDANCE to change the WALK interval from a range of 4 to 7 seconds to a minimum of 7 seconds. In paragraph 9, the FHWA proposes to include an OPTION that if pedestrian volumes and characteristics do not require a 7-second WALK interval, a WALK interval as short as 4 seconds may be used.

27. In redesignated Section 4E.9 (formerly 4E.7), paragraph 6, the FHWA proposes an OPTION that allows the use of new technology for pedestrian detection as an alternative to using lower walking speeds for slower pedestrians. There has been a successful experiment in Portland, Oregon, on the use of passive methods to detect pedestrians in the crosswalk.[2] Such equipment can detect pedestrians that need more time to complete their crossing. The equipment extends the length of the pedestrian clearance time (flashing DON'T WALK) for that cycle to allow pedestrians to complete their crossing before cross traffic begins.

28. In Section 4J.3, paragraph 1, the FHWA proposes to increase the minimum height and width dimensions of each DOWNWARD GREEN ARROW, YELLOW X, and RED X signal face from 300 mm (12 in) to 450 mm (18 in). The FHWA believes this proposed change will ensure that these critical signals are adequately conspicuous to capture the drivers' attention. The FHWA is also including an OPTION to use 300 mm (12 in) lane-use control signal faces in areas having minimal visual clutter and having speeds of 70 km/h (45 mph) or less.

29. The FHWA proposes to add a new Section 4L, In-Roadway Lights, to the MUTCD. In-Roadway Lights are special types of highway traffic signals. They consist of a series of flashing light units embedded across the roadway to warn road users that they are approaching a condition on or adjacent to the roadway that might not be readily apparent and might require the road users to slow down and possibly come to a stop. These conditions include, but are not limited to, marked crosswalks that are not controlled by STOP signs, YIELD signs, or traffic control signals.

30. The proposed new Sections 4L.1 and 4L.2 would provide STANDARDS and GUIDANCE for the design and operation of In-Roadway Lights (if used) installations. The STANDARDS, among other things, would provide: (1) For the installation of In-Roadway Lights parallel to the edge of the crosswalk, (2) For the operation to be initiated based on pedestrian actuation (active or passive), (3) For the operation to cease at a predetermined time after the actuation or with passive detection when the pedestrian clears the crosswalk, (4) For the installation at marked crosswalks only with applicable warning signs, and (5) For the height of the In-Roadway Lights not to exceed a height of 20 mm (3/4 in).

[2] Kloos, W., ''Implementing Passive Methods for Detecting Pedestrians,'' presentation at the 1998 Annual Meeting, Institute of Transportation Engineers, Washington, DC.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action will not be a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal. The new standards and other changes proposed in this notice are intended to improve traffic operations and safety, and provide additional guidance, clarification, and optional applications for traffic control devices. The FHWA expects that these proposed changes will create uniformity and enhance safety and mobility at little additional expense to public agencies or the motoring public. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposed action on small entities. This notice of proposed rulemaking adds some new and alternative traffic control devices and traffic control device applications. The proposed new standards and other changes are intended to improve traffic operations and safety, expand guidance, and clarify application of traffic control devices. The FHWA hereby certifies that these proposed revisions would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting 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 (2 U.S.C. 1532).

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that it would not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This proposed action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

The FHWA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This is not an economically significant action and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed action would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that it would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 655

Design standards, Grant programs—transportation, Highways and roads, Incorporation by reference, Signs, Traffic regulations.

(23 U.S.C. 109(d), 114(a), 315, and 402(a); 23 CFR 1.32; 49 CFR 1.48)

Issued on: December 17, 1999.

Kenneth R. Wykle,

Administrator.

BILLING CODE 4910–22–P

Manual on Uniform Traffic Control Devices

Introduction

Standard

Traffic control devices are all signs, signals, markings, and other devices used to regulate, warn, or guide traffic, placed on, over or adjacent to a street, highway, pedestrain facility, or bikeway by authority of a public body or official having jurisdiction.

The Manual on Uniform Traffic Control Devices (MUTCD) is incorporated by reference in 23 Code of Federal Regulations (CFR), Parts 655, Subpart F and recognized as the national standard for traffic control devices on all roads open to public travel. The policies and procedures of the Federal Highway Administration (FHWA) to obtain basic uniformity of traffic control devices are described in 23 CFR 655, Subpart F.

Support:

The need for uniform standards was recognized long ago. The American Association of State and Highway Officials (AASHO), now know as the American Association of State Highway and Transportation Officials (AASHO) published a manual for rural highways in 1927 and the National Conference on Street and Highway Safety (NCSHS) published a manual for urban streets in 1930. In the early years, the necessity for unification of the standards applicable to the different classes of road and street systems was obvious. To meet this need, a joint committee of AASHO and NCHSH developed, and published in 1935, the original edition of this Manual of Uniform Traffic Control Devices (MUTCD). That committee, now called the National Committee on Uniform Traffic Control Devices (NCUTDC), though changed from time to time in name, organization and personnel, has been in continuous existence and has contributed to periodic revisions of the Manual. The FHWA has administered the MUTCD since the 1971 edition. The FHWA and its predecessor organizations have participated in the development and publishing of the previous editions. There were seven previous editions of the MUTCD and several additions were revised one or more times. Table I–1 traces the evolution of the MUTCD, including two manuals developed by AASHO and NCSHS.

The Secretary if Transportation, under authority granted by legislation in 1966, decreed that traffic control devices on all roads in each State shall be in substantial conformance with the standards issued or endorsed by FHWA.

23 CFR, Part 655.603 adopts the MUTCD as the national standard for any street, highway, or bicycle trail open to public travel. The Uniform Vehicle Code (UVC) is one of the referenced documents contained in the MUTCD. The UVC contains a model set of motor vehicle and traffic laws for use throughout the Nation. As with the MUTCD, the UVC also includes language in Section 15–117 which states that, ''No person shall install or maintain in any area of private property used by the public any sign, signal, marking or other device intended to regulate, warn or guide traffic unless it conforms with the State manual and specifications adopted under Section 15–104.'' Section 15–104 of the UVC adopts the MUTCD as the standard for conformance.

EVOLUTION OF THE MUTCD

Year	Name	Month/year revised
1927	Manual and Specifications for the Manufacture, Display, and Erection of U.S. Standard Road Markers and Signs (for rural roads).	4/29, 12/31
1930	Manual on Street Traffic Signs, Signals, and Markings (for urban streets).	No revisions
1935	Manual on Uniform Traffic Control Devices for streets and Highway (MUTCD).	2/39
1942	MUTCD—War Emergency Edition	No revisions
1948	MUTCD	9/54
1961	MUTCD	No revisions
1971	MUTCD	11/71, 4/72, 3/73, 10/73, 6/74, 6/75, 9/76, 12/77
1978	MUTCD	12/79, 12/83, 9/84, 3/86
1988	MUTCD	1/90, 3/92, 9/93, 11/94, 12/96, 6/98, 6/99

Table I–1, Evolution of the MUTCD

Part 1. General Provisions

1A.1 Purpose of Traffic Control Devices

Support:

The purpose of traffic control devices and principles for their use is to promote highway safety and efficiency by providing for the orderly movement of all road users on streets and highways throughout the nation.

Traffic control devices notify road users of regulations and provide warning and guidance needed for the safe, uniform, and efficient operation of all elements of the traffic stream.

Standard:

Traffic control devices or their supports shall not bear any advertising message or any other message that is not related to traffic control.

1A.2 Principles of Traffic Control Devices

Support:

This Manual contains the basic principles that govern the design and use of traffic control devices for all streets and highways open to public travel regardless of type or class or the governmental body having jurisdiction. The text specifies the restriction on the use of a device if it is intended for limited application or for a specific system. It is important that these principles be given primary consideration in the selection and application of each device.

Guidance:

To be effective, a traffic control device should meet five basic requirements:

1. Fulfill a need.
2. Command attention.
3. Convey a clear, simple meaning.
4. Command respect from road users.
5. Give adequate time for proper response.

The following aspects of traffic control devices should be considered to ensure that these requirements are met: design; placement and operation; maintenance; and uniformity.

Support:

The term speed can mean the 85th percentile, design, average, operating, posted or statutory speed. The definitions of these and other specified speed terms are contained in Section 1A.14, *Definition of Words and Phrases.*

Guidance:

The policies and procedures of the FHWA to obtain basic uniformity of traffic control devices on all streets and highways are described in 23 CFR 655 Subpart F. The actions required for road users to obey regulatory devices should be specified by state statute, or in cases not covered by state statute, by local ordinance or resolution consistent with national standards.

The use of traffic control devices should provide the reasonable and prudent road user with the information necessary to safely and lawfully use the streets, highways, pedestrian facilities, and bikeways. Furthermore, the selection, application, design, placement, installation, operation, and maintenance of traffic control devices should be based on the minimum capabilities described in the Uniform Vehicle Code that a road user must possess to lawfully operate a vehicle.

Support:

Uniformity of the meaning of traffic control devices is vital to their effectiveness. The meanings ascribed in devices in this Manual are in general accord with the documents mentioned in Section 1A.12.

1A.3 Design of Traffic Control Devices

Guidance:

Devices should be designed so that such features as size, contrast, colors, shape, composition, and lighting or retroreflection are combined to draw attention to the devices; that shape, size, colors, and simplicity of message combine to produce a clear meaning; that legibility and size combine with placement to permit adequate time for response; and that uniformity, size, legibility, and reasonableness of the message combine to command respect.

Standard:

All new symbols and sign colors shall be adopted using the procedures described in Section 1A.11. All symbols shall be unmistakably similar to or mirror images of those shown herein. Symbols and colors shall not be modified.

Guidance:

Other aspects of a device's design should be modified only where there is demonstrated need. Modifications should be kept to a minimum and should be done in a way that will preserve the essential characteristics of the device's appearance.

Options: State and local highway agencies may develop word message signs to notify road users of special regulations or to warn of special situations or hazards. Unlike with symbol signs and colors, new word message signs may be used without the need for experimentation. With the exception of symbols and colors, minor modifications in the specific design elements of a device may be made provided the essential appearance characteristics are preserved. Although the standard design of symbol signs cannot be modified, it may be appropriate to change the orientation of the symbol to better reflect the direction of travel.

1A.4 Placement and Operation of Traffic Control Devices

Guidance:

Placement of the device should assure that it is within the cone of vision of the

viewer so that it will command attention; that it is appropriately positioned with respect to the location, object, or situation to which it applies to aid in conveying the proper meaning; and that its location, combined with suitable legibility, is such that a road user has adequate time to make the proper response in both day and night conditions.

Traffic control devices should be placed and operated in a uniform and consistent manner to assist road users in properly responding to the device, based on their previous exposure to similar traffic control situations.

Unnecessary traffic control devices should be removed. The fact that a device is in good physical condition should not be a basis for deferring needed replacement or change.

1A.5 Maintenance of Traffic Control Devices

Guidance:

Functional maintenance of traffic control devices should be provided to determine if certain devices need to be changed to meet current traffic conditions.

Physical maintenance of traffic control devices should be performed to ensure that legibility is retained, that the device is visible, and that it functions properly in relation to other traffic control devices in the vicinity.

Support:

Clean, legible, properly mounted devices in good working condition command the respect of road users.

1A.6 Uniformity of Traffic Control Devices

Support:

Uniformity of devices simplifies the task of the road user because it aids in recognition and understanding, thereby reducing perception/reaction time. It aids road users, police officers, and traffic courts by giving everyone the same interpretation. It aids public highway and traffic officials through efficiency in manufacture, installation, maintenance, and administration. Simply stated, uniformity means treating similar situations in the same way. The use of uniform traffic control devices does not, in itself, constitute uniformity. A standard device used where it is not appropriate is as objectionable as a nonstandard device; in fact, this may be worse, because such misuse may result in disrespect at those locations where the device is needed.

1A.7 Responsibiloity for Traffic Control Devices

Standard:

The responsibility for the design, placement, operation, maintenance, and uniformity of traffic control devices shall rest with the public agency or the official having jurisdiction. 23 CFR 655.603 adopts the MUTCD as the national standard for all traffic control devices installed on any street, highway, or bicycle path open to public travel. When a State or other Federal agency MUTCD or supplement is required, they shall be in substantial conformance with the national MUTCD.

23 CFR 655.603 also states that traffic control devices on all streets and highways open to public travel in each State shall be in substantial conformance with standards issued or endorsed by the Federal Highway Administrator.

Support:

The Uniform Vehicle Code has the following provision in Section 15–104 for the adoption of a uniform Manual:

''(a) The [State Highway Agency] shall adopt a manual and specification for a uniform system of traffic-control devices consistent with the provisions of this code for use upon highways within this State. Such uniform system shall correlate with and so far as possible conform to the system set forth in the most recent edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, and other standards issued or endorsed by the Federal Highway Administrator.

''(b) The Manual adopted pursuant to subsection (a) shall have the force and effect of law.''

Additionally, States are encouraged to adopt Uniform Vehicle Code, Section 15–117 which states that, ''No person shall install or maintain in any area of private property used by the public any sign, signal, marking or other device intended to regulate, warn of guide traffic unless it conforms with the State manual and specifications adopted under § 15–104.''

1A.8 Placement Authority

Standard:

Traffic control devices and other signs or messages within the highway right-of-away shall be placed only by a public authority or the official having jurisdiction, for the purpose of regulating, warning, or guiding traffic.

When the public authority or the official having jurisdiction over a street or highway has granted proper authority, others such as contractors and public utility companies shall be permitted to install temporary traffic control devices. Such traffic control devices shall conform to the standards of this Manual.

Guidance:

Any unauthorized traffic control device or other sign or message placed on the highway right-of-way by a private organization or individual constitutes a public nuisance and should be removed. All unofficial and non-essential signs should be removed.

Standard:

All regulatory devices shall be supported by laws, ordinances, or regulations.

Support:

Provisions of this Manual are based on the concept that effective traffic control depends upon both appropriate application of the devices and reasonable enforcement of the regulations.

1A.9 Engineering Study or Judgment Required

Standard:

This Manual describes the application of traffic control devices, but shall not be a legal requirement for their installation, unless so stated in any specific section.

Guidance:

The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. Thus while this Manual provides standards for design and application of traffic control devices, the Manual should not be considered a substitute for engineering judgment.

Qualified engineers should exercise engineering judgment inherent in the selection and application of traffic control devices, just as in the location and design of the roads and streets which the devices complement. Jurisdictions with responsibility for traffic control that do not have qualified engineers on their staffs, should seek assistance from the State transportation agency, their county, a nearby large city, or a traffic engineering consultant.

1A.10 Meaning of STANDARD, GUIDANCE, OPTION, AND SUPPORT

Support:

The standard, guidance, option, and support material described in this edition of the MUTCD provide the engineer with the information needed to

make appropriate decisions regarding the use of traffic control devices on streets and highways. This is organized to better differentiate between required conditions for traffic control devices (standards) that must be satisfied and other conditions (guidance and options) which may or may not be applicable, depending upon the particular circumstances of a situation.

Throughout this Manual the headings ''Standard,'' ''Guidance,'' ''Option,'' and ''Support'' are used to classify the nature of the text that follows.

Standard:

When used in this Manual the headings shall be defined as follows:

1. Standard: A statement of required, mandatory or specifically prohibitive practice regarding a traffic control device. All standards are labeled and the headings appear in uppercase, blocked, and bold type. The word ''shall'' is typically used. Standards are sometimes modified by options.

2. Guidance: A statement of recommended but not mandatory practice in typical situations, with deviations allowed if engineering judgment or engineering study indicates the deviation to be appropriate. All guidance statements are labeled and the headings appear in uppercase shaded type. The word ''should'' is typically used. Guidance statements are sometimes modified by options.

3. Option: A statement of practice which is a permissive condition and carries no recommendation or mandate. Options may contain allowable modifications to a standard and/or guidance. All option statements are labeled and the headings appear in lowercase normal type. The word ''may'' is typically used.

4. Support: An informational statement which does not convey any degree of mandate, recommendation, authorization, prohibition, or enforceable condition. Support statements are labeled and the headings appear in uppercase normal type.

Support:

Figures, tables, and illustrations supplement the text and might constitute a Standard, Guidance, Option, or Support. The reader can refer to the appropriate text to determine the meaning of the figure, table, or illustration.

1A.11 Manual Changes, Interpretations and Authority to Experiment

Standard:

Use of devices that do not conform to the provisions of this Manual shall be prohibited unless the provisions of this section are followed.

Support:

Continuing advances in technology will produce changes in the highway, the vehicle, and in road user proficiency, and portions of the system of control devices in this Manual will require updating. In addition, unique situations often arise for device applications which might require interpretation or clarification of this Manual. It is important to have a procedure for recognizing these developments and for introducing new ideas and modifications into the system.

Guidance:

Requests for any change, interpretation or permission to experiment should be sent to the Federal Highway Administration (FHWA), Office of Transportation Operation (HOTO), 400 Seventh Street, SW., Washington, D.C. 20590. The request to experiment may be sent directly to HOTO with a copy to the FHWA Division Office or the request may be sent to the FHWA Division Office and then forwarded to HOTO. Diagrams showing the process for changes to the MUTCD and experimentation with traffic control devices are included after this section.

1. Change—A change includes consideration of new devices to replace a present standard device, additional devices to be added to the list of standard devices, or revisions to recommended application or meaning criteria.

Request for a change in the Manual should contain the following information:

(a) A statement indicating what change is proposed.

(b) Any illustration which would be helpful to understand the request.

(c) Any supporting research data which is pertinent to the item to be reviewed.

2. Interpretation—An interpretation includes application and operation of standard traffic control devices, official meanings of standard traffic control devices, or variations from standard device designs.

Requests for an interpretation of the Manual should contain the following information:

(a) A concise statement of the interpretation being sought.

(b) A description of the condition which provoked the need for an interpretation.

(c) Any illustration which would be helpful to understand the request.

(d) Any supporting research data which is pertinent to the item to be interpreted.

3. Experiment—Requests to experiment include consideration of testing or evaluating a new traffic control device, its application or manner of use, or a provision not specifically described in this Manual.

Request for permission to experiment will be considered only when submitted by the governmental agency or private toll facility responsible for the operation of the road or street on which the experiment is to take place and should contain the following:

(a) A statement indicating the nature of the problem.

(b) A description of the proposed change, how it was developed, the manner in which it deviates from the standard, and how it is expected to be an improvement over existing standards.

(c) Any illustration which would be helpful to understand the experimental device or use of the device.

(d) Any supporting data explaining how the experimental device was developed, if it has been tried, in what way it was found to be adequate or inadequate, and how this choice of device or application was derived.

(e) A detailed research or evaluation plan including the time period and location(s) of the experiment. This plan must also provide for close monitoring of the experimentation, especially in the early stages of its field implementation.

(f) An agreement to restore the experiment site to a condition which complies with the provisions of the Manual within 3 months following the end of the time period of the experiment. This agreement must also provide that the agency sponsoring the experimentation will terminate the experimentation at any time that it determines significant safety hazards are directly or indirectly attributable to the experimentation. The Office of Transportation Operations may also terminate approval of the experimentation at any time if there is an indication of hazards. If, as a result of the experimentation, a request is made that the Manual be changed to include the device or application being experimented with, the device or application may remain in place until an official rulemaking action has occurred.

(g) An agreement to provide semiannual progress reports for the duration of the experimentation and to provide a copy of the final results of the experimentation to the Office of Transportation Operations (HOTO), within 3 months following completion

of the experimentation. The Office of Transportation Operations may terminate approval of the experimentation if reports are not provided in accordance with this schedule.

Support:

Procedures for revising the Manual are set out in the **Federal Register** of June 30, 1983, (48 FR 30145).

For additional copies of information concerning changes, interpretations, or experimentation, write to the FHWA (HOTO), 400 Seventh Street, SW., Washington, D.C. 20590.

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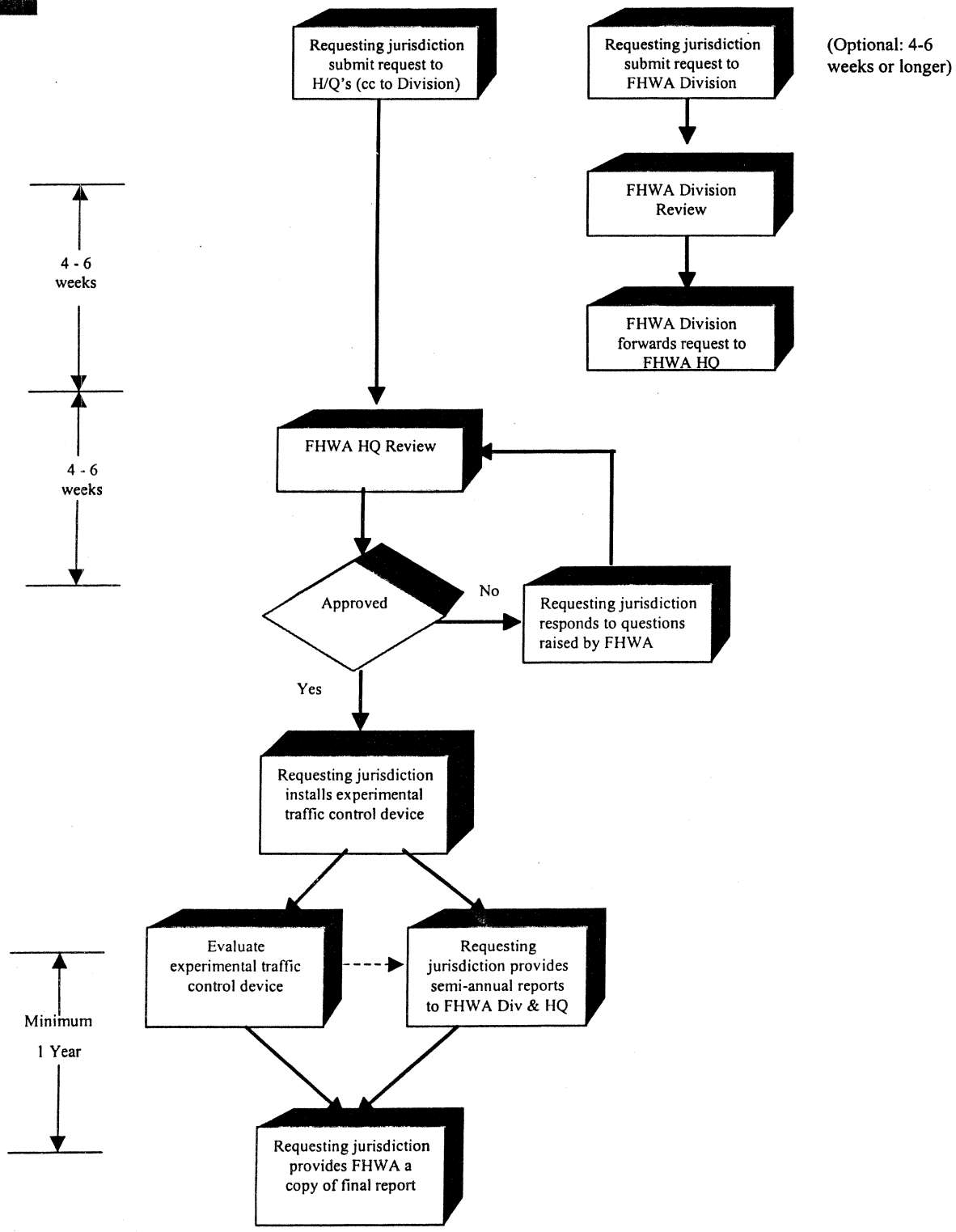
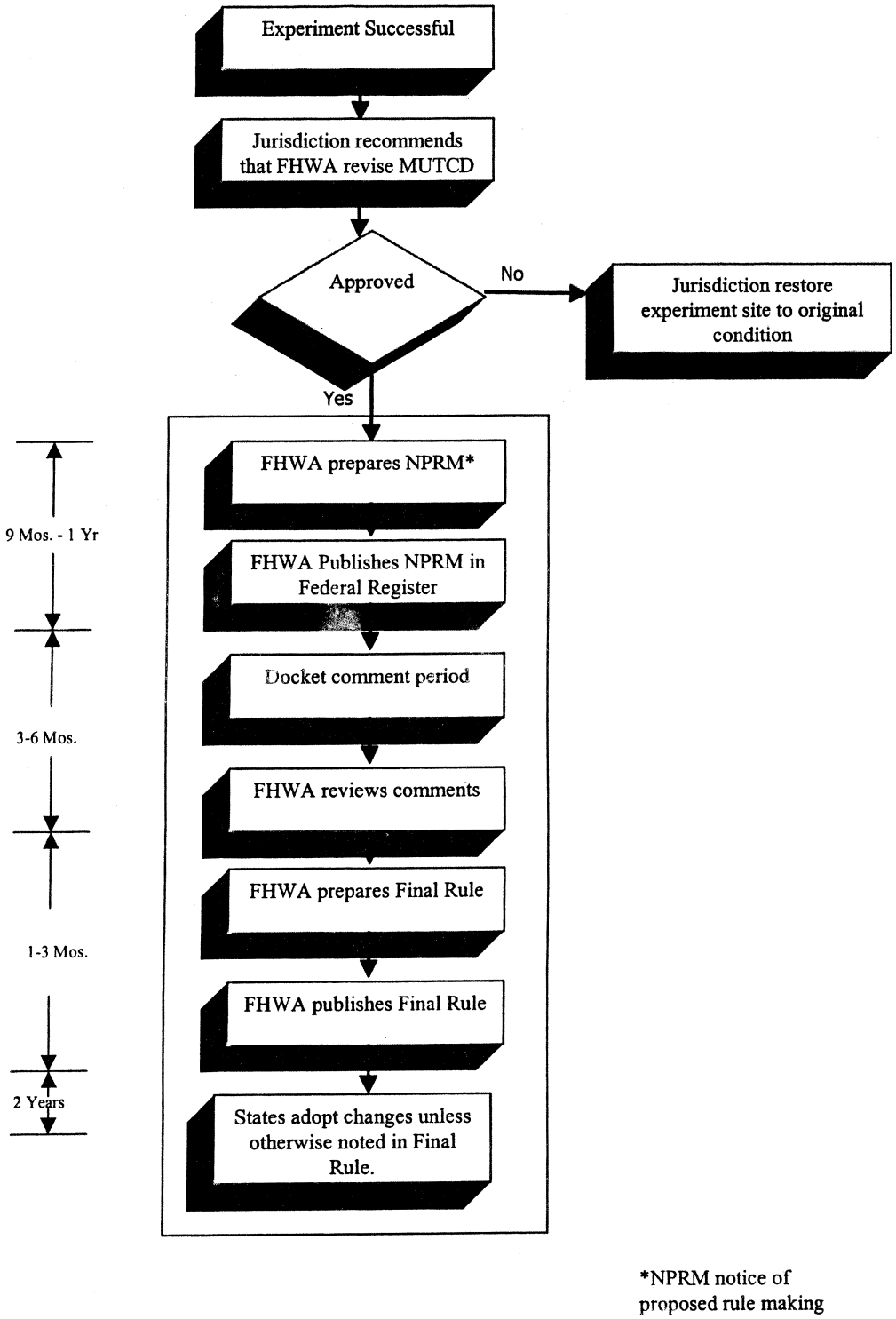
Obtaining Experimental Status for New Traffic Control Devices



Process to Incorporate New Traffic Control Device into MUTCD



*NPRM notice of proposed rule making

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1A.12 Relation to Other Documents

Support:

Two publications by the National Committee on Uniform Traffic Laws and Ordinances are specifically designed to provide the content and language of legislation needed to give regulatory devices the same meaning in all jurisdictions. These are the Uniform Vehicle Code and the Model Traffic Ordinance. Both the Code and the Ordinance require the placing of signs or other traffic control devices to make some of their provisions effective, and both define the legal meaning of certain devices. The Code directs State authorities to adopt a manual for a uniform system of traffic control devices, and requires all devices to conform thereto. The Ordinance also requires municipalities or other local governments to conform with the State manual for traffic control devices. The adoption of appropriate legislation is an essential step toward uniformity.

Standard:

To the extent they are incorporated by specific reference, the latest editions of the following documents, or those editions specifically noted, shall be a part of this Manual:

''Standard Alphabets for Highway Signs and Pavement Markings,'' FHWA

''Standard Color Tolerance Limits,'' FHWA

''Standard Highway Signs,'' FHWA

''Vehicle Traffic Control Signal Heads,'' Institute of Transportation Engineers (ITE)

''Pedestrian Traffic Control Signal Indications,'' ITE

''Purchase Specification for Flashing and Steady Burn Warning Lights,'' ITE

''Traffic Signal Lamps,'' ITE

''Uniform Vehicle Code'' and ''Model Traffic Ordinance'', National Committee on Uniform Traffic Laws and Ordinances.

Support:

Other documents that are useful sources of information with respect to utilization of these standards include:

''Traffic Engineering Handbook'', ITE

''Highway Capacity Manual,'' Transportation Research Board (TRB)

''A Policy on Geometric Design of Highway and Streets,'' American Association of State Highway and Transportation Officials (AASHTO)

''Guidelines for the Selection of Supplemental Guide Signs for Traffic Generators Adjacent to Freeways, (AASHTO)

List of Control Cities for Use in Guide Signs on Interstate Highways,'' ASSHTO

''Manual on Traffic Engineering Studies,'' ITE

''Manual of Transportation Engineering Studies,'' ITE

''Roadside Design Guide,'' AASHTO

''School Trip Safety Program Guidelines,'' ITE

''Manual of Traffic Signal Design,'' ITE

''Traffic Signal Installation and Maintenance Manual,'' ITE

''Traffic Detector Handbook,'' ITE

''Signal Manual of Recommended Practice,'' Association of American Railroads (AAR)

1A.13 Color Code

Support:

The following color code establishes general meanings for eight colors of a total of twelve colors that have been identified as being appropriate for use in conveying traffic control information. Central values and tolerance limits for each color are available from the Federal Highway Administration (HOTO), 400 Seventh Street SW., Washington, D.C. 20590.

The three colors for which general meanings have not yet been assigned are being reserved for future applications that will be determined only by FHWA after consultation with the States, the engineering community, and the general public. The meanings described in this Section are of a general nature. More specific assignments of colors are given in the individuals Parts of this Manual relating to each class of devices.

Standard:

YELLOW	General warning
RED	Stop or prohibition
BLUE	Road user services guidance, Tourist information, and Civil defense evacuation route
GREEN ..	Indicated movements permitted, direction guidance
BROWNn	Recreational and cultural interest guidance
ORANGE	Temporary traffic control
BLACK ...	Regulation
WHITE ...	Regulation
FLOURESCENT YELLOW-GREEN.	Pedestrian, Bicycle, School Warning
PURPLE	Unassigned
LIGHT BLUE.	Unassigned
CORAL ...	Unassigned

1A.14 Defintiions of Words and Phrases

Standard:

All words and phrases uses in this Manual shall have the meaning described herein. Unless otherwise defined herein, or in the other parts of this Manual, definitions contained in the most recent edition of the Uniform Vehicle Code, AASHTO Transportation Glossary (Highway Definitions), and other documents specified in Section 1A.12 are also incorporated and adopted by reference.

When definitions vary from UVC and AASHTO Glossary, the MUTCD definition shall be followed. Definitions included in this section are for items that are used throughout the MUTCD. If a term is used only in one specific part of the Manual (i.e., Signals), then the definition will appear in that specific part of the Manual.

85th percentile speed.—The speed at or below which eighty-five percent of the motorized vehicles travel.

Active highway-rail grade crossing warning system.—The flashing signals, with or without traffic gates, together with the necessary control equipment used to inform road users of the approach or presence of trains at the grade crossing.

Advisory speed.—A recommended maximum speed for all typical vehicles operating on a section of highway and based on an engineering study of the highway design and operating characteristics.

Approach.—All lanes of traffic moving towards an intersection or a mid-block location from one direction, including any adjacent parking lane(s).

Arterial highway (street).—A general term denoting a highway primarily use by through traffic, usually on a continuous route or a highway designated as part of an arterial highway system.

Average day.—A day representing traffic volumes normally and repeatedly found at a location, typically a weekdays when volumes are influenced by employment or a weekend day when volumes are influenced by entertainment or recreation.

Average speed.—The summation of the distances traveled divided by the summation of the time in motion to traverse the distances for all vehicles. Also may be the summation of the measured speeds of vehicles divided by the number of vehicles observed.

Bicycle.—A pedal-powered vehicle upon which the human operator sits.

Bicycle path.—A separate trail or path from which motor vehicles are prohibited and which is for the

exclusive use of bicycles or the shared use of bicycles and pedestrians. Where such trail or path forms a part of a highway, it is separated from the roadways for motor vehicle traffic by an open space or barrier.

Bicycle route.—A system of bikeways designated by appropriate route makers, and by the jurisdiction having authority.

Bikeway.—Any road, street, path, or way which in some manner is specifically designated as being open to bicycle travel, regardless of whether such facilities are designated for the exclusive use of bicycles or are to be shared with other transportation modes.

Center line markings.—The yellow pavement marking line(s) that delineate the separation of traffic lanes which have opposite directions of travel on a roadway. These markings need not be at the geometrical center of the pavement.

Changeable message sign.—A sign with the flexibility to display various messages.

Channelizing line markings.—White pavement marking lines that define the neutral area, direct existing traffic at the proper angle for smooth divergence into the ramp, and reduce the probability of collision with objects adjacent to the roadway.

Collector highway.—A term denoting a highway which in rural areas connects small towns and local highways to arterial highways, and in urban areas provides land access and traffic circulation within residential, commercial and business areas and connects local highways to the arterial highways.

Crosswalk.—(a) That part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or in the absence of curbs, from the edges of the traversable roadway, and in the absence of a sidewalk on one side of the roadway, the part of a roadway included within the extension of the lateral lines of the sidewalk at right angles to the centerline.

(b) Any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface.

Crosswalk lines.—White pavement marking lines that mark both edges of a crosswalk.

Design speed.—A speed determined by the design and correlation of the physical features of a highway that influence vehicle operation.

Edge line markings.—White or yellow pavement marking lines that delineates the right or left edge(s) of a travel way.

End of roadway marker.—A device used to warn and alert road users of the end of a roadway in other than construction or maintenance areas.

Engineering judgment.—The evaluation of available pertinent information, and the application of appropriate principles, standards, guidance, and practice as contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. Engineering judgment shall be exercised by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. Documentation of engineering judgment is not required.

Engineering study.—The comprehensive analysis and evaluation of available pertinent information, and the application of appropriate principles, standards, guidance, and practice as contained in this Manual and other sources, for the purpose of deciding upon the applicability, design, operation, or installation of a traffic control device. An engineering study shall be performed by an engineer, or by an individual working under the supervision of an engineer, through the application of procedures and criteria established by the engineer. An engineering study shall be documented.

Flashing (flashing mode).—A mode of operation in which a traffic signal indication is turned on and off repetitively.

Flashing beacon.—A highway traffic signal with one or more signal sections that operates in a flashing mode.

Guide signs.—A sign that shows route designations, destinations, directions, distances, services, points of interest, or other geographical, recreational, or cultural information.

Highway-rail grade crossing (roadway-rail intersection).—The general area where a highway and a railroad cross at the same level, within which are included the railroad, roadway and roadside facilities for traffic traversing that area.

Highway, road, or street.—General terms denoting a public way for purposes of travel, including the entire area within the right-of-way.

Highway traffic signal.—A power-operated traffic control device by which traffic is warned or directed to take some specific action. These devices do not include power-operated signs, barricade warning lights, or steady burning electric lamps.

Intersection.—(a) The area embraced within the prolongation or connection of the lateral curb lines, or if none, the lateral boundary lines of the roadways of two highways that join one another at, or approximately at, right angles, or the area within which vehicles traveling on different highways that join at any other angle may come into conflict.

(b) If a highway includes two roadways 9 meters (30 ft) or more apart, then every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. If the intersecting highway also includes two roadways 9 meters (30 ft) or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.

(c) The junction of an alley or driveway with a roadway or highway shall not constitute an intersection

Island.—A defined area between traffic lanes for control of vehicular movements or for pedestrian refuge. Within an intersection area, a median or an outer separation is considered to be an island.

Lane line markings.—The white pavement marking lines(s) that delineate the separation of traffic lanes that have the same direction of travel on a roadway.

Lane-use control signal.—An overhead signal face displaying indications to permit or prohibit the use of specific lanes of a roadway or to indicate the impending prohibition of such use.

Major roadway.—The roadway normally carrying the higher volume of vehicular traffic.

Median.—Area between two roadways of a divided highway measured from edge of traveled way to edge of traveled way. The median excludes turn lanes. The median width may be different between intersections, and at opposite approaches of the same intersection.

Minor roadway.—The roadway normally carrying the lower volume of vehicular traffic.

Roadway network.—A geographical arrangement of intersecting roadways.

Object markers.—Devices used to mark obstructions within or adjacent to the roadway.

Operating speed.—A speed at which a typical vehicle or the overall traffic operates. May be defined with speed values such as the average, pace, or 85th percentile speeds.

Pace speed.—The highest speed within a specific range of speeds which represents more vehicles than in any other like range of speed. The range of speeds typically used is 10 mph.

Paved.—A bituminous surface treatment, mixed bituminous concrete, or portland cement concrete roadway surface which has both a structural (weight bearing) and a sealing purpose for the roadway.

Pedestrian.—A person afoot, in a wheelchair, on skates, or on a skateboard.

Platoon.—A group of vehicles or pedestrians traveling together as a group, either voluntarily or involuntarily, because of traffic signal controls, geometrics, or other factors.

Posted speed.—A speed limit displayed on a traffic control device.

Preferential bicycle lane.—A portion of a roadway or shoulder which has been designated for use by bicyclists. It is distinguished from the portion of the roadway for motor vehicle traffic by a paint stripe, curb, or other similar device.

Preferential lane marking.—Consists of white lines formed in a diamond shape.

Pretimed operation.—A type of controller unit operation during which the length of various intervals remains constant.

Raised pavement marker.—A device with a height of at least 10 mm (0.4 inch), mounted on or in a road surface and intended to supplement or substitute for pavement markings.

Regulatory signs.—A sign that gives notice of traffic laws or regulations.

Resistance gate (second gate).—A type of traffic gate located downstream of the moveable bridge warning gate which may provide a physical barrier to vehicle and/or pedestrian traffic when placed in the appropriate position. Additional information is contained in the AASHTO Standard Specifications for Moveable Highway Bridges.

Retroreflectivity.—The return of a point source illumination from a surface to its origin.

Right-of-way [assignment].—Permitting vehicles and/or pedestrians to proceed in a lawful manner in preference to other vehicles or pedestrians by the display of signal indications.

Road (see roadway).

Road delineators.—Retroreflective devices mounted above the roadway surface and at the side of the roadway in a series to indicate the alignment of the roadway.

Road user.—A vehicle operator, bicyclist, or pedestrian within the highway.

Roadway.—That portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the sidewalk, berm, or shoulder even though such sidewalk, berm or shoulder is used by persons riding bicycles or other human-powered vehicles. In the event a highway includes two or more separate roadways, the term ''roadway'' as used herein shall refer to any such ''roadway'' separately but not to all such roadways collectively. Roadway includes parking lanes.

Roadway-rail intersection (see highway-rail grade crossing.

Rural.—A type of roadway defined by the jurisdiction in compliance with their legislation, statute, regulations, and policies.

Second gate (see resistance gate).

Semi-actuated operation.—A type of operation of a controller unit in which one or more, but not all, signal phases do not function on basis of actuation.

Shared roadway.—A roadway which is officially designated and marked as a bicycle route, but which is open to motor vehicle travel and upon which no bicycle lane is designated.

Sidewalk.—That portion of a street between the curb line, or the lateral line of a roadway, and the adjacent property line, intended for use by pedestrians.

Sign illumination.—Either internal or external lighting that shows the same color day or night. Street, highway, or strobe lighting shall not be considered as meeting this definition.

Sign legend.—All word messages, borders, logos, and symbol designs that are intended to convey specific meanings.

Signal face.—Front part of a signal head.

Signal head.—An assembly of one or more signal faces together with the associated signal housings.

Signal housing.—That part of a signal section that protects the light source and other required components.

Signal indication.—The illumination of a signal lens or equivalent device or a combination of several lenses or equivalent devices at the same time.

Signal installation.—The traffic signal equipment, signal heads and their supports, and associated electrical circuitry at a particular location.

Speed.—The 85th percentile, design, average, operating, posted or statutory speed as defined by the road authority for the engineering application.

Speed limit.—The maximum (or minimum) speed applicable to a section of highway as established by law.

Speed measurement marking.—A white transverse pavement marking placed on the roadway to assist the enforcement of speed regulations.

Speed zone.—A section of highway with a speed limit which is established by law but which is different form a legislatively specified statutory speed limit. Often established by administrative action as permitted by law.

Statutory speed.—A speed limit established by legislative action which typically is applicable for highways with specified design, functional, jurisdictional and/or location characteristic.

Stop line.—A solid white pavement marking line extending across approach lanes to indicate the point at which a stop is intended or required to be made.

Street (see roadway).

Traffic.—Pedestrains, ridden or herded animals, vehicles, streetcars, and other conveyances either singularly or together while using any highway for purposes of travel.

Traffic control devices.—All signs, signals, markings, islands, and other devices used to regulate, warn, or guide traffic, placed on, over, or adjacent to a street, highway, road, pedestrian facility, or bicycle path by authority of a public body or official having jurisdiction.

Traffic control signal (traffic signal).—Any highway traffic signal by which traffic is alternately assigned the right-of-way to the various movements at an intersection or other roadway location.

Train.—A locomotive or self-propelled unit which is assigned a train number, which operates on fixed rails or tracks and to which all other traffic must yield the right-of-way by law.

Transverse markings.—Pavement markings that include shoulder markings, word and symbol markings, stop liens, crosswalk lines, speed measurement markings, parking space markings, and others.

Traveled way.—The portion of the roadway for the movement of vehicles, exclusive of the shoulders, berms, sidewalks, and parking lanes.

Urban.—A type of roadway as defined by the jurisdictions in compliance with their legislation, statute, regulations, and policies.

Vehicle.—Every device in, upon, or by which any person or property may be transported or drawn upon a highway, except trains. A light rail car operating on a roadway, to which other traffic is not required to yield the right-of-way by law, is vehicle.

Warning gate.—A type of traffic gate designed to warn, but not to primarily provide a physical barrier to, vehicle and/or pedestrian traffic when placed in the appropriate position.

Warning sign.—A sign that calls attention to conditions on a adjacent to a highway or street that present a situation that may not be readily apparent to the road user.

Warrant.—A warrant describes threshold conditions to the engineer in evaluating the potential safety and operational benefits of traffic control devices and is based upon ''average'' or ''normal'' conditions. Warrants are not a substitute for engineering judgment. The fact that a warrant for a particular traffic

control device is met is not conclusive justification for the installation of the device.

Wrong-way arrows.—Slender, elongated, white pavement marking arrows placed upstream from the ramp terminus to indicate the correct direction of traffic flow. They are intended primarily to warn wrong-way road users that they are going in the wrong direction.

1.A.15 Abbreviations

Standard:

The following are standard abbreviations for word messages used in connection with traffic control devices:

ON SIGNS

ALT = alternate
AM = morning
AVE = avenue
BIKE = bicycle
BLVD = boulevard
CB = CB Radio
CD = civil defense
CYCLES = 2-wheeled vehicles
D = diesel fuel
DR = drive
E = east
EV = electric vehicle
EXEMPT = stop at highway-rail grade crossing not required by some types of vehicles
FM = FM radio
FT = feet
H = hospital
HR = hour
INFO = information
JCT = junction/intersection
KM = kilometers
KM/HR = kilometers per hour
LN = lane
LBS = pounds
LP–GAS = liquid propane gas
LUGS = tires with lugs
M = meters
MIN = minutes
MI = miles
MON-FRI = days of week
M.P.H. = miles per hour
NAT'L = national
N = north
P = parking
PED = pedestrian
PHONE = telephone
PM = afternoon/night
R.R. = highway-rail grade crossing
ST = street
T = tons of weight
US = state numbered route
2-WAY = two way intersection
- = to
& = and
? = information
% = percent
'' = inches
' = feet

PAVEMENT MARKINGS

MPH = miles per hour
PED = pedestrian
RXR = highway-rail grade crossing
US = state numbered route
XING = crossings other than highway-rail grade

ON SIGNALS

DONT = do not

3B. Pavement and Curb Markings

3B.1 Yellow Longitudinal Line Markings

A. Center Line Markings

Standard:

Center line markings, when used, shall be the pavement markings used to delineate the separation of traffic lanes which have opposite directions of travel on a roadway. These markings need not be placed at the geometrical center of the roadway.

Option: On roadways without a continuous center line marking, short sections may be marked with center line to control the position of traffic at specific locations, (e.g. around curves, over hills, on approaches to roadway-rail intersections, at roadway-rail intersections and at bridges.)

Standard:

The center line markings on two-lane, two-way roadways shall be one of the following as shown in Figure 3–1:

- Broken center line markings consisting of a normal broken yellow line where crossing the centerline markings for passing with care is permitted for traffic traveling in each direction.
- One-direction no-passing zone markings consisting of a normal broken yellow line and a normal solid yellow line where crossing the center line markings for passing with care is permitted for the traffic traveling adjacent to the broken line but is prohibited for traffic traveling adjacent to the solid line.
- Two-direction no-passing zone markings consisting of two normal solid yellow lines where crossing the centerline markings for passing is prohibited for traffic traveling in each direction.

Standard:

The center line markings one two-ways roadways with four or more traffic lanes always available, shall be the two-directions no-passing zone markings as shown in Figures 3–2 and 3–3.

Guidance:

On two-way roadways with three traffic lanes, two lanes should be designated for traffic in one direction by using one- or two-direction no-passing zone markings as shown in Figure 3–4.

Standard:

Center line markings shall be placed on paved two-way traveled ways on streets and highways having one or more of the following characteristics.

(a) All urban and rural arterials and collectors that have a roadway of 6 m (20 ft) or more in width with an ADT of 6000 or greater.

(b) All urban and rural highways that have three or more traffic lanes.

Guidance:

Center line markings should be place on the paved, two-way traveled ways on streets and highways having the following characteristics:

- Urban arterials and collectors that have a roadway 6 m (20 ft) or more in width with an ADT of 4000 or greater.
- All rural arterials and collectors that have a roadway of 5.5 m (18 ft) or more in width with an ADT of 3000 or greater.

An engineering study should be used in determining whether to place center line markings on a traveled way less than 4.8 m (16 ft) wide due to traffic encroaching on the pavement edges, traffic being affected by parked vehicles, and due to traffic encroachment into the lane of opposing traffic where edge line markings are used.

Option: Center line markings may be placed on other two-way roadways 4.8 m (16 ft) or more in width.

B. No-Passing Zone markings

Standard:

A no-passing zone shall be marked by either the one direction no-passing zone markings or the two-direction no-passing zone markings described above and shown in Figures 3–1b, 3–2, 3–3, and 3–4.

When center line markings are used, the no-passing zone marking shall be used on two-way roadways at lane reduction transitions (Sections 3B.5) and on approaches to obstructions that must be passed on the right (Section 3B.6).

Guidance:

Where the distance between successive no-passing zones is less than 120 m (400 ft), no-passing markings should connect the zones.

Option: In addition to the pavement markings herein prescribed, no-passing zone signs (Section 2B.21, 2B.22, 2C.38) may be used to emphasize the existence and extent of a no-passing zone.

Support:

Specific reference is made to Section 11–307 UVC Revised.

Standard:

On two-way, two- or three-lane roadways where center line markings are installed, no-passing zones shall be established as follows:

(1) at vertical and horizontal curves and other locations where an engineering study indicates passing must be prohibited because of inadequate sight distances or there special conditions.

(2) with the no-passing zone markings extended throughout the no-passing zone.

(3) on three-lane roadways where two lanes from each direction of travel transition to become one lane for each direction of travel, a median island shall be provided in the center lane. The median island shall consist of a lane transition at each end of a buffer zone and shown in Figure 3–5.

Guidance:

For roadways having a posted or statutory speed limit of 70 KM/H (45 mph) or greater, the transition taper length should be computed by the formula L = 0.62WS (L=WS).

For roadways having a posted or statutory speed limit of 60 KM/H (40 mph) or less, the taper length should be computed by the formula $L=WS^2/155$ ($L=WS^2/60$). Under both formulas, L equals the taper length in meters (feet), W equals the width of the center lane in meters (feet), and S equals the posted or statutory speed limiting in kilometers (miles) per hours.

The minimum taper length of the lane transitions shall be 30 m (100 ft) in urban areas and 60 m (200 ft) in rural areas.

Standard:

On roadways with center line markings, a no-passing zone marking shall be used at a horizontal or vertical curve where the sight distance is less than the minimum necessary for safe passing at the posted or statutory speed limit a s shown in Table 3–1, Passing sight distance on a vertical curve is the distance at which an object 1.07 m (3.50 ft) above the pavement can be seen by an approaching driver (Figure 3–6a). Similarly, passing sight distance on a horizontal curve is the distance measured along the center line (or right hand lane line of a three-lane highway) between two points 1.07 m (3.50 ft) above the pavement on a line tangent to the embankment or other obstruction that cuts off the view on the inside of the curve (Figure 3–6b).

TABLE 3–1. MINIMUM PASSING SIGHT DISTANCES

Posted or Statutory Speed Limit		Minimum Passing Sight Distance	
km/h	mph	meters	feet
40	25	140	450
50	30	160	500
60	35	180	550
a.	40	.....	600
70	45	210	700
80	50	245	800
90	55	280	900
100	60	320	1,000
110	65	355	1,100
120	70	395	1,200

Support:

The beginning of a no-passing zone at point ''a,'' in Figure 3–6 is that point where the sight distance first becomes less than that specified in Table 3–1. The end of the no-passing zone at point ''b'' in Figure 3–6 that point at which the sight distance again becomes greater than the minimum specified.

C. Reversible Lane Line Markings

Standard:

The reversible lane line markings shall consist of two normal broken double yellow lines to delineate the edges of a lane in which the direction of travel is changed from time to time in such a way that these markings serve as the center line markings of the roadway during some period. Signs, signals, or both shall be used to supplement these pavement markings as shown in Figure 3–7.

D. Two-Way Left Turn Lane Markings

Standard:

The two-way left turn lane markings shall consist of a normal broken yellow line and a normal solid yellow line to delineate both edges of a two-way left turn lane which may be used by traffic for part of a left turn maneuver. These markings shall be placed with the broken line toward the two-way left turn lane and the solid line toward the adjacent traffic lane as show in Figure 3–3a. Traffic adjacent to the solid line may cross such markings with care only as part of a left turn maneuver.

Option: Pavement marking arrows may be used in conjunction with the two-way left turn markings as shown in Figure 3–3a.

Guidance:

Signs should be used in conjunction with the two-way left turn markings (Section 2B.19).

E. Median Islands Formed by Pavement Markings

Standard:

Two double solid yellow lines shall be used to form continuous median islands where these islands separate travel in opposite directions as shown in Figures 3–2b and 3–5. Other markings in the median island area shall be yellow, except crosswalk markings which shall be white (Section 3B.8).

F. Left Edge Line Markings

Standard:

The left edge line markings shall consist of a normal solid yellow line to delineate the left edge of a roadway, or to indicate driving or passing restrictions left of these markings on the roadways of divided and one-way highways and on any ramp in the direction of travel (Section 3B.3).

3B.2 White Longitudinal Line Markings

A. Lane Line Markings

Standard:

Lane line markings when used, shall be the pavement markings used to delineate the separation of traffic lanes that have the same direction of travel.

Support:

Typical applications of lane line markings are shown in Figures 3–1 through 3–6, 3–8 through 3–13, 3–20, and 3–21.

Standard:

The broken white lane line markings shall consist of a normal broken white line where crossing the lane line markings with care is permitted.

Standard:

The solid lane line markings shall consist of a normal solid white line where crossing the lane line markings is discouraged.

Option: Solid white lane line markings may be used to separate through traffic lanes from auxiliary lanes, such as uphill truck lanes, left or right turn lanes and preferential lanes. They may also be used to separate traffic lanes approaching an intersection. Wide solid lane line markings may be used for greater emphasis.

Standard:

Double solid lane markings shall consist of two normal solid white lines where crossing the lane line markings is prohibited.

Standard:

Lane line markings shall be used on all Interstate highways and freeways.

Guidance:

Lane line markings should be used at the following locations:

(a) on all roadways with 2 or more adjacent traffic lanes that have the same direction of travel,

(b) at congested locations where the roadway will accommodate more traffic lanes with lane line markings than without the markings.

Standard:

The channelizing line shall be a wide or double solid white line. Other markings in the island area shall be a normal solid white line.

Option: The channelizing line may be used to form islands where traffic with the same direction of travel is permitted on both sides of the island.

Support:

Typical examples of channelizing line applications are shown in Figures 3–2, 3–3, 3–8, 3–9, 3–11, 3–12, 3–13c, and 3–20.

C. Interchange Ramp Markings

Support:

Channelizing lines at exit ramps as shown in Figure 3–11, define the neutral area, direct existing traffic at the proper angle for smooth divergence into the ramp, and reduce the probability of colliding with objects adjacent to the roadway.

Channelizing lines at entrance ramps as shown in Figure 3–12, promote safe and efficient merging with the through traffic.

Standard:

For exit ramps, channelizing lines shall be placed along the sides of the neutral area adjacent to the through traffic lane and the ramp lane. With a parallel deceleration lane, a lane line shall be extended from the beginning of the channelizing line upstream for a distance of one-half the length of the full-width deceleration lane.

Option: White transverse markings may be placed in neutral area for special emphasis, as shown in Figures 3–11a,b, and 3–12c.

Guidance:

For entrance ramps, a channelizing line should be placed along the side of the neutral area adjacent to the ramp lane.

On entrance ramps with a parallel acceleration lane, or lane line should be extended from the end of the channelizing line for a distance one-half the length of the full width acceleration lane, as should in Figure 3–12a.

Option: With a tapered acceleration lane, lane line markings may be placed to extend the channelizing line, but not beyond a point where the tapered lane meets the near side of the through traffic lane, as shown in Figure 3–12b.

Lane drop markings as shown in Figure 3–11c may be used in advance of lane drops at exit ramps to distinguish a lane drop from a normal exit ramp or from an auxiliary lane. The lane drop marking may consist of a wide, white dotted line with segments 900 mm (3ft) in length separated by 3.6 m (12ft) gaps.

Guidance:

If used, lane drop markings should begin 800 m (0.5 mi) in advance of the theoretical gore point.

Option: Where lane changes might cause conflicts, a wide solid white channelizing line may extend upstream from the theoretical gore point.

Support:

Pavement marking arrow use for wrong-way traffic is included in Section 3B.12.

D. Right Edge Line Markings

Standard:

The right edge line markings shall consist of a normal solid white line to delineate the right edge of the roadway (Section 3B.3).

3B.3 Edge Line Markings

Standard:

Edge line markings are those markings which delineate the right or left edges of a roadway (Sections 3B.1 and 3B.2).

Edge line markings shall not be continued through intersections.

Guidance:

Edge line markings should not be broken for driveways.

Support:

Edge line markings have unique value as visual references to guide road users during adverse weather and visibility conditions.

Edge Line Marking Warrants

Standard:

Edge line markings shall be placed on the paved traveled ways on streets and highways with the following characteristics:

- freeways
- expressways
- rural arterials with a roadway 6 m (20 ft) or more in width with and ADT of 6000 or greater.

Guidance:

Edge line markings should be placed on the paved roadways of the following highways:

- Rural collectors with a roadway 6 m (20 ft) or more in width and where the edge of the roadway is not otherwise delineated with curbs or other pavement markings such as for parking.
- Other paved streets and highways where an engineering study indicates a need.

Option: Edge line markings may be placed on highways with or without center line markings. They may be excluded based on engineering judgment where the traveled way edge are delineated by curbs or other markings. Edge line markings may be used where edge delineation is desirable to minimize unnecessary driving on paved shoulders or on refuge areas that have lesser structural pavement strength than the adjacent roadway.

3B.4 Extensions Through Intersections or Interchanges

Standard:

Pavement markings extended into or continued through an intersection or interchange area shall be the same color and at least the same width as the line markings they extend.

Guidance:

Where highway design or reduced visibility conditions make it desirable to provide control or to guide vehicles through an intersection or interchange such as at offset, skewed, complex multi-legged intersections, or where multiple turn lanes are used, dotted line markings should be used to extend longitudinal line markings as necessary through an intersection or interchange area (Figures 3–9, 3–9a, 3–11 & 3–20).

Where greater restriction is required, solid lane lines or channelizing lines should be extended into or continued through intersections.

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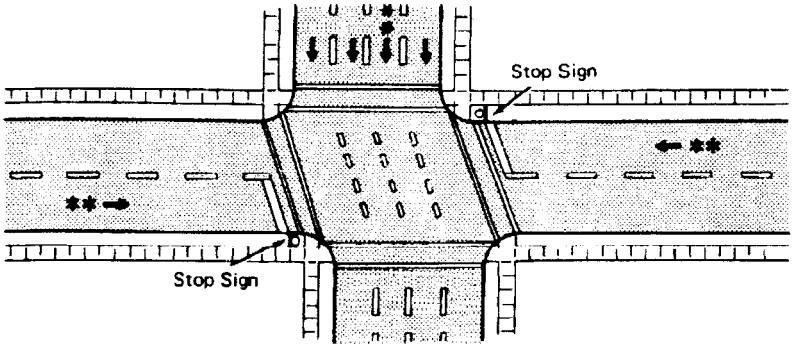
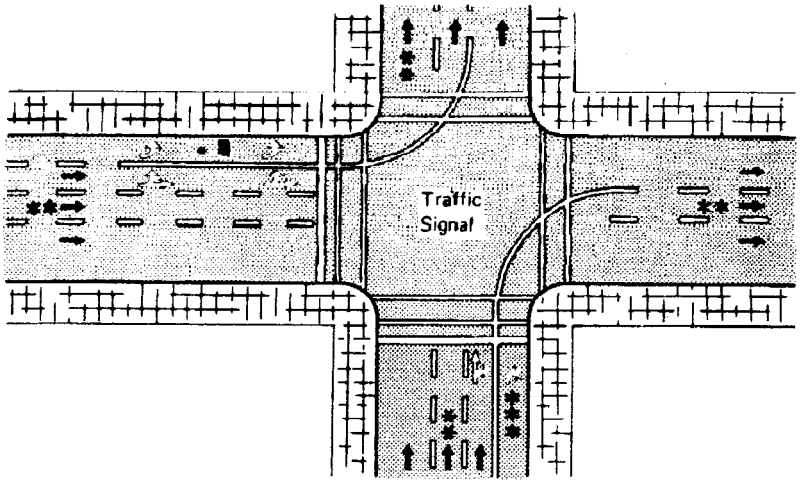
a—Typical pavement marking with offset lane lines continued through the intersection and optional crosswalk lines and stop limit lines.



b—Typical pavement marking with optional double turn lane lines, lane-use turn arrows, crosswalk lines, and stop limit lines.



c—Typical pavement marking with optional turn lane lines, lane use turn arrows, crosswalk lines, and stop limit lines.

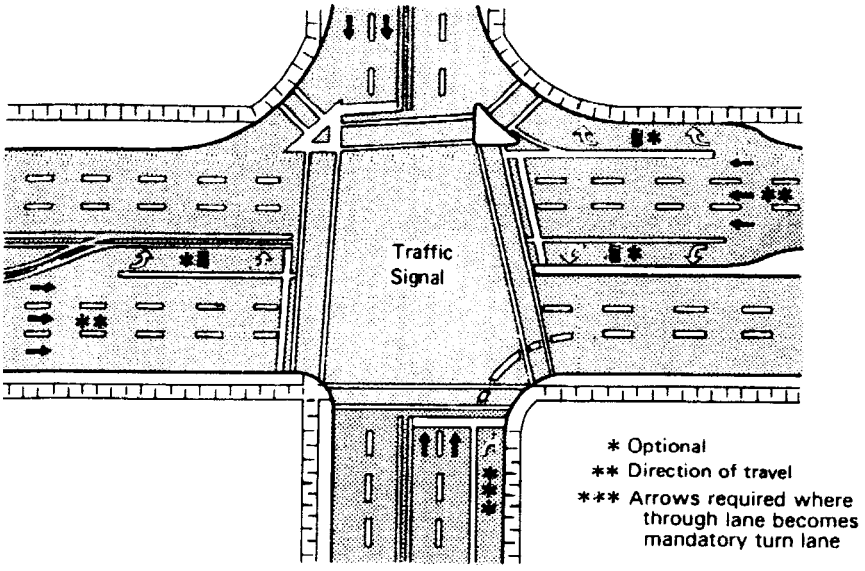
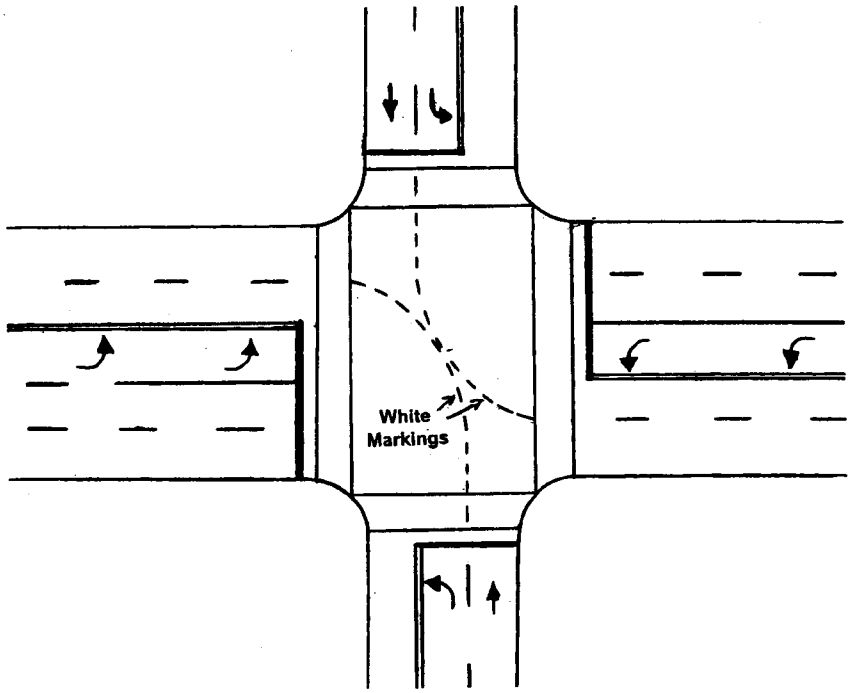


Figure 3-9. Typical pavement marking applications.

d - Typical dotted line markings to extend longitudinal lane line markings.



e - Typical dotted line markings to extend longitudinal center line markings.

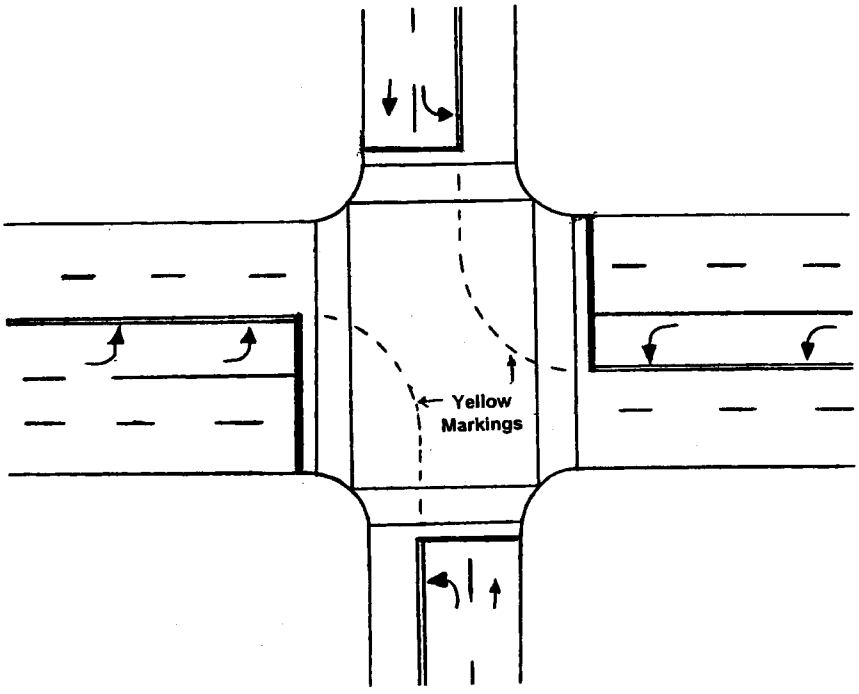


Figure 3-9a. Typical pavement marking applications.

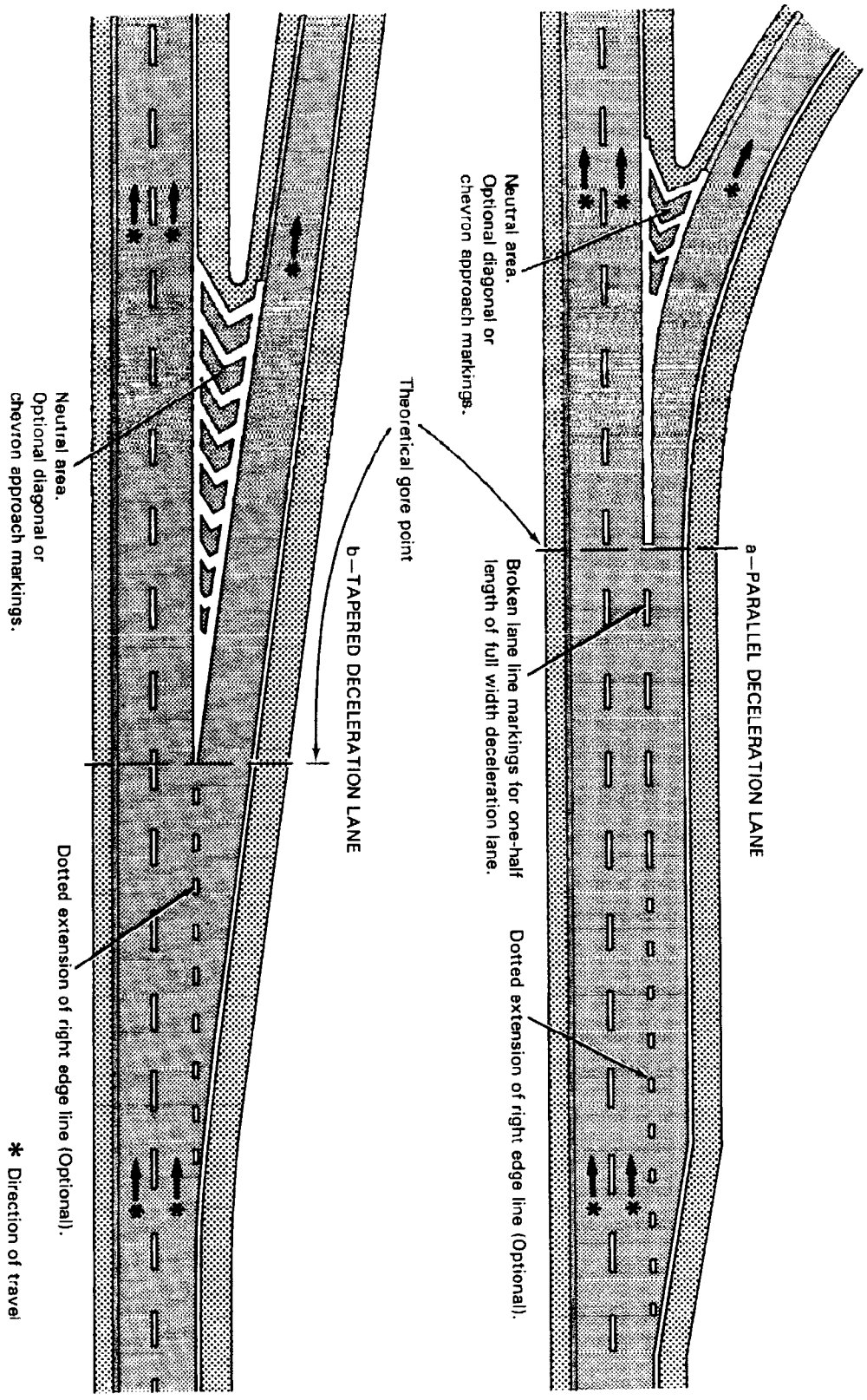


Figure 3-11. Typical exit ramp markings.

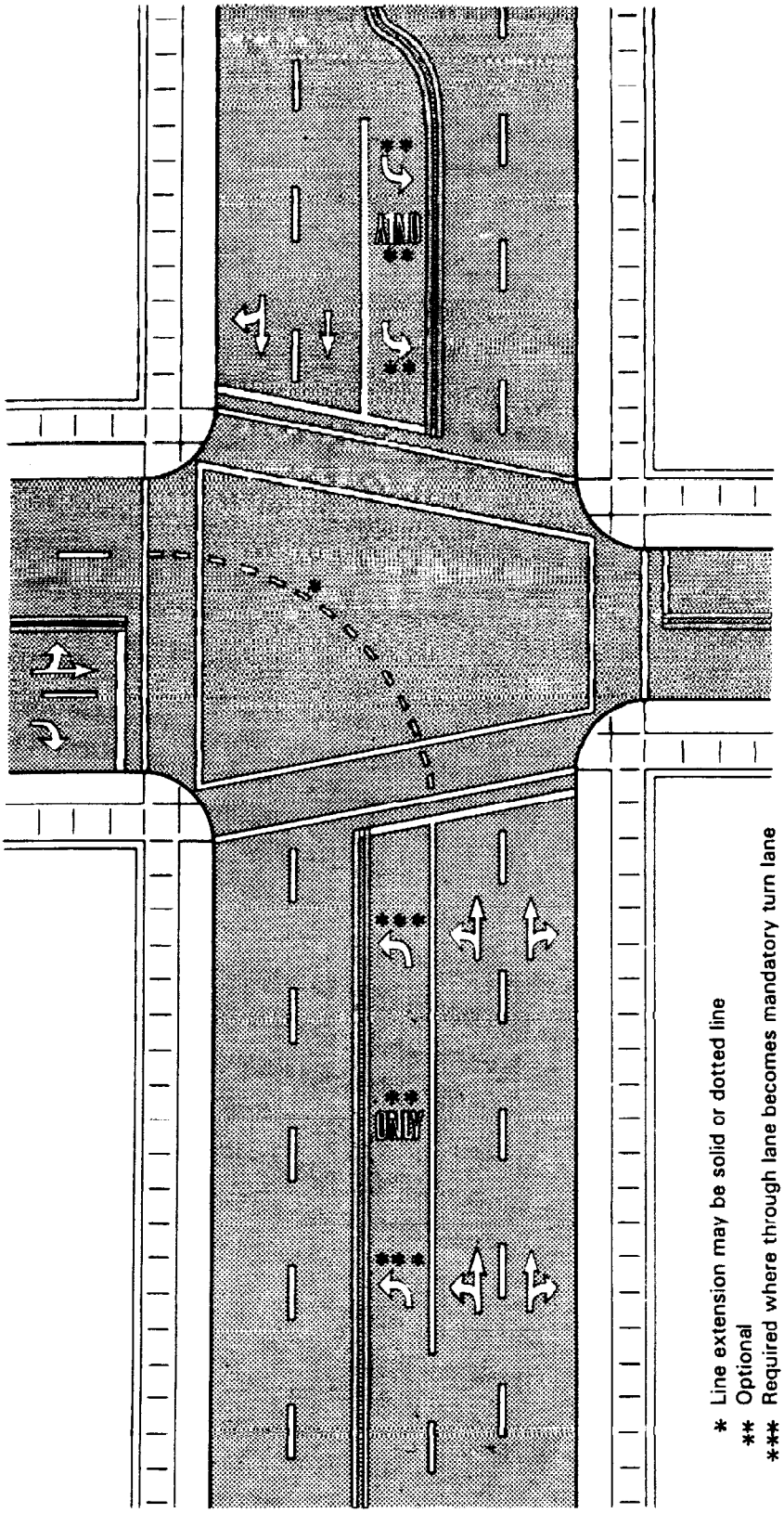
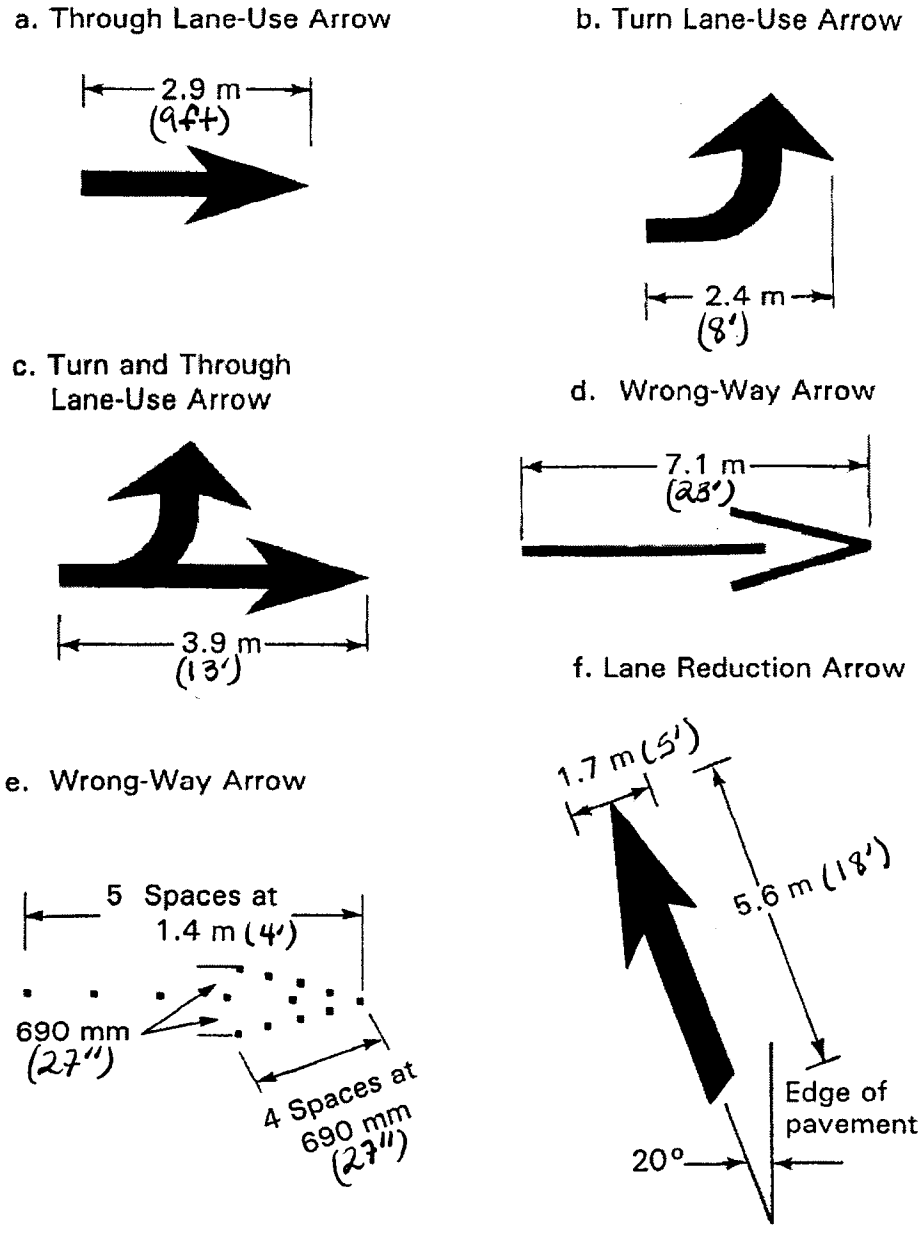


Figure 3-20. Typical lane-use-control word and symbol markings.



Standard sizes for normal installation; smaller sizes may be reduced approximately one-third for low speed urban conditions; larger sizes may be needed for freeways, above average speeds, and other critical locations. A narrow elongated arrow design is optional. For proper proportion, see Standard Alphabets for Highway Signs and Pavement Markings (Available from FHWA, HHS-10, Washington, DC. 20590)

Figure 3-19. Lane-Use, Lane Reduction and Wrong-Way Arrows for Pavement Markings.

3B.9 Stop and Yield Lines

Standard:

Stop lines are solid white lines extending across approach lanes to indicate the point at which the stop is intended or required to be made.

Yield lines consist of a row of isosceles triangles extending across approach lanes, and pointing toward approaching vehicles to indicate the point at which the yield is intended or required to be made.

Guidance:

Stop lines should be 300 to 600 mm (12 to 24 in) wide.

Stop lines should be used to indicate the point behind which vehicles are required to stop, in compliance with a STOP sign or traffic signal.

The individual triangles comprising the yield line should have a base of 0.3 to 0.6 m (12 to 24 in) wide and a height equal to 11/2 times the base. The space between the triangles should be 75 to 300 mm (3 to 12 in). (See Figure 3–24)

Option: Yield lines may be used to indicate the point behind which vehicles are required to yield in compliance with a YIELD sign.

Guidance:

Stop and yield lines, where used, should be placed 1.2 m (4 ft) in advance of and parallel to the nearest crosswalk line, except at roundabouts as provided for in Section 3B.17.

In the absence of a marked crosswalk, the stop line or yield line should be placed at the desired stopping or yielding point, but should be placed no more than 9.0 m (30 ft) nor less than 1.2 m (4 ft) from the nearest edge of the intersecting traveled way. Stop lines should be placed to ensure sufficient sight distance for all approaches to an intersection.

Stop lines at mid-block signalized locations should be placed at least 12.0 m (40 ft) in advance of the nearest signal indication. (See Section 4B.15)

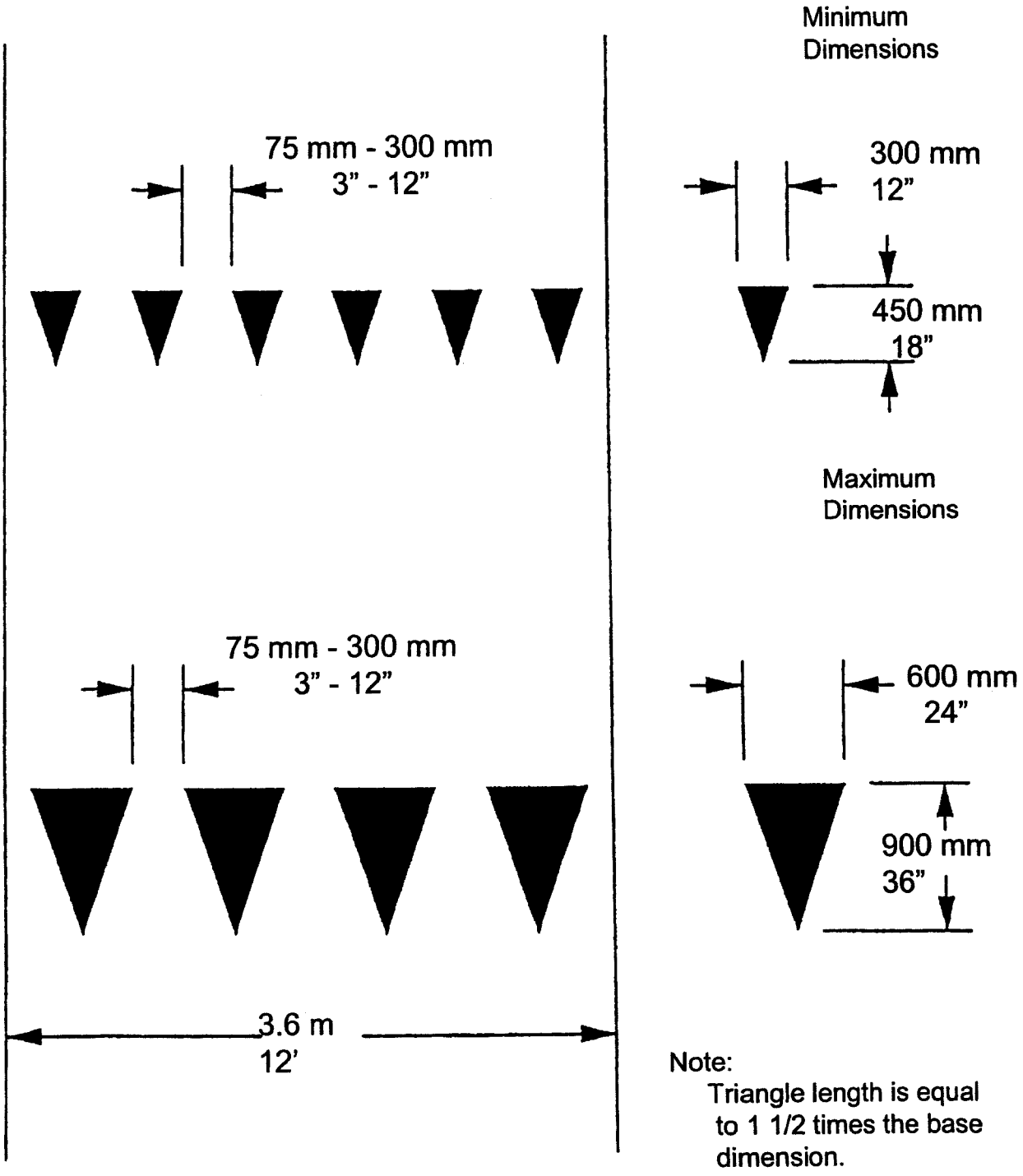


Figure 3-24. Typical Yield Line Layout

3B.12 Pavement Word and Symbol Markings

Support:

Word and symbol markings on the pavement are used for the purpose of guiding, warning, or regulating traffic. Symbol messages are preferable to word messages. Examples of standard symbol, word, and arrow pavement markings are shown in Figures 3–18 and 3–19.

Standard:

Word and symbol markings should be white.

Guidance:

Large letters and numerals should be 1.8 m (6 ft) or more in height.

Word and symbol markings should not exceed three lines of information.

If a pavement marking word message consists of more than one word, it should read in the direction of travel. The first word should be nearest to the road user.

The longitudinal space between words or symbol message markings, including arrow markings, should be at least four times the height of the characters for low speed roads but not more than ten times the height of the characters under any conditions.

The number of different word and symbol markings used should be minimized to provide effective guidance and avoid misunderstanding.

Pavement word and symbol markings should be no more than one lane in width except ''SCHOOL'' word markings.

Option: The ''SCHOOL'' word markings may extend to the width of two lanes. (Section 7C.6).

Guidance:

When the ''SCHOOL'' word markings are extended to the width of two lanes, the characters should be 3 m (10 ft) or more in height. (Section 7C.6).

Option: The International Symbol of Access (ISA) parking space markings may be placed in each parking space designated for use by persons with disabilities. A blue background with a white border may supplement the wheelchair symbol as shown in Figure 3–17.

Standard:

Where a through lane becomes a mandatory turn lane, lane-use arrow markings shown in Figure 3–19 shall be used and accompanied by standard signs.

The standard designs of lane use, lane reduction, and wrong way arrow markings are shown and discussed in Figure 3–19.

Guidance:

Where a through lane becomes a mandatory turn lane, signs or markings should be repeated as necessary to prevent entrapment and to help the road user select the appropriate lane in advance of reaching a queue of waiting vehicles.

Option: Lane-use arrow markings in Figure 3–19 may be used to convey either guidance or mandatory messages.

The message marking ''ONLY'' may be used to supplement lane-use arrow markings (Figures 3–18 and 3–20).

In situations where a lane reduction transition occurs, the lane reduction arrow markings in Figure 3–19 may be used.

The wrong-way arrow markings in Figure 3–19 may be placed near the downstream terminus of a ramp as shown in Figures 3–12(a) and 3–21(b). This arrow indicates the correct direction of traffic flow to warn of travel in the wrong direction.

A yield-ahead triangle symbol or ''YIELD AHEAD'' word pavement markings may only be used in advance of intersections where approaching traffic will encounter a YIELD sign. (See Figure 3–25).

Support:

Lane-use arrow markings are often used to provide guidance in turn bays (Figure 3–20) where turns may or may not be mandatory and in two-way left-turn lanes (Figure 3–3(a)).

Where crossroad channelization or ramp geometry do not make wrong-way movements physically difficult, guidance to a potential wrong-way road user can be provided by placing a lane-use arrow marking in each lane of the ramp near the crossroad where it is clearly visible.

Option: word and symbol markings may include, but are not limited to, the following: Other words or symbols may also be used under certain conditions.

a. Regulatory
STOP
RIGHT (LEFT) TURN ONLY
40 KM/H (25 MPH)
Arrow Symbols

b. Warning
STOP AHEAD
YIELD AHEAD
YIELD AHEAD Triangle Symbol
SCHOOL X-ING
SINGAL AHEAD
PED X-ING
SCHOOL
R X R

c. Guide
US 40
STATE 135
ROUTE 40

Standard:

The word ''STOP'' shall not be used on the pavement unless accompanied by a stop line (Section 3B.9) and STOP sign (Section 2B.4).

The word ''STOP'' shall not be placed on the pavement in advance of a stop line, unless every vehicle is required to stop at all times.

The yield-ahead triangle symbol or ''YIELD AHEAD'' word pavement marking shall not be used unless a YIELD sign (Section 2B.7) is in place at the intersection. The yield-ahead symbol marking shall be as shown in Figure 3–25.

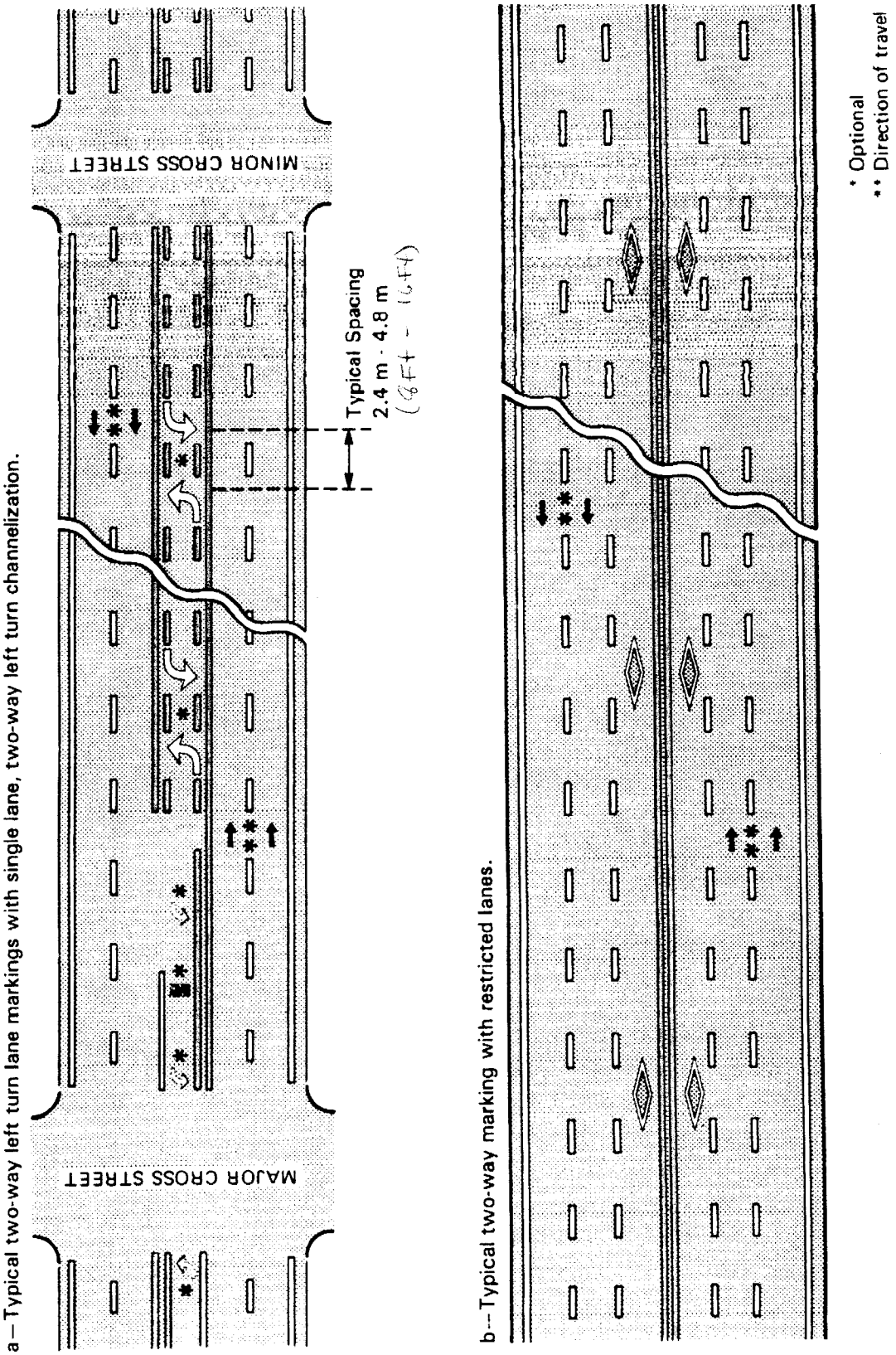


Figure 3-3. Typical two-way marking applications.

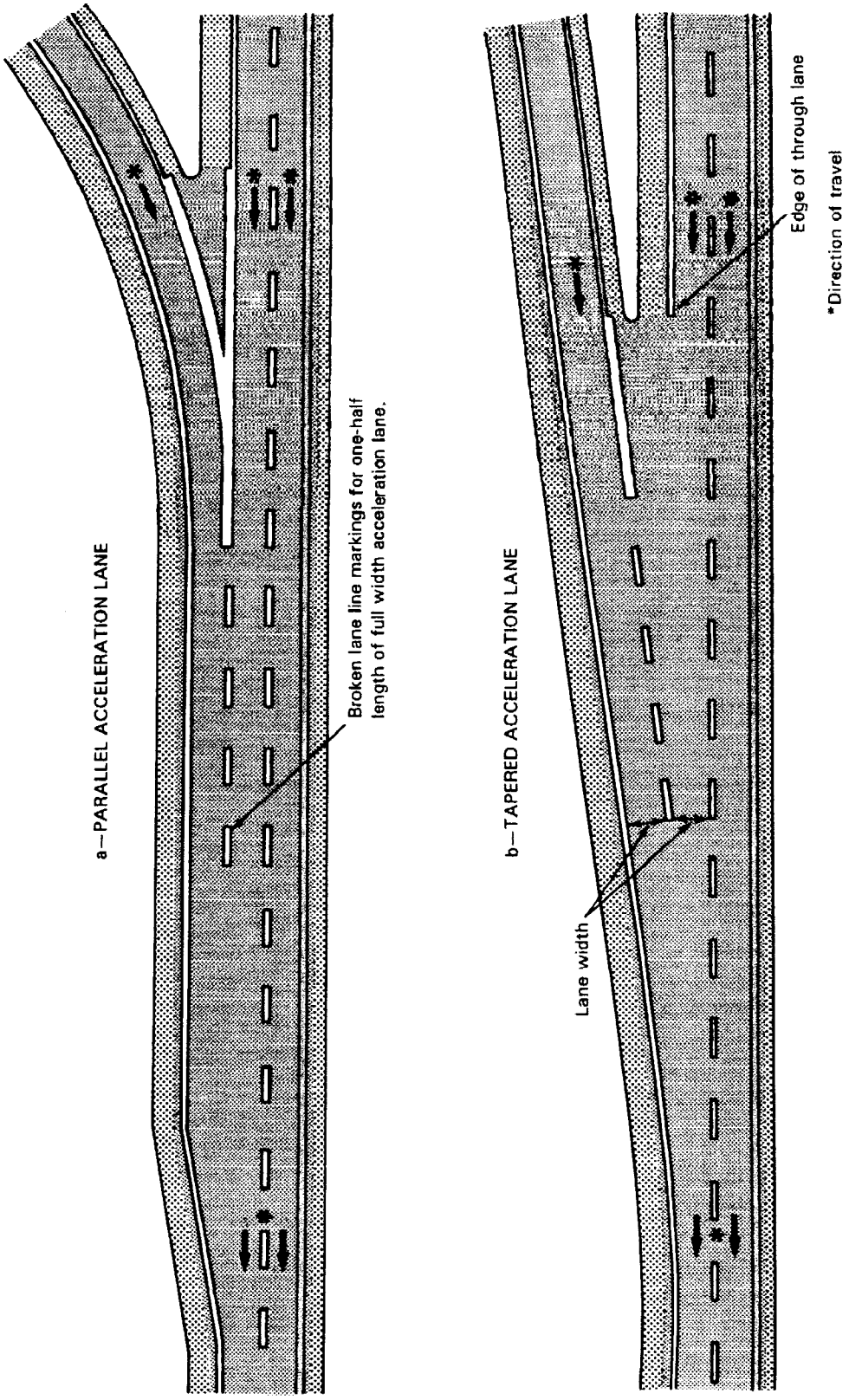


Figure 3-12. Typical entrance ramp markings.

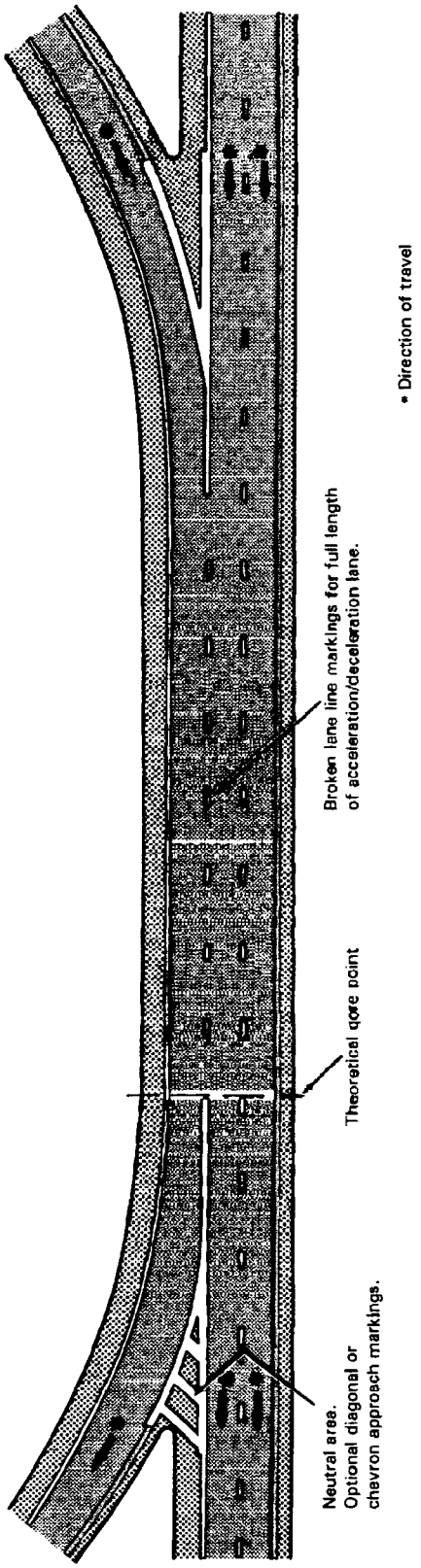


Figure 3-12c. Typical cloverleaf loop ramp markings.

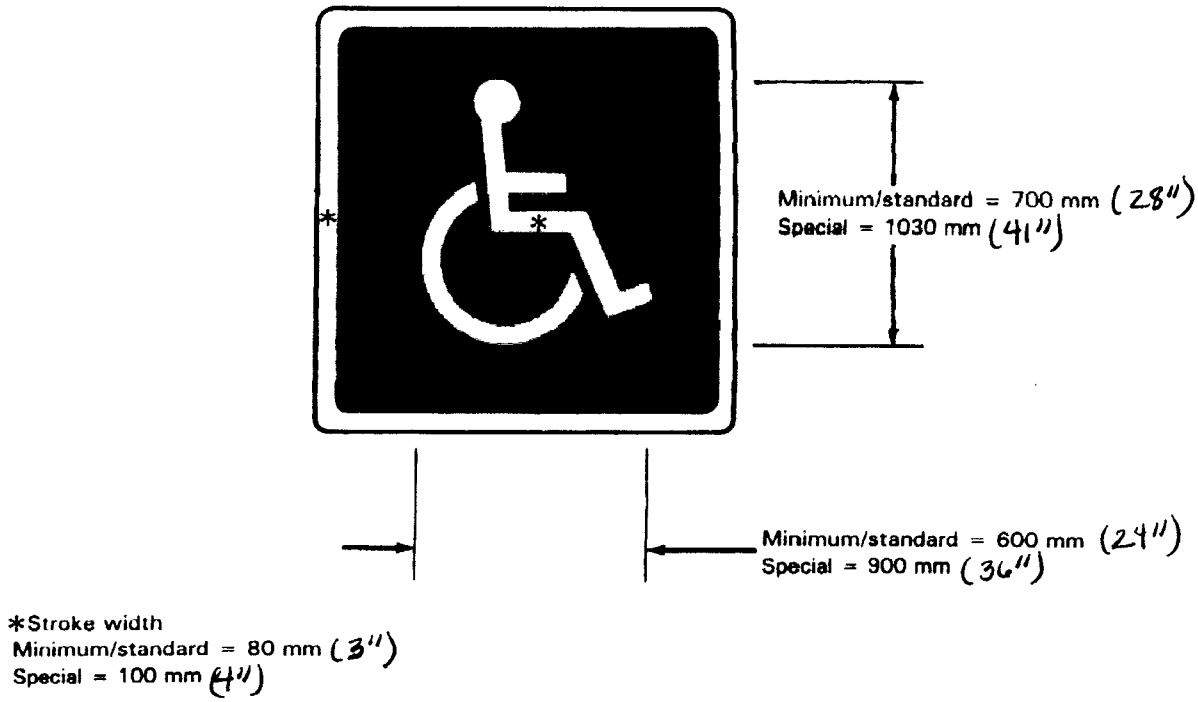


Figure 3-17. International symbol of access parking space marking with blue background and white border otions.

Figure 3-18. Typical elongated letters for pavement marking.

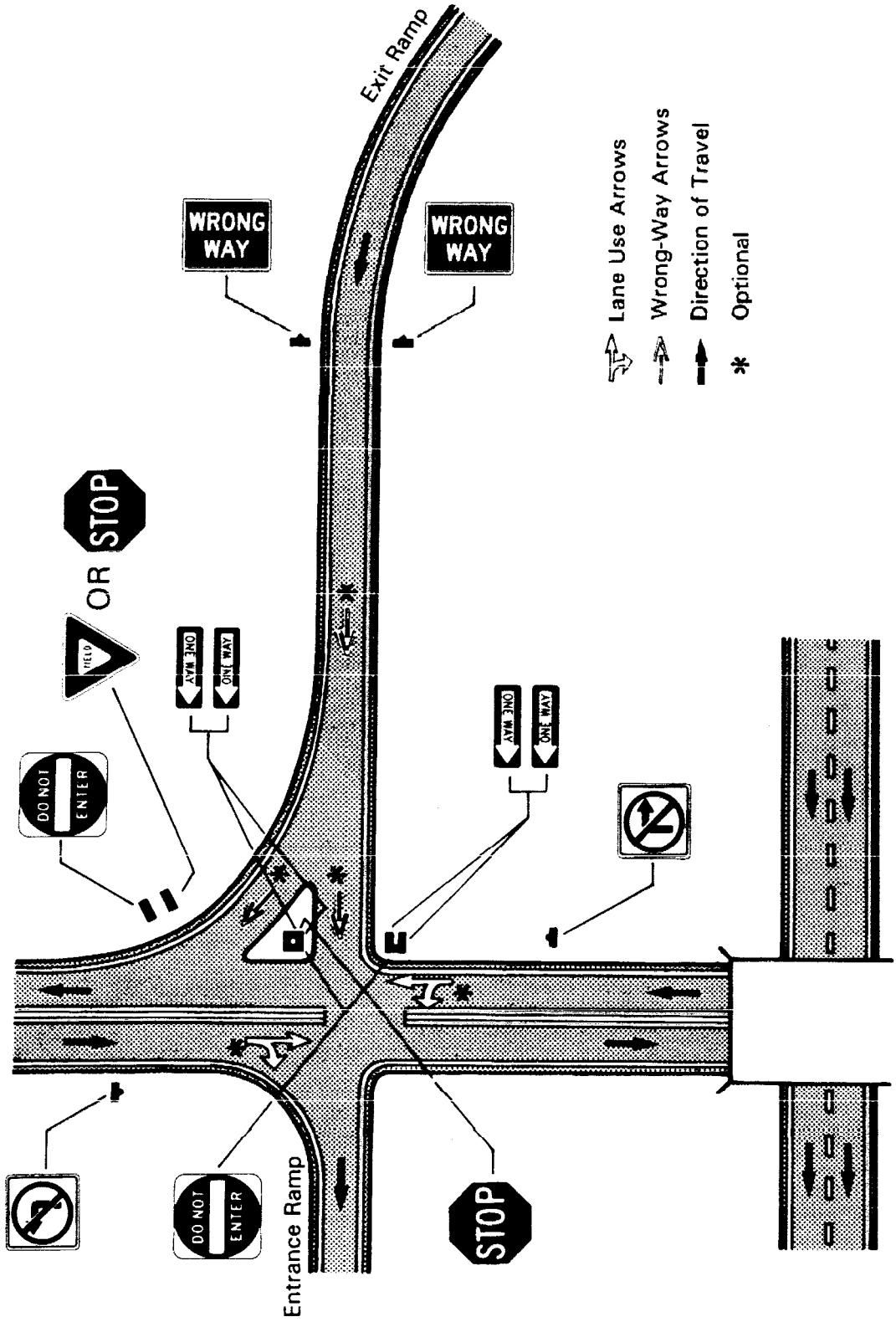


Figure 3-21a. Arrow markings at exit ramp terminals to deter wrong-way entry (Modify as appropriate for 4-lane crossroads).

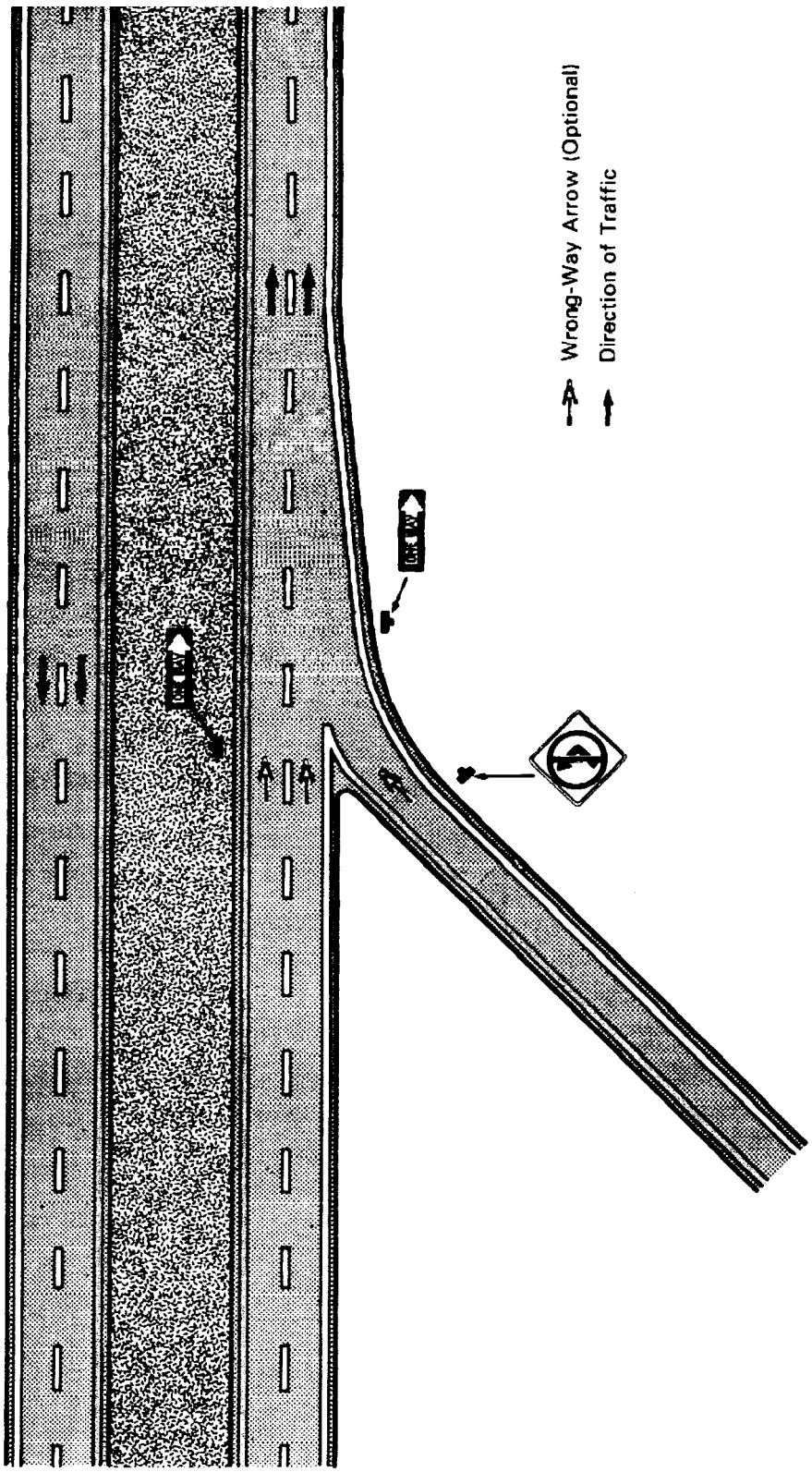


Figure 3-21b. Arrow markings at entrance ramp terminals where design does not clearly indicate the direction of flow.

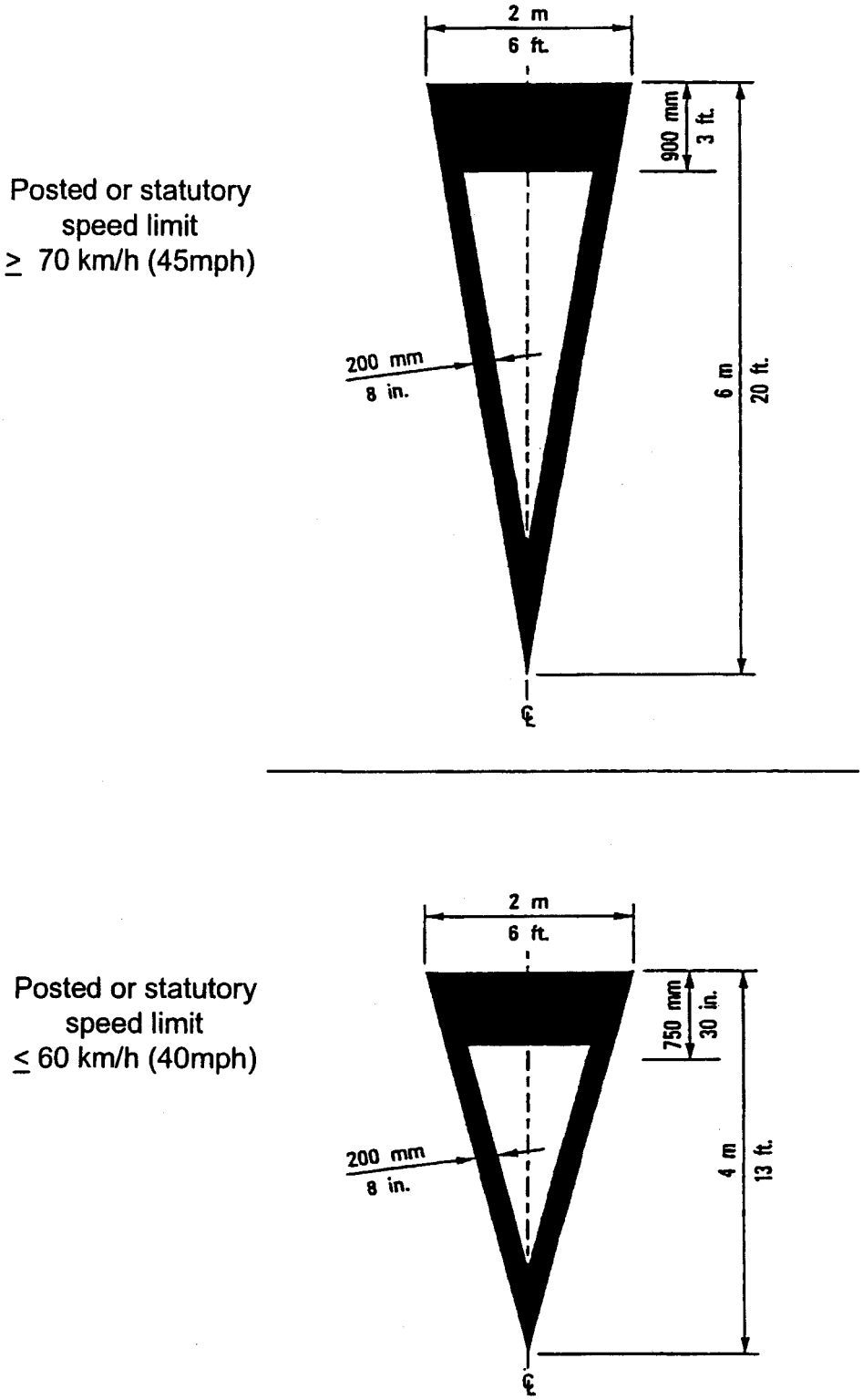


Figure 3-25. Typical Yield Ahead Triangle Symbols.

3B.13 Preferential Lane Word and Symbol Markings

Standard:

When a lane is assigned full or part time to a particular class or classes of vehicles, preferential lane markings shall be used.

Signs or signals shall be used with preferential lane word or symbol markings

All preferential lane word and symbol markings shall be white.

all preferential lane word and symbol markings shall be positioned laterally in the center of the preferred-use lane.

Support:

Preferential lanes may be designated to identify a wide variety of special uses. This could include, but is not limited to HOV (High Occupancy Vehicle) lanes, bicycle lanes, bus only lanes, taxicab only lanes, etc.

Standard:

Where a preferential lane use is established, the preferential lane shall be marked with one of the following symbol or word markings for the preferential lane use specified;

- HOV lane, the preferential lane use marking for HOV lanes shall consist of white lines formed in a diamond shape. The diamond shall be at least 750 mm (2.5 ft) wide and 3.6m (12 ft) in length. The lines shall be at least 150 mm (6 in) in width.
- Bicycle lane; the preferential lane use marking for a bicycle lane shall consist of a bicycle symbol or the word marking ''BIKE LANE.'' (See Section 9C, Markings, and Figures 9–4 through 9–9).
- Bus Only Lane; the preferential lane use markings for a busses only lane shall consist of the word markings ''BUS ONLY'' (See Section 3B.12).
- Taxi Only Lane; the preferential lane use marking for a taxi only lane shall consist of the word markings ''TAXI ONLY'' (See Section 3B.12).
- Other preferential lane use marking shall be identified in accordance with Section 3B.12.

Guidance:

Engineering judgement should determine the need for supplemental devices such as tubular markers, traffic cones, or flashing lights.

SUPPORT:

The spacing of the marking is an engineering judgement based on prevailing speed, block lengths, distance form intersections and other factors that affect clear communication to the road user. Markings spaced as close as 24 m (80 ft) apart might be appropriate on city streets, while markings spaced 300 m (1,000 ft) may be appropriate for freeways.

The vehicle occupancy requirements established for an HOV lane may be included in sequence after the diamond symbol. The word message ''HOV'' may be used in lieu of the diamond symbol.

3B.15 Curb Markings

Support:

Curb markings are most often used to indicate parking regulations or to delineate the curb.

Standard:

Signs shall be used with curb markings those areas where curb markings are frequently obliterated by snow and ice accumulation.

Where curbs are marked, the colors shall conform to the general principles of markings (Section 3A.5).

Guidance:

When curb markings are used without signs to convey parking regulations, a legible word marking regarding the regulation should be placed on the curb. For example, ''No Parking,'' or ''No Standing.''

Retroreflective solid yellow marking should be placed on paved median noses and the curbs of islands that are located in the line of traffic flow where the paved median nose or the curb serves to channel traffic to the right of the obstruction.

Retroreflective solid white marking should be used when traffic may pass on either side of the island.

Option: Local authorities may prescribe special colors for curb markings to supplement standard signs for parking regulation.

Support:

It is usually advisable to establish parking regulations by installing standard signs (Sections 2B.31, 2B.32 and 2B.33) because certain curb markings such as white and yellow curb markings are often used only for curb delineation and visibility purposes.

Where the curbs of the islands become parallel to the direction of traffic flow it is not necessary to mark the curbs unless an engineering study indicates the need for this type of delineation.

Curbs at openings in a continuous median island need not be marked unless an engineering study indicates the need for this type of marking.

3B.16 Preferential Lane Longitudinal Markings for Motorized Vehicles

Standard:

Preferential lane longitudinal markings for motorized vehicles shall be marked with the appropriate word or symbol pavement markings in accordance with Section 3B.13.

Support:

Preferential lanes can take many forms depending on the level of usage and the design of the facility. They may be physically separated from the other travel lanes by a barrier, median, or painted neutral area, or they may be concurrent with other travel lanes and be separated only by longitudinal pavement markings. Further, physically separated preferential lanes may operate in the same direction or be reversible.

Preferential lane may be operated either full-time (24 hours per day on all days), for extended periods of the day, or part-time (restricted usage during specific hours on specified days).

Standard:

The following four sections are presented in tabular form in Table 3–2:

2. Physically separated, non-reversible preferential lane; longitudinal pavement markings for preferential lane physically separated from the other travel lanes by a barrier, median, or painted neutral area shall consist of a single normal solid yellow line at the left edge of the travel lane(s), a single normal solid white line at the right edge of the travel lane(s), and if there are two or more preferential lanes, the travel lanes shall be separated with a normal broken white line. (See Figure 3.23a).

3. Physically separated, reversible preferential lane; longitudinal pavement markings for preferential lane shall consist of a single normal solid white line at both edges of the travel lane(s), and if there are two or more preferential lanes, the travel lanes shall be separated with a normal broken white line. (See Figure 3.23(a)).

4. Concurrent flow (left side) preferential lane; longitudinal pavement markings for a full-time or part-time preferential lane on the left side of the other traveled lanes, shall consist of a single normal solid yellow line at the left edge of the preferential travel lane(s) and one of the following at the right edge of the preferential travel lane(s):

a. a double solid wide white line where crossing is prohibited; see Figure 3–23(b);

b. a single solid wide white line where crossing is discouraged; see Figure 3–23(c);

c. a single broken wide white line where crossing is permitted; see Figure 3–23(d).

If there are two or more preferential lanes, the travel lanes shall be separated with a normal broken white line.

4. Concurrent flow (right side) preferential lane; longitudinal pavement markings for a full-time or part-time preferential lane on the right of the other travel lanes, shall consist of a single normal solid white line at the right edge of the preferential travel lane(s) if warranted and one of the following at the left edge of the preferential travel lane(s):

a. a double solid wide white line where crossing is prohibited; see Figure 3–23(b);

b. a single solid wide white line where crossing is discouraged; see Figure 3–23(c);

c. a single broken wide white line were crossing is permitted, see Figure 3–23(d);

d. a single dotted normal white line where crossing is permitted by any vehicle to perform a right turn maneuver; see Figure 3–23(e).

If there are two or more preferential lanes, the travel lanes shall be separated with a normal broken white line.

Guidance:

When concurrent flow preferential lanes and other travel lanes are separated by more than 1.2 m (4 ft) chevron markings should be placed in the neutral area. The chevron spacing should be 30 m (100 ft) or greater.

For full time or part-time concurrent flow preferential lanes, the spacing or skip pattern of the single broken wide white line may be reduced. The width of the single broken wide white line may also be increased.

TABLE 3–2. STANDARD LANE MARKINGS

Types of preferential lane		Longitudinal lane lines		
		Left edge line	Right edge line	2+ Lane centerline
Physically separated.	Non-reversible	Single normal solid yellow line	Single normal solid white line	Travel lanes shall be separated with a normal broken white line
	Reversible	Single normal solid white line at both edges	Single normal solid white line at both edges.	
Concurrent flow.	Left Side	Single normal solid yellow line at left edge ...	A double solid wide white line where crossing is prohibited; (See Figure 3–23b)..	
		.....	A single solid wide white line where crossing is discouraged; (See Figure 2–23c)..	
		.....	A single broken wide white line where crossing is permitted; (See Figure 3–23e)..	
	Right Side	A double solid wide white line where crossing is prohibited; (See figure 3–23e)..	Single normal solid white line at the right edge.	
		A single solid wide white line where crossing is discouraged; (See Figure 3–23e..		
		A single broken wide white line where crossing is permitted; (See Figure 3–23e)..		
		A single dotted normal white line where crossing is permitted for any vehicle to perform a right turn maneuver (See figure 3–23e)..		

The standard lane markings listed in this table is provided in a tabular format for reference. This information is also described in the second standard in Section 3B.16.

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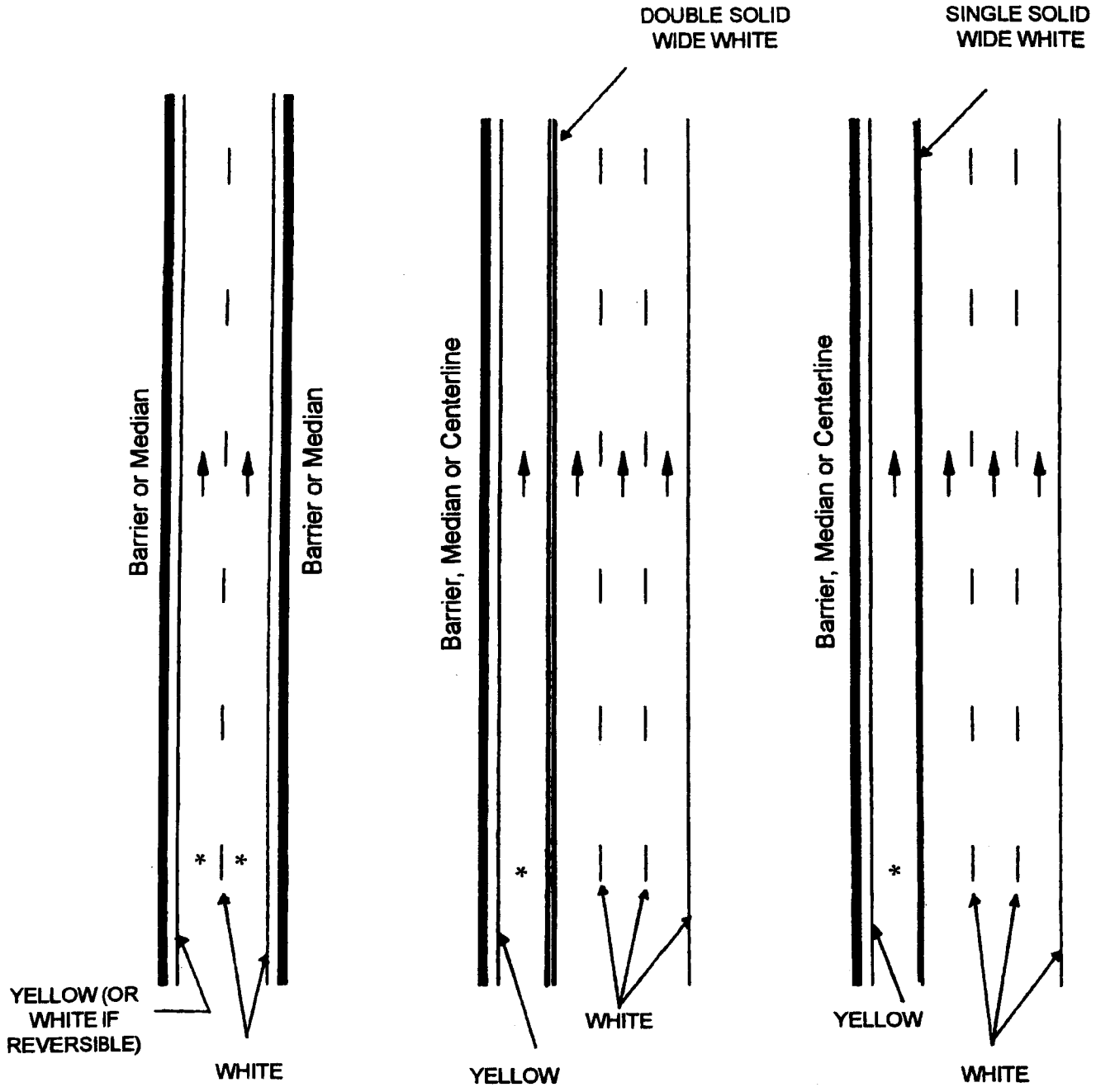


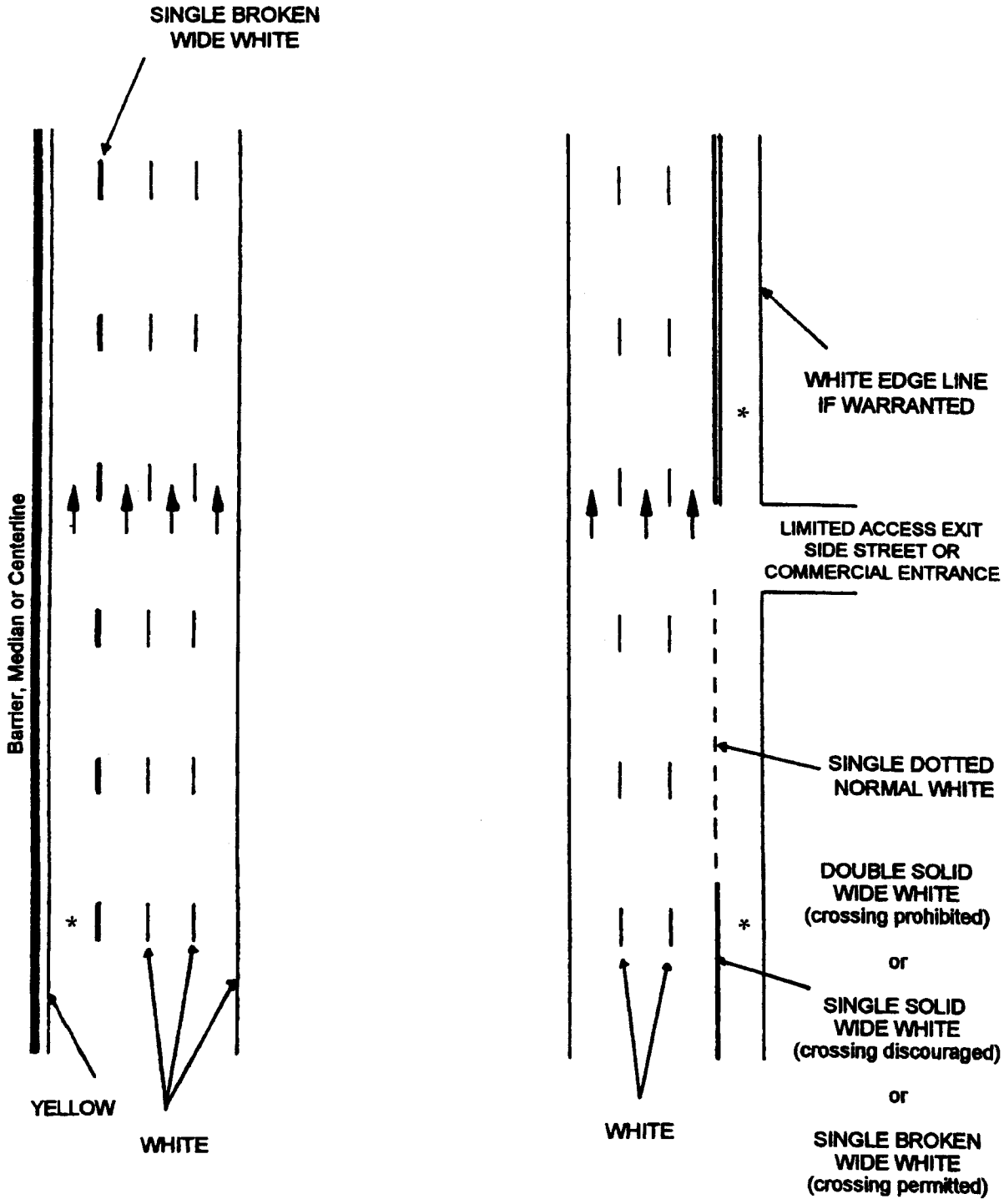
* - Applicable symbol or word

a - Physically separated permanent lanes(s)

b – Full-time concurrent lane(s) where enter/exit movements are PROHIBITED

c – Concurrent lane(s) where enter/exit movements are DISCOURAGED

Figure 3-23. Markings for Preferential Lanes for Motorized Vehicles



* – Applicable symbol or word

d – Concurrent lane(s) where enter/exit movements are ALLOWED

e – Right side concurrent lane(s)

Figure 3-23. Markings for Preferential Lanes for Motorized Vehicles (Continuation)

3B.17 Markings for Roundabouts

Support:

Roundabouts are distinctive circular roadways with the following three critical characteristics:

1. a requirement to yield at entry which gives a vehicle on the circular roadway the right-of-way; and

2. a deflection of the approaching vehicle around the central island; and

3. a flare or widening of the approach to match the width of the circular roadway.

Typical markings for roundabouts are shown in Figure 3–26 and 3–26a.

Option: A yellow edge line may be placed around the inner (left) edge of the circular roadway.

Guidance:

A white line should be used on the outer (right) side of the circular roadway as follows: a solid line along the splitter island and a dotted line across the lane(s) entering the roundabout.

Edge line extensions should not be placed across the exits from the circular roadway.

Where crosswalk markings are used, these markings should be located a minimum of 8m (25 ft) upstream for the yield line, or, if none, from the dotted white line.

Option: Lane lines may be used on the circular roadway when there is more than one lane.

3B.18 Markings for Other Circular Intersections

Support:

Other circular intersections include but are not limited to rotaries, traffic circles, and residential traffic calming designs.

Option: The markings shown in Figures 3–26 and 3–26a may be used in other circular intersections when engineering judgement indicates that their presence will benefit drivers and/or pedestrians.

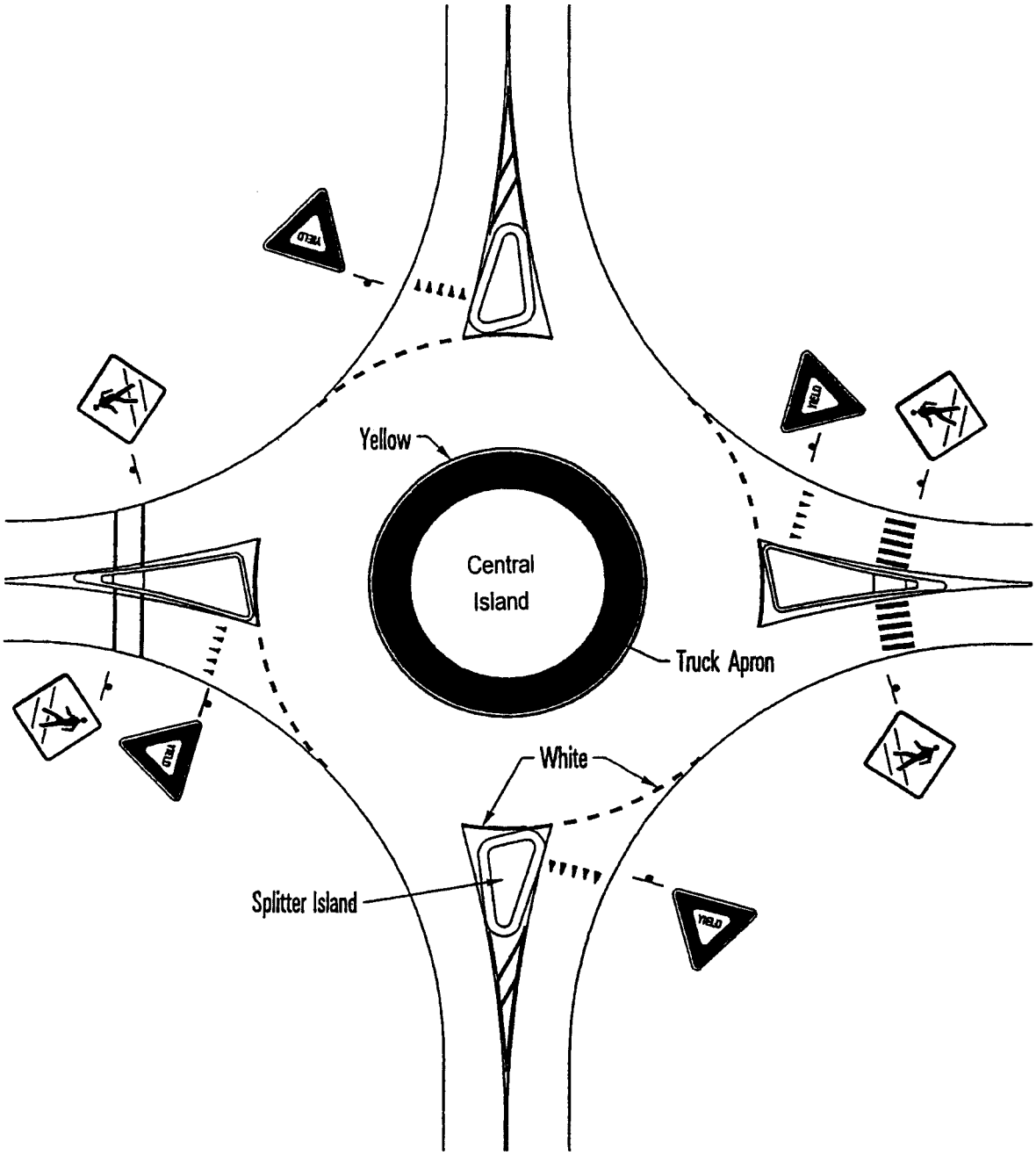


Figure 3-26. Typical Marking for Roundabouts.

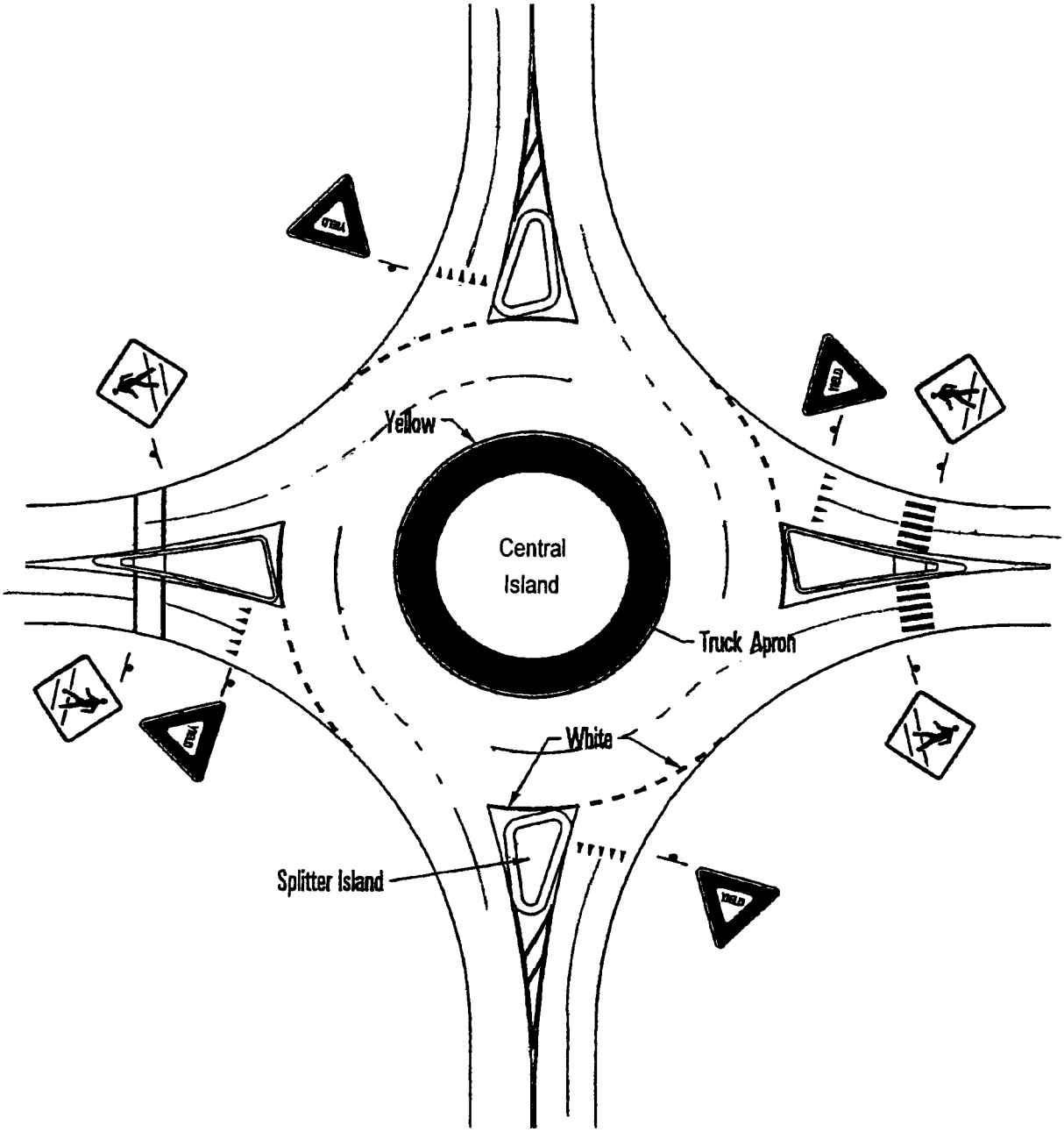


Figure 3-26a Typical Marking for Roundabouts.

3B.19 Speed Hump Markings

Standard:

Speed hump markings are a special white marking placed on a speed hump to identify its location.

Option: Speed humps, except those used for crosswalks, may be marked in accordance with Figure 3–27. The markings shown in Figure 3–28 may be used where the speed hump also functions with a crosswalk, or speed table.

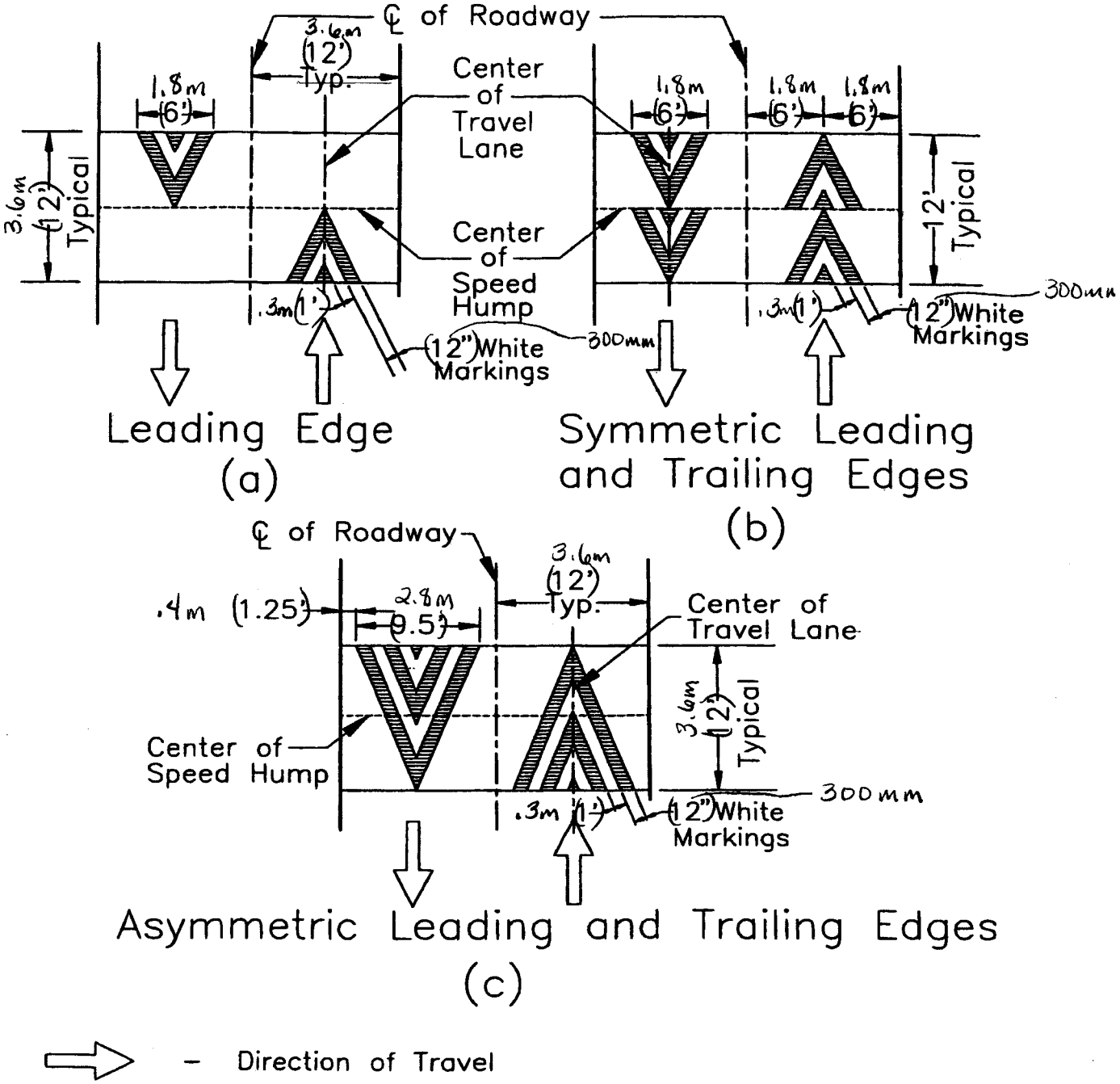


FIGURE 3-27. Pavement Markings for Speed Humps

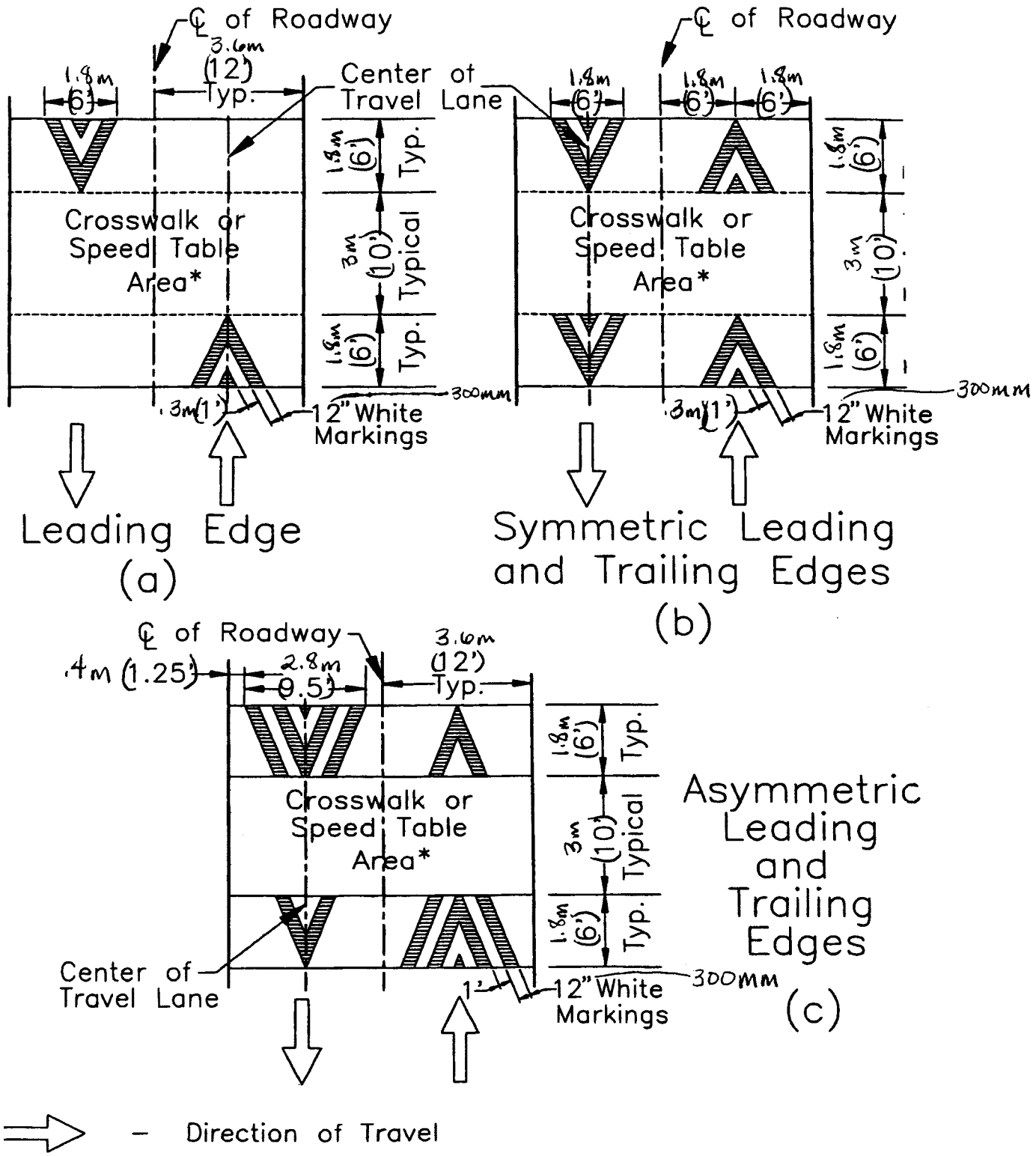


FIGURE 3-28. Pavement Markings for Speed Humps with Crosswalks

3B.20 Advance Speed Hump Marking

Standard:

Advance speed hump markings are a special white marking placed in advance of speed humps or other engineered, vertical roadway deflections such as dips.

Option: Advance speed hump markings may be used in advance of an engineered, vertical roadway deflection where added visibility is desired or where such deflection is not expected. (Figure 3–29)

Advance pavement wording such as ''BUMP'' or ''HUMP'' (see section 3B.12) may be used on the approach to a speed hump either alone or in conjunction with advance speed hump markings.

Guidance:

If used, advance speed hump markings should be installed in each approach lane.

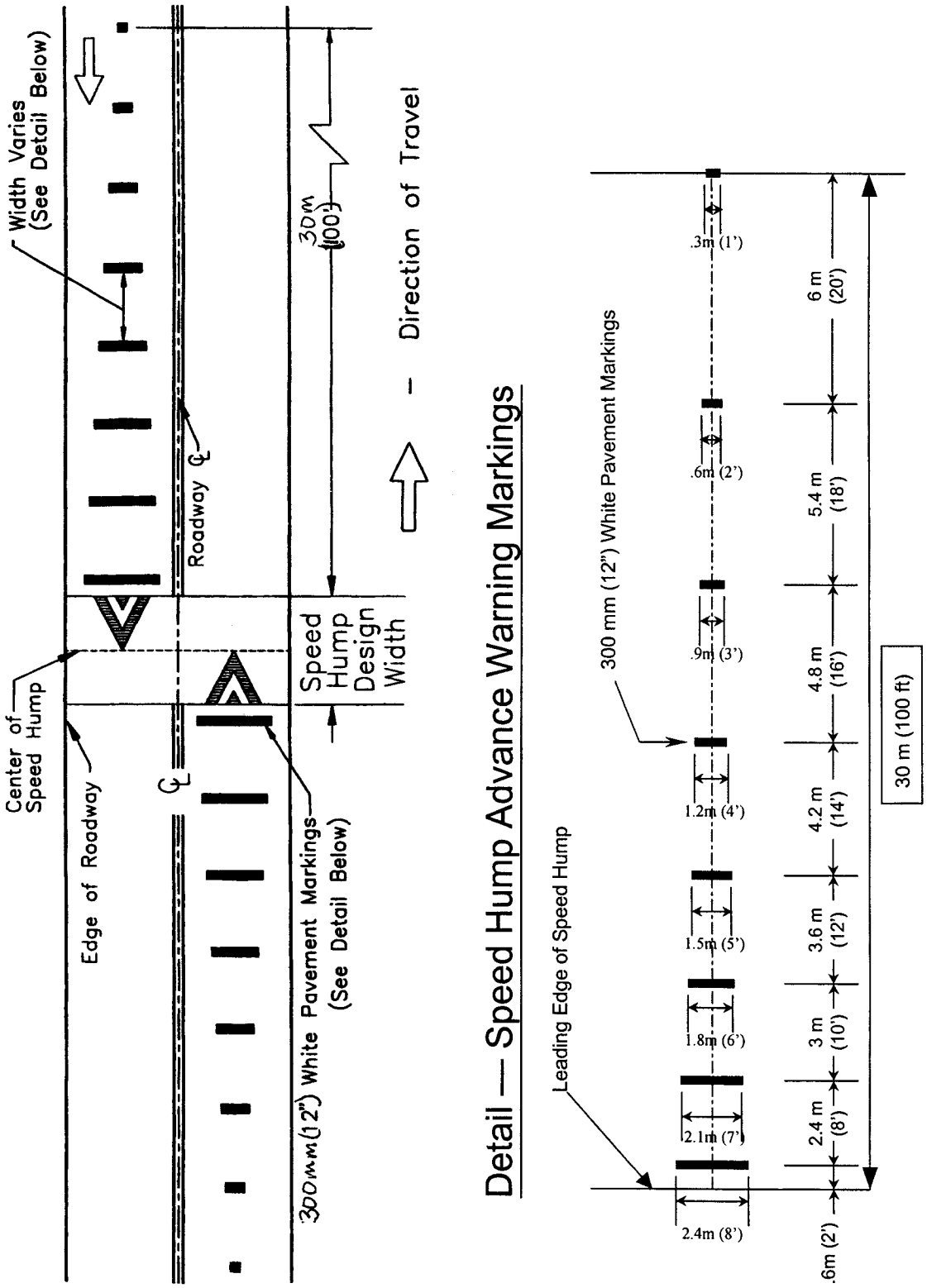


FIGURE 3-29. Advance Warning Markings for Speed Humps

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4B.2 Basis of Installation or Removal of Traffic Control Signals

Guidance:

The selection and use of highway traffic signals should be based on an engineering study of roadway, pedestrian, bicycle, and traffic conditions.

If changes in traffic patterns eliminate the need for a highway traffic signal, consideration should be given to removing it and replacing it with appropriate alternative traffic control devices.

Option: If the engineering study indicates that the traffic control signal is no longer justified, removal may be completed using the following steps:

a. Determine the appropriate traffic control to be used after removal of the signal.

b. Remove any sight-distance restrictions as necessary.

c. Inform the public of the removal study, for example by installing an information sign (or signs) with the legend TRAFFIC SIGNAL UNDER STUDY FOR REMOVAL at the signalized location in a position where it is visible to all road users.

d. Flash or cover the signal heads for a minimum of 90 days, and install the appropriate stop control or other traffic control devices.

e. Remove the signal if the engineering data collected during the removal study period confirms that the signal is no longer needed. Instead of total removal of the traffic control signal, the poles and cables may remain in place for a maximum of one year after removal of the signal heads for continued analysis.

Support:

A careful analysis of traffic operations, pedestrian needs, and other factors at a large number of signalized and unsignalized intersections, coupled with the judgment of experienced engineers, has provided a series of warrants, described in Section 4C, that define the minimum conditions under which installing highway traffic signals may be justified.

4C.1 Studies and Factors for Justifying Traffic Control Signals

Standard:

A traffic engineering study of traffic conditions, pedestrian characteristics, and physical characteristics of the location shall be performed to determine whether installation of a traffic control signal is justified at a particular location.

The investigation of the need for a traffic control signal shall include an analysis of the applicable factors contained in the following traffic signal warrants and other factors related to existing operation and safety at the study location:

Warrant 1—Eight-hour vehicular volume.
Warrant 2—Four-hour vehicular volume.
Warrant 3—Peak hour.
Warrant 4—Pedestrian volume.
Warrant 5—School crossing.
Warrant 6—Coordinated signal system.
Warrant 7—Accident experience.
Warrant 8—Roadway network.

The satisfaction of a traffic signal warrant or warrants shall not in itself require the installation of a traffic control signal.

Guidance:

A traffic control signal should not be installed unless one or more of the factors described in this section are met.

A traffic control signal should not be installed unless an engineering study indicates that installing a traffic control signal will improve the overall safety and/or operation of the intersection.

A traffic control signal should not be installed if it will seriously disrupt progressive traffic flow.

The study should consider the effects of the right-turn vehicles from the minor-roadway approaches. Engineering judgment should be used to determine what, if any, portion of the right-turn traffic is subtracted from the minor-roadway traffic count when evaluating the count against the above warrants.

Engineering judgment should also be used in applying various traffic signal warrants to cases where approaches consist of one lane plus one left-turn or right-turn lane. The site-specific traffic characteristics dictate whether an approach should be considered one lane or two lanes. For example, for a roadway approach with one lane (for through and right-turning traffic) plus a left-turn lane, engineering judgment could indicate that it should be considered a one-lane approach if the traffic using the left-turn lane is minor. In such a case, the total traffic volume approaching the intersection should be applied against the warrants as a one-lane approach. The approach should be considered two lane if traffic splits in half and the left-turn lane is sufficient length to accommodate all left-turn vehicles.

Similar judgment and rationale should be applied to a roadway approach with one lane plus a right-turn lane. In this case, the degree of conflict of minor-roadway right-turn traffic with traffic on the major roadway should be considered. Thus, right-turn traffic should not be included in the minor-roadway volume if the movement enters the major roadway with minimal conflict. The approach should be evaluated as a one-lane approach, and only the traffic volume in the through/left-turn lane considered.

At a location that is under development or construction and where it is not possible to obtain a traffic count that would represent future traffic conditions, vehicular and pedestrian hourly volumes should be estimated as part of an engineering study for comparison with traffic signal warrants.

For warrant analysis, a location with a wide-median should be considered as one intersection.

Option: Engineering study data may include the following:

a. The number of vehicles entering the intersection in each hour from each approach during 12 consecutive hours of an average day. The 12 hours selected should contain the greatest percentage of the 24-hour traffic volume.

b. Vehicular volumes for each traffic movement from each approach, classified by vehicle type (heavy trucks, passenger cars and light trucks, public-transit vehicles, and, in some locations, bicycles), during each 15-minute period of the two hours in the morning and two hours in the afternoon during which total traffic entering the intersection is greatest.

c. Pedestrian volume counts on each crosswalk during the same periods as the vehicular counts in paragraph b above and during hours of highest pedestrian volume. Where people who are young, elderly, physically challenged, have visual disabilities, or need special consideration, the pedestrians and their crossing times may be classified by general observation.

d. Information about nearby facilities and activity centers that serve the elderly, people with disabilities, and/or requests from people with disabilities for accessible crossing improvements along this route. These people may not be adequately reflected in the pedestrian volume count if the lack of a signal restrains their mobility.

e. The posted or statutory speed limit or the 85th-percentile speed on the uncontrolled approaches to the location.

f. A condition diagram showing details of the physical layout, including such features as inter-sectional geometrics, channelization, grades, sight-distance restrictions, bus stops and routings, parking conditions, pavement markings, roadway lighting, driveways, nearby railroad crossings, distance to nearest highway traffic signals, utility

poles and fixtures, and adjacent land use.

g. A collision diagram showing accident experience by type, location, direction of movement, severity, time of day, date and day of week for at least one year.

The following data, which are desirable for a more precise understanding of the operation of the intersection, may be obtained during the periods specified in paragraph b above:

a. Vehicle-seconds delay determined separately for each approach.

b. The number and distribution of gaps in vehicular traffic on the major roadway when minor-roadway traffic finds it difficult to use the intersection safely.

c. The posted or statutory speed limit or the 85th-percentile speed on controlled approaches at a point near to the intersection but unaffected by the control.

d. Pedestrian delay time for at least two 30-minute peak pedestrian delay periods of an average weekday or like periods of a Saturday or Sunday.

4D.3 Provisions for Pedestrians

Support:

Chapter 4E contains additional information regarding pedestrian signals.

Standard:

The design and operation of traffic control signals shall take into consideration the needs of pedestrians, including those with disabilities, as well as vehicular traffic.

If engineering judgment indicates the need for pedestrian provisions for a given pedestrians or other non-motorist movement, signal faces conveniently visible to pedestrians shall be provided by pedestrian signal heads or a signal face for an adjacent vehicular movement.

Guidance:

Safety considerations should include the installation, where appropriate, of accessible pedestrian signals that provide information in non-visual format (including audible tones, verbal messages, and/or vibrotactile information). Provisions for accessible signals are presented in Sections 4E.6 and 4E.8.

Where pedestrian movements regularly occur but are low in volume, pedestrians should be provided with sufficient time to cross the roadway by adjusting the traffic control signal operation and timing to continually provide sufficient crossing time or by providing pedestrian detectors.

Option: If it is desirable to prohibit certain pedestrian movements at a traffic control signal, a NO PEDESTRIAN CROSSING sign (R9–3a, R9–3) may be used. (see Section 2B.36.)

4D.4 Meaning of Vehicle Signal Indications

Support:

The Uniform Vehicle Code is the primary source for the standards for the meaning of vehicle signal indications to both vehicle operators and pedestrians set forth below, and the standards for the meaning of separate pedestrian signal indications as set forth in Section 4D.2.

Standard:

Unless otherwise determined by law, the following meanings shall be given to highway traffic control signal indications for vehicles and pedestrians:

a. Steady green indications shall have the following meanings:

(1) Traffic, except pedestrians, facing a CIRCULAR GREEN indication may proceed straight through or turn right or left except as such movement is modified by lane-use signs, turn prohibition signs, lane markings, or roadway design. But vehicular traffic, including vehicles turning right or left, shall yield the right-of-way to other vehicles, and to pedestrians lawfully within the intersection or an adjacent crosswork, at the time such signal indication is exhibited.

(2) Traffic, except pedestrians, facing a GREEN ARROW indications, shown alone or in combination with another indication, may cautiously enter the intersection only to make the movement indicated by such arrow or such other movement as is permitted by other indications shown at the same time. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(3) Unless otherwise directed by a pedestrian signal head, pedestrians facing any green indication, except when the sole green indication is a turn arrow, may proceed across the roadway within any marked or unmarked crosswalk.

b. Steady yellow indications shall have the following meanings:

(1) Traffic, except pedestrians, facing a steady CIRCULAR YELLOW or YELLOW ARROW indication is thereby warned that the related green movement is being terminated or that a red indication will be exhibited immediately thereafter, when vehicular traffic shall not enter the intersection.

(2) Pedestrians facing a steady CIRCULAR YELLOW or YELLOW ARROW indication, unless otherwise directed by a pedestrian signal head, are thereby advised that there is insufficient time to cross the roadway before a red indication is shown, and no pedestrian shall then start to cross the roadway.

c. Steady red indications shall have the following meanings:

(1) Vehicular traffic facing a steady CIRCULAR RED indication alone shall stop at a clearly marked Stop line, but if there is no stop line, traffic shall stop before entering the crosswalk on the near side of the intersection, or if there is no crosswalk, then before entering the intersection, and shall remain standing until an indication to proceed is shown, or as provided below.

Except when a sign is in place prohibiting a turn on red, vehicular traffic facing a CIRCULAR RED indication may enter the intersection to turn right, or to turn left from a one-way roadway into a one-way roadway, after stopping. Such vehicular traffic shall yield the right-of-way to pedestrians lawfully within an adjacent crosswalk and to other traffic lawfully using the intersection.

(2) Unless otherwise directed by a pedestrian signal head, pedestrians facing a steady CIRCULAR RED indication alone shall not enter the roadway.

d. Flashing signal indications shall have the following meanings:

(1) Flashing yellow—When a yellow lens is illuminated with rapid intermittent flashes, drivers of vehicles may proceed through the intersection or past such indication only with caution.

(2) Flashing red—When a red lens is illuminated with rapid intermittent flashes, drivers of vehicles shall stop at a clearly marked stop line, but if there is no stop line, they shall stop, before entering the crosswalk on the near side of the intersection, or if there is no crosswalk, at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. The right to proceed shall be subject to the rules applicable after making a stop at a STOP sign.

(3) Flashing YELLOW ARROW indications have the same meaning as the corresponding flashing circular indication, except that they apply only to drivers of vehicles intending to make the movement indicated by the arrow.

4D.5 Application of Steady Signal Indications

Standard:

When a traffic signal installation is being operated in a steady (stop-and-go)

mode, at least one lens in each signal face shall be illuminated at any given time.

A signal face(s) that controls a particular vehicular movement during any interval of a cycle shall control that same movement during all intervals of the cycle.

Steady signal indications shall be applied as follows:

a. A steady CIRCULAR RED indication

(1) Shall be displayed when it is intended to prohibit traffic, except pedestrians directed by a pedestrian signal head, from entering the intersection or other controlled area. Turning after stopping is permitted as stated in Section 4D.4(c)(1).

(2) Shall be displayed with the appropriate GREEN ARROW indications when it is intended to permit traffic to make a specified turn and to prohibit traffic from proceeding straight ahead through the intersection or other controlled area, except in exclusive mode turn signal faces.

b. A steady CIRCULAR YELLOW indication

(1) Shall be displayed following a CIRCULAR GREEN indication in the same signal face.

(2) Shall not be displayed in conjunction with the change from the CIRCULAR RED indication to the CIRCULAR GREEN indication.

(3) Shall be followed by the display of a CIRCULAR RED indication except that, when entering preemption operation, the display of the previous CIRCULAR GREEN indication shall be permitted following a CIRCULAR YELLOW indication. (See Section 4D.13.)

c. A steady CIRCULAR GREEN indication shall be displayed only when it is intended to permit traffic to proceed in any direction that is lawful and practical.

d. A steady YELLOW ARROW indication

(1) Shall be displayed in the same direction as a GREEN ARROW indication following a GREEN ARROW indication in the same signal face, unless the GREEN ARROW indication and a CIRCULAR GREEN indication terminate simultaneously in the same signal face.

(2) Shall not be displayed when any conflicting vehicular movement has a green or yellow indication or any conflicting pedestrian movement has a WALK or flashing DONT WALK indication. (See Section 4D.9.)

(3) Shall be terminated by a CIRCULAR YELLOW indication or a CIRCULAR RED indication except

(a) When entering preemption operation, the display of the previous GREEN ARROW indication shall be permitted following a YELLOW ARROW indication.

(b) When the movement controlled by the arrow is to continue as permitted during a subsequent CIRCULAR GREEN indication.

e. A steady GREEN ARROW indication

(1) Shall be displayed only to allow vehicular movements, in the direction indicated, that are not in conflict with other vehicles moving on a green or yellow indication or with pedestrians crossing in conformance with a WALK or flashing DONT WALK indication. (see Section 4D.9.)

(2) Shall be displayed on a signal face that controls a left-turn movement when said movement is not in conflict with other vehicles moving on a green or yellow indication or with pedestrians crossing in conformance with a WALK or flashing DONT WALK indication. (See Section 4D.9.)

(3) Shall not be required on the stem of T intersections or for turns from one-way roadways.

Option: Steady YELLOW ARROW, and GREEN ARROW indications, if not otherwise prohibited, may be used in lieu of the corresponding circular indications at the following locations:

a. On an approach intersecting a one-way roadway.

b. Where certain movements are prohibited.

c. Where certain movements are physically impossible.

4D.6 Application of Steady Signal Indications For Left Turns

Support:

Left-turning traffic is controlled by one of four modes as follows:

a. Permissive Mode—turns made on the CIRCULAR GREEN indication after yielding to oncoming traffic and pedestrians.

b. Protected Mode—turns made only when the left-turn GREEN ARROW indication is displayed.

c. Protected/Permissive Mode—both modes occur on an approach during the same cycle.

d. Variable left-turn mode—the operating mode changes among the protected mode and/or the protected/permissive mode and/or the permissive mode.

Standard:

A leading protected-only left turn phase is one in which the GREEN ARROW, YELLOW ARROW, and CIRCULAR RED is given to vehicles turning left from a particular street before the CIRCULAR GREEN indication is given to the through movement on the same street.

Option:

A leading protected-only left turn phase may be considered if there are not a sufficient number of acceptable gaps for the left-turning movement.

Standard:

The required left-turn signal indication or indications shall be determined by the selected mode of left-turn operation, as follows:

a. Permissive Mode only—The signal indication for permissive mode left turns shall be identical to the signal indication for through traffic. A separate signal indication or signal face for left turns shall not be required.

b. Protected Mode only—At least one left-turn signal face shall be provided in addition to the two approach signal faces required in Section 4D.15 for the through movement. The left-turn signal face shall be capable of displaying one of the following sets of indications:

(1) GREEN and YELLOW left-turn ARROW indications and a CIRCULAR RED indication. Only one of the three lenses shall be illuminated at any given time. If the CIRCULAR RED indication would be readily visible to other traffic on the same approach, either a LEFT TURN SIGNAL sign (R10–10) or a visibility-limited CIRCULAR RED signal indication shall be used.

(2) CIRCULAR RED, CIRCULAR YELLOW, CIRCULAR GREEN, and left-turn GREEN ARROW indications. This four-section signal face shall be used only when the CIRCULAR GREEN and left-turn GREEN ARROW indications begin and terminate together. During each interval, the circular indications shall be the same as the indication on the signal face(s) for the adjacent through traffic.

c. Protected/Permissive Mode—A separate signal face is not required for the left turn, but, if provided, it shall be considered an approach signal face, and shall meet the following requirements:

(1) During the protected left-turn movement, the signal face shall simultaneously display:

a) a left-turn GREEN ARROW; and

b) a circular indication that is the same as the indication for the adjacent through lane on the same approach as the protected left-turn.

During the protected left-turn movement, the signal face for through traffic on the opposing approach shall simultaneously display a CIRCULAR RED indication.

(2) During the permissive left-turn movement, all signal faces on the

approach shall display the CIRCULAR GREEN indication.

(3) All signal faces on the approach shall simultaneously display the same color of circular indications to both through and left-turn road users.

(4) A supplementary sign shall not be required. If used, it shall be a LEFT TURN YIELD ON GREEN (symbolic green ball) sign (R10–12).

d. Variable left-turn mode—If the protected mode occurs during one or more periods of the day, and the permissive mode or the combined protected/permissive mode occurs during other periods of the day, the requirements of paragraphs a, b, and c above that are appropriate to that mode of operation shall be met subject to the following:

(1) Signal faces for the protected mode shall not be limited to three signal sections,

(2) The display of the CIRCULAR GREEN and CIRCULAR YELLOW indications shall not be required when operating in the protected mode.

(3) The left-turn GREEN ARROW and left-turn YELLOW ARROW indications shall not be displayed when operating in the permissive mode.

(4) A supplementary sign shall not be required. If used, both the LEFT TURN SIGNAL sign (R10–10) and the LEFT TURN YIELD ON GREEN (symbolic green ball) sign (R10–12) shall be provided.

4D.7 Application of Steady Signal Indications For Right Turns

Support:

Right-turning traffic is controlled by one or four modes as follows:

a. Permissive Mode—turns made on the CIRCULAR GREEN indication after yielding to pedestrians.

b. Protected mode—turns made only when the right-turn GREEN ARROW indication is displayed.

c. Protected Permissive Mode—both modes occur on an approach during the same cycle.

d. Variable Right-Turn Mode—the operating mode changes among the protected mode, the protected/permissive mode, and/or the permissive mode during different periods of the day.

Standard:

The required right-turn signal faces and operation shall be determined by the selected mode of right-turn operation, as follows:

a. Permissive Mode only—A separate signal indication or signal face for right turns shall not be required. The signal indication for permissive mode right turns shall be identical to the indication for adjacent through traffic, except that if the right turn is held to provide an exclusive pedestrian movement, a separate right-turn RED CIRCULAR indication shall be provided along with a RIGHT TURN SIGNAL sign, R10–10.

b. Protected Mode only—At least one right-turn signal face shall be provided in addition to the two approach signal faces required for the through movement in Section 4C–15. The right-turn signal face shall be capable of displaying one of the following sets of indications:

(1) GREEN and YELLOW right-turn ARROW indications and a CIRCULAR RED indication. Only one of three lenses shall be illuminated at any given time. If the CIRCULAR RED indication would be readily visible to other traffic movements on the same approach, either a RIGHT TURN SINGLE sign (R10–120) or a visibility-limited CIRCULAR RED signal indication shall be used; or

(2) CIRCULAR RED, CIRCULAR YELLOW, CIRCULAR GREEN, and right-turn GREEN ARROW indications. This four-section signal shall be used only when the CIRCULAR GREEN and left-turn GREEN ARROW indications begin and terminate together. During each interval, the circular indication shall be the same as the indication on the signal faces for adjacent through traffic.

c. Protected/Permissive Mode—A separate signal face is not required for the right turn, but, if provided, it shall be considered an approach signal face, and shall meet the following requirements.

(1) During the protected right-turn movement, the single face shall simultaneously display:

(a) a right-turn GREEN ARROW indication and

(b) a circular indication that is identical to the adjacent through lane indication on the same approach with the protected right turn.

(2) During the permissive right-turn movement, all signal faces on the approach shall display the CIRCULAR GREEN indication.

(3) All signal faces on the approach shall simultaneously display the same color of circular indications to both through and right-turn road users.

d. Variable right-turn mode—If the protected mode occurs during one or more periods of the day, and the permissive mode or the combined protected/permissive mode occurs during other periods of the day, the requirements of paragraphs a, b, and c above that are appropriate to that mode of operation shall be met subject to the following:

(1) Signal faces for the protected mode shall not be limited to three signal sections.

(2) The display of the CIRCULAR GREEN and CIRCULAR YELLOW indications shall not be required when operating in the exclusive mode.

(3) The right-turn GREEN ARROW and right-turn YELLOW ARROW indications shall not be displayed when operating in the permissive mode.

Additional appropriate signal indications or changeable message signs shall be used, if necessary, to meet these requirements.

4D.8 Prohibited Steady Signal Indications

Standard:

The following combinations of signal indications shall not be simultaneously displayed on any one signal face:

a. CIRCULAR GREEN with CIRCULAR YELLOW.

b. CIRCULAR RED with CIRCULAR YELLOW.

c. CIRCULAR GREEN with CIRCULAR RED.

d. Straight-through GREEN ARROW with CIRCULAR RED.

The above combinations shall not be simultaneously displayed in different signal faces on any one approach unless:

a. One of the signal faces is a turn signal controlling only a protected mode, and a RIGHT (LEFT) TURN SIGNAL sign (R10–10) (see Sections 4D.6 and 4D.7) is mounted adjacent to each such signal face.

b. The signal faces are shielded, hooded, louvered, positioned, or designed so that the combination is not confusing to approaching road users.

The straight-through, left-turn, and right-turn RED ARROWs and the straight-through YELLOW ARROW signal indications shall not be displayed on any signal face, either alone or in combination with any other indication.

4D.11 Application of Flashing Signal Indications

Standard:

The light source of a flashing signal indication shall be flashed continuously at a rate of not less than 50 nor more then 60 times per minute. The illuminated period of each flash shall be not less than half and not more than two-thirds of the total flash cycle.

Flashing indications shall comply with the requirements of other sections of this manual regarding shielding or positioning of the display of conflicting signal indications except that flashing yellow indications for through traffic

shall not be required to be shielded or positioned to prevent visual conflict for road users in separately-controlled turn lanes.

The following applications shall apply whenever a traffic control signal is operated in the flashing mode:

a. Each approach or protected mode turn movement that is controlled during steady mode (stop-and-go) operation shall display a signal indication during flashing operation.

b. All signal faces that are flashed on an approach shall flash the same color, either yellow or red, except that separate signal faces for protected mode turn movements shall be permitted to flash a CIRCULAR RED indication when the through indications are flashed yellow.

c. The appropriate YELLOW ARROW indication shall be flashed when a signal face contains a YELLOW ARROW and a GREEN ARROW.

d. If a signal face includes both circular and arrow lenses of the color that is to be flashed, only the circular indication shall be flashed.

When a traffic control signal is operated in the flashing mode, a flashing yellow indication should be used for the major roadway and a flashing red indication should be used for the other approaches unless flashing red indications are used on all approaches.

4D.15 Number and Location of Signal Faces by Approach

Support:

Sections 4D.5, 4D.17, and 4D.18 contain additional information regarding the design of signal faces.

Standard:

The signal faces for each approach to an intersection or a mid-block location shall be provided as follows:

a. A minimum of two signal faces shall be provided:

(1) For through traffic.

(2) For one of the turning movements (left or right) if no through movement exists, such as on the stem approach to a T intersection.

b. See Section 4D.6 for left-turn signal indications.

c. See Section 4D.7 for right-turn signal indications.

d. Except where the width of an intersecting roadway or other conditions make it physically impractical,

(1) A signal face installed to satisfy paragraphs b and c above and at least one and preferably both of the signal faces required by paragraph a above shall be located:

(a) Not less than 12 m (40 ft) beyond the stop line.

(b) Not more than 45 m (150 ft) beyond the stop line unless a supplemental near side signal face is provided.

(c) As near as practicable to the line of the driver's normal view, if mounted over the roadway.

(2) A signal face installed to satisfy paragraphs b and c above and at least one and preferably both of the signal faces required by paragraph a above shall be located no higher than at a maximum height to the top of the signal housing mounted over a roadway of 7.8 meters (25.6 feet) above the pavement. For viewing distances between 12 meters (40 feet) and 16 meters (53 feet) from the stop line, the maximum mounting height to the top of the signal housing shall be as shown on Figure 4–5.

(3) At least one and preferably both of the signal faces required by paragraph a above shall be located between two lines intersecting with the center of the approach at a point 3 m (10 ft) behind the stop line, one making an angle of approximately 20 degrees to the right of the center of the approach extended, and the other making an angle of approximately 20 degrees to the left of the center of the approach extended (see Figure 4–6).

(4) If both of the signal faces required by paragraph a above are on mounted-posts, they shall both be on the far sides of the intersection, one of the right and one on the left of the approach lane(s).

e. If the minimum sight distance in Table 4–2 cannot be met, sign shall be erected to warm approaching traffic of the signal.

f. Required signal faces for through traffic on any one approach shall be placed not less than 2.5 m (8 ft) apart measured horizontally between the centers of the signal faces.

g. If more than one turn signal face is provided for a protected-mode turn, the signal faces shall be placed not less than 2.5 m (8 ft) apart measured horizontally between the centers of the signal faces.

h. If supplemental signal faces are used, the following limitations shall apply:

(1) Left-turn arrows shall not be used in near-right signal faces.

(2) Right-turn arrows shall not be used in far-left signal faces. A far-side median mounted signal face shall be considered a far-left signal for this application.

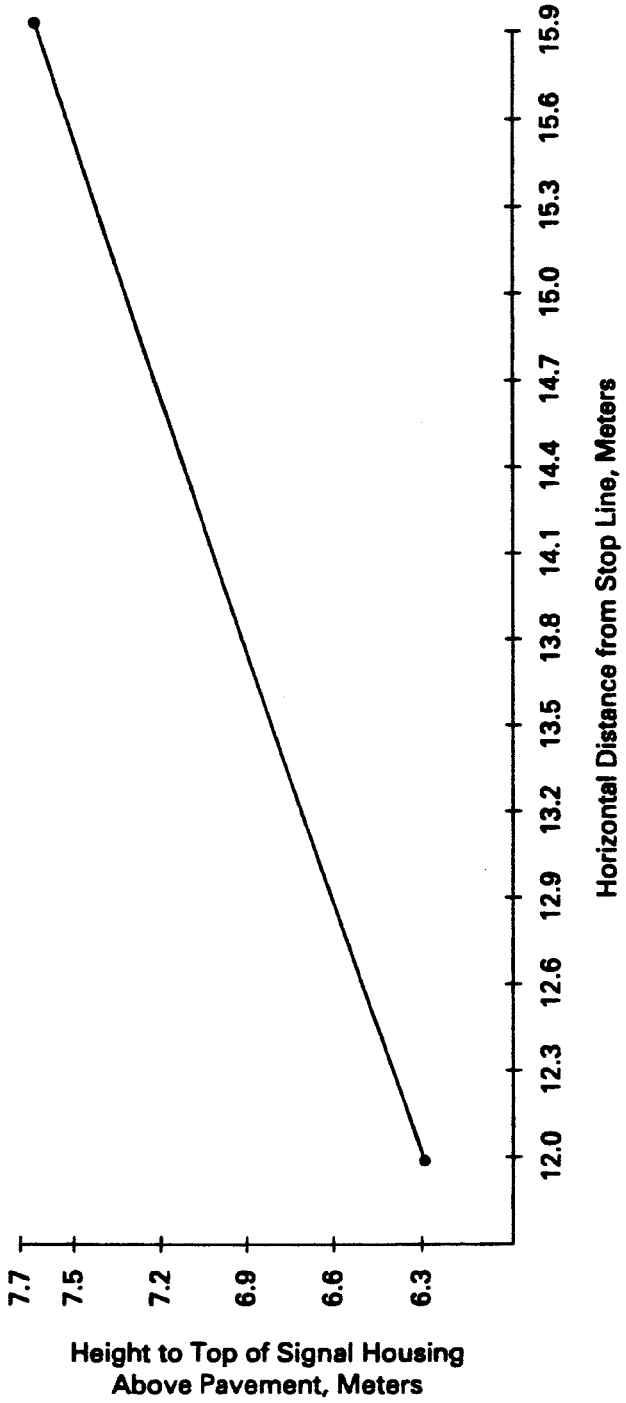

Figure 4-5. Maximum mounting height of signal heads located between 12 meters (40 feet) and 16 meters (53 feet) from stop line

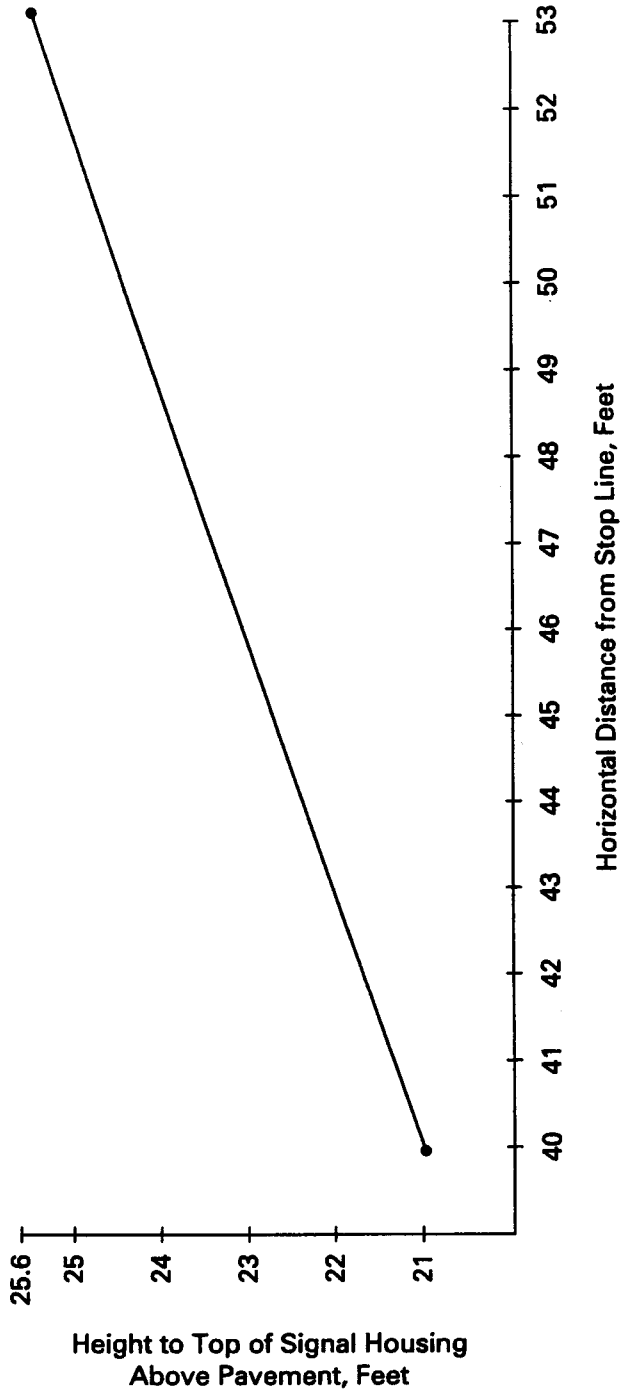

Figure 4-5. Maximum mounting height of signal heads located between 12 meters (40 feet) and 16 meters (53 feet) from stop line

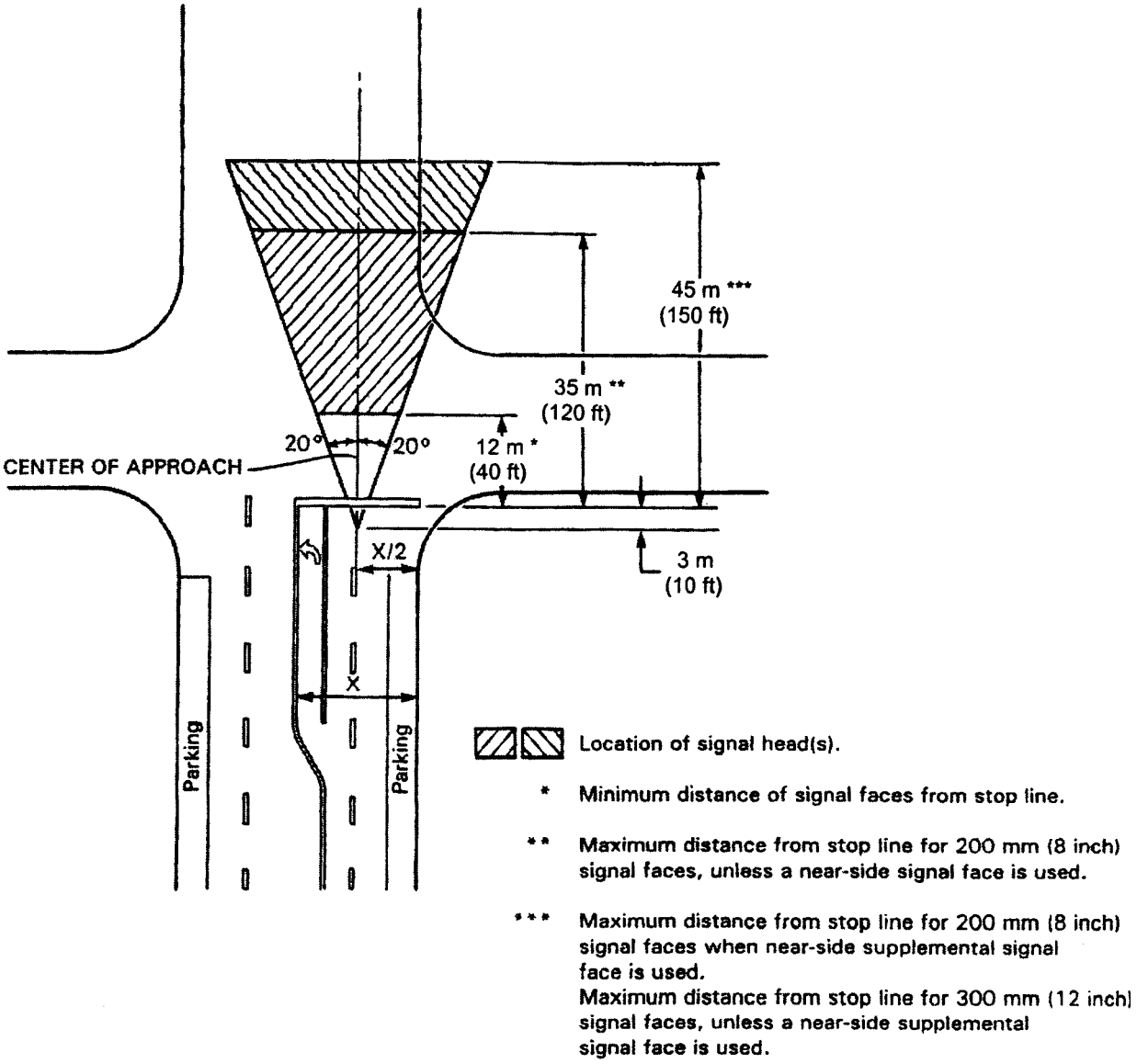

Figure 4-6. Illustration of Section 4D.15.

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TABLE 4–2.—MINIMUM SIGHT DISTANCE

85th-Percentile Speed		Minimum Sight Distance	
km/h	mph	meters	feet
30	20	50	175
40	25	65	215
50	30	85	270
60	35	100	325
60	40	120	390
70	45	140	460
80	50	165	540
90	55	195	625
100	65	220	715

Guidance:

The two signal faces required for each approach should be continuously visible to traffic approaching the traffic control signal, from a point at least the minimum sight distance indicated in Table 4–2 in advance of and measured to the stop line. This range of continuous visibility should be provided unless precluded by a physical obstruction or unless another signalized location is within this range.

If two or more left-turn lanes are provided for a separately-controlled exclusive mode only left-turn movement or if a left-turn movement represents the major movement from an approach, two left-turn signal faces should be provided.

If two or more right-turn lanes are provided for a separately-controlled right-turn movement, or if a right-turn movement represents the major movement from an approach, two right-turn signal faces should be provided.

Near-side signal faces should be located as near as practicable to the stop line.

If a signal face controls a specific lane or lanes of approach, its position should make it readily visible to road users making that movement.

Supplemental signal faces should be used if an engineering study has shown that they are needed to achieve visibility both in advance and immediately before the signalized location. If supplemental signal faces are used, they should be located to provide optimum visibility for the movement to be controlled.

At signalized mid-block crosswalks, at least one of the signal faces should be over the traveled roadway for each approach.

Option: If a sign is erected to warn approaching road users who do not have a continuous view of at least one signal indication for the minimum sight distance, the sign may be supplemented by a warning beacon. (See Section 4J.2.)

A warning beacon used in this manner may be interconnected with the traffic signal controller assembly in such a manner as to flash yellow during the period when road users passing this beacon at the legal speed for the roadway, may encounter a red indication upon arrival at the signalized location.

4D.16 Number and Arrangement of Sections in Signal Faces

Standard:

Each signal face shall have not more than five signal sections.

Each signal face shall have at least three signal sections except under the following circumstances:

a. If pedestrian signal indications are present.

b. A single-section signal face consisting of a continuously illuminated GREEN ARROW lens that is being used to indicate a continuous movement.

c. A dual arrow signal section that is being used to display a GREEN ARROW and a YELLOW ARROW indication alternately.

d. A signal face used for a ramp control signal.

Arrows shall be pointed

a. Vertically upward to indicate a straight-through traffic movement.

b. Horizontally in the direction of the turn to indicate a turn at approximately or greater than a right angle.

c. Upward with a slope at an angle approximately equal to that of the turn if the angle of the turn is substantially less than a right angle.

The lenses in a signal face shall be arranged in a vertical or horizontal straight line, except that in a vertical array, lenses of the same color may be arranged horizontally adjacent to each other at right angles to the basic straight line arrangement. Such clusters shall be limited to two identical lenses or to two or three different lenses of the same color.

In each signal face, all red lenses in vertical faces shall be located above, and in horizontal faces shall be located to the left, of all yellow and green lenses.

A yellow lens shall be located between the red lens or lenses and all other lenses.

In vertically-arranged signal faces, each YELLOW ARROW lens shall be located immediately above the GREEN ARROW lens to which it applies. If a variable-indication signal section is used, the lens shall be in the same position relative to other lenses as are the GREEN ARROW lenses in a vertical signal face.

In horizontally-arranged signal faces, the YELLOW ARROW lens shall be located immediately to the left of the GREEN ARROW lens. If a variable-indication signal section is used, the variable left-turn arrow lens shall be located immediately to the right of the CIRCULAR YELLOW lens, the straight-through GREEN ARROW lens shall be located immediately to the right of the CIRCULAR GREEN lens, and the variable right-turn arrow lens shall be located to the right of all other lenses.

The relative positions of lenses within the signal face shall be as follows:

a. In a vertical signal face from top to bottom:
CIRCULAR RED
CIRCULAR YELLOW
CIRCULAR GREEN
Straight-through GREEN ARROW
Left-turn YELLOW ARROW
Left-turn GREEN ARROW
Right-turn YELLOW ARROW
Right-turn GREEN ARROW

b. In a horizontal signal face from left to right:
CIRCULAR RED
CIRCULAR YELLOW
Left-turn YELLOW ARROW
Left-turn GREEN ARROW
CIRCULAR GREEN
Straight-through GREEN ARROW
Right-turn YELLOW ARROW
Right-turn GREEN ARROW

c. If adjacent indications in a cluster are not identical, their arrangement shall follow paragraph a or b above, as applicable.

Option: In a vertical array cluster, identical signal indications may be repeated in adjacent horizontal locations within the same signal face.

Horizontal and vertical signal faces may be used on the same approach provided they are separated to meet the lateral clearance required in Section 4D.15.

Three hundred millimeter (12 in) lenses should be used for all signal indications for the following:

a. Approaches with 85th-percentile approach speeds exceeding 65 km/h (40 mph).

b. Approaches where a traffic control signal might be unexpected.

c. Arrows.

d. All approaches without curbs and gutters where only signal heads mounted on post are used.

Support:

Figure 4–7 illustrates some of the possible arrangements of lenses in signal faces.

Standard:

Three-hundred millimeter (12-in) lenses shall be used:

a. For signal indications for approaches (see definition in Section 4A.6) where road users view both traffic control and lane-use control signal heads simultaneously.

b. If the nearest signal face is between 35 m (120 ft) and 45 m (150 ft) beyond the stop line, unless a supplemental near-side signal indication is provided.

c. When signal faces are located more than 45 meters (150 feet) from the stop line.

d. For approaches to all signalized locations for which the minimum visibility distance in Table 4–2 cannot be met.

e. For arrow signal sections.

Support:

The use of 300 mm (12-in) lenses or higher intensity 200 mm (8-in) lenses can be used to assist older drivers in decision-making tasks further from the intersection where traffic density is lower and there are fewer potential conflicts with other vehicles.

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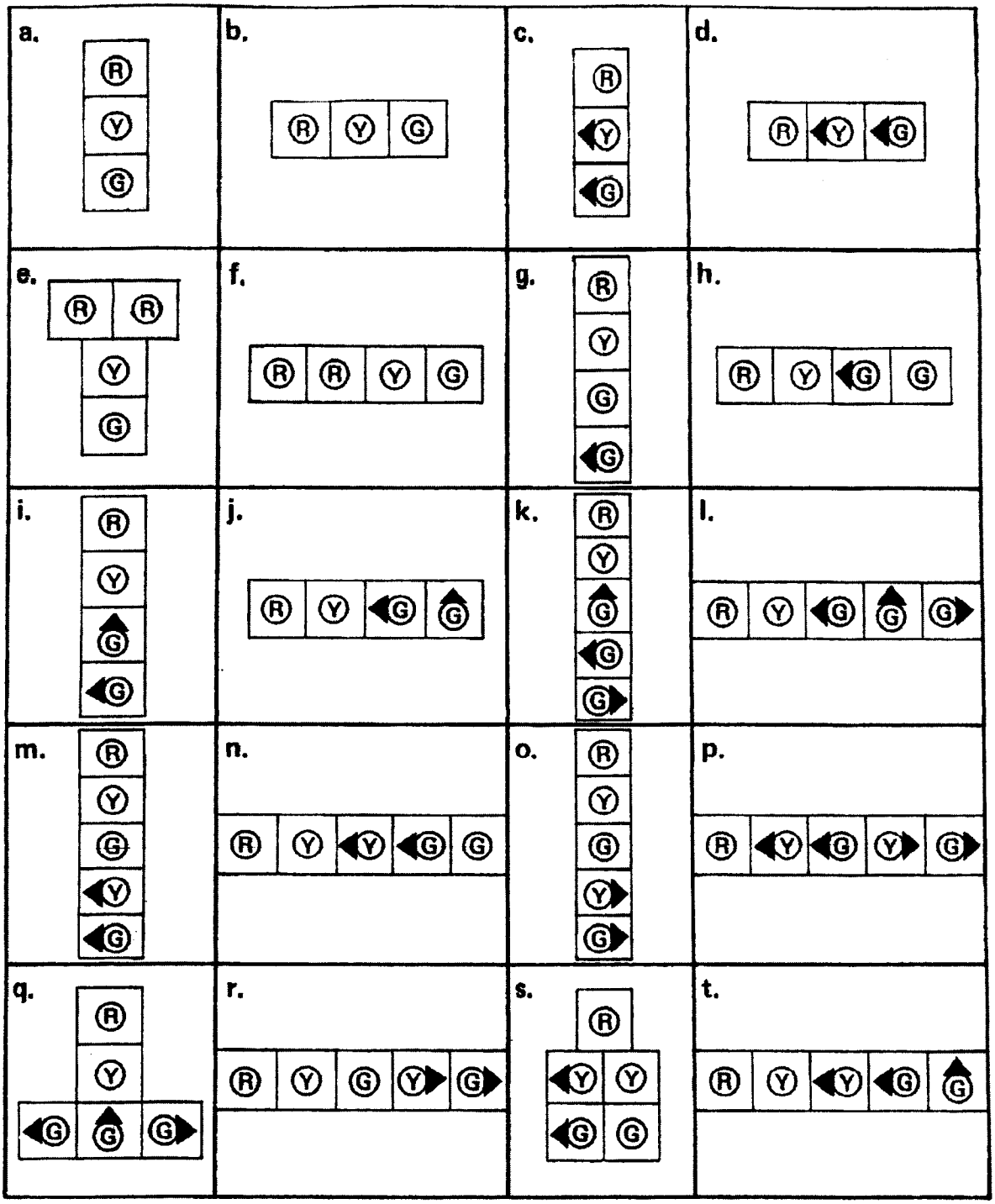

Figure 4-7. Typical arrangements of lenses in signal faces.

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4D.17 Visibility, Shielding, and Positioning of Signal Faces

Standard:

The primary consideration in signal face placement and adjustment shall be to optimize the signals visibility to approaching traffic. Road users approaching a signalized intersection or other signalized area, such as a mid-block crosswalk, shall be given a clear and unmistakable indication of their right-of-way assignment.

The geometry of each intersection to be signalized, including vertical grades, horizontal curves, and obstructions as well as the lateral and vertical angles of sight toward a signal face, as determined by typical driver-eye position, shall be considered in determining the vertical, longitudinal, and lateral position of the signal face.

If the sight distance to the signal heads facing the approach is limited by horizontal or vertical alignment, the signal faces shall be aimed at a point on the approach at which the signal indication first becomes visible.

In cases where irregular intersection geometric design necessitates placing signal faces for different roadway approaches with a comparatively small angle between their respective lenses, each signal lens shall, to the extent practicable, be shielded or directed by signal visors, louvers, or other means so that an approaching road user can see only the lens(es) controlling movements on the road user's approach.

The bottom of the signal housing and any related attachments to a vehicle face located over a roadway shall be at least 4.6 meters (15 feet) above the pavement. The top of the signal housing of a vehicle signal face located over a roadway shall not be more than 7.8 meters (25.6 feet) above the pavement.

Signal visors exceeding 300 mm (12 in) in length shall not be used on free-swinging signal heads.

The bottom of the housing of a vehicle signal face mounted or suspended over a roadway shall be at least 4.6 meters (15 feet) but not more than 5.8 meters (19 feet) above the pavement.

The bottom of the signal housing of a vehicle signal face, not mounted or suspended over a roadway.

a. Shall be at least 2.5 m (8 ft) but not more than 5.8 m (19 ft) above the sidewalk or, if there is no sidewalk, above the pavement grade at the center of the roadway.

b. Shall be at least 1.4 m (4.5 ft) but not more than 5.8 m (19 ft) above the median island grade of a center median island if located on the near side of the intersection.

Supports for post-mounted signal heads at the side of a roadway with curbs shall have a horizontal clearance of not less than 0.6 m (2 ft) from the face of a vertical curb.

If there is no curb, supports for post-mounted signal heads shall have a horizontal clearance of not less than 0.6 m (2 ft) from the edge of a shoulder.

Guidance:

On medians, the above minimum clearances for signal supports should be obtained if practicable.

There should be legal authority to prohibit the display of any unauthorized sign, signal, marking, or device that interferes with the effectiveness of any official traffic control device. Specific reference is made to Section 11–205, Uniform Vehicle Code (latest edition).

In the interest of safety:

a. Reference should be made to the American Association of State Highway and Transportation Officials (AASHTO) Roadside Design Guide.

b. Signal supports should be placed as far as practicable from the edge of the traveled way without adversely affecting the visibility of the signal indications.

Where supports cannot be located with the required clearances, consideration should be given to the use of breakaway designs or guard shielding barriers.

No part of a concrete base for a signal support should extend more than 100 mm (4 in) above the ground level at any point. This limitation does not apply to the concrete base for a rigid (non-breakaway) support.

c. A signal support or controller cabinet should not obstruct the sidewalk, or access from the sidewalk to the crosswalk.

d. Controller cabinets should be located as far as practicable from the edge of the roadway.

Signal visors should be used on signal faces to aid in directing the signal indication specifically to approaching traffic, as well as to reduce ''sun phantom'' which results when external light enters the lens.

In general, vehicular signal faces should be aimed so that the continuation of the optical axis of the signal sections passes through a point on the approach that is located at least the minimum sight distance from the stop line and at driver's eye height.

A backplate for target value enhancement should be used on signal faces viewed against bright sky or bright or confusing backgrounds.

Support:

The use of back-plates of a size (width) three times the diameter of the signal can be used to assist older drivers in decision-making tasks further from an intersection where the traffic density is lower and there are fewer potential conflicts with other vehicles. The use of back-plates also enhances the contrast between the traffic signals and their surroundings for both daytime and nighttime conditions.

Option: In some instances road users may be misdirected when two different signal indications on different signal faces are simultaneously visible. In these instances, a visibility-limited signal face may be used.

4E.4 Size, Design, and Illumination of Pedestrian Signal Head Indications

Standard:

All new pedestrian signal head indications shall be displayed within a rectangular background and shall consist of symbolized messages. Symbol designs are set forth in the Standard Highway Signs. Existing pedestrian signal head indications with lettered messages may be retained for the remainder of their useful service life. Each indication shall be independently illuminated and emit a single color. (See Figure 4–8.)

The DON'T WALK signal section shall be mounted directly above or integral with the WALK signal section.

The WALK indication shall be white, conforming to the document entitled Pedestrian Traffic Control Signal Indications[1], with all except the symbols obscured by an opaque material.

The DON'T WALK indication shall be Portland orange conforming to the Pedestrian Traffic Control Signal Indications[2], with all except the symbols obscured by an opaque material.

When not illuminated, the WALK and DON'T WALK symbols shall not be readily visible to pedestrians at the far end of the crosswalk that the signal head indications control.

Guidance:

Pedestrian signal head indications should be conspicuous and recognizable to pedestrians at all distances from the beginning of the controlled crosswalk to a point 3 m (10 ft) from the end of the controlled crosswalk during both day and night.

For crosswalks where the pedestrian enters the crosswalk more than 30 m (100 ft) from the pedestrian signal head

[1] Available in, ''Equipment and Material Standards of the Institute of Transportation Engineers,'' see Preface.

[2] Ibid.

indications, the symbols should be at least 225 mm (9 in) high.

For pedestrian signal head indications, the symbols shall be at least 150 mm (6 in) high.

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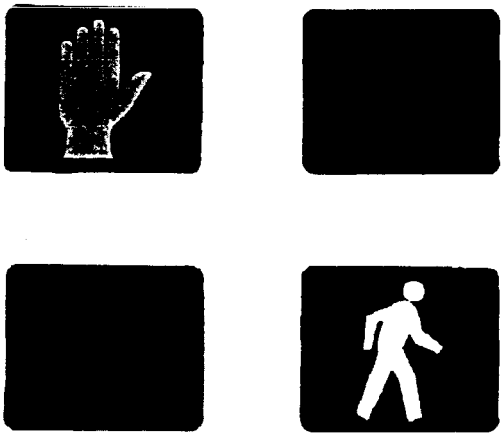
Single Section



Two Section

Figure 4-8. Typical pedestrian signal indications.
(Hands are in Orange, Walking People are in White)

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4E6. Accessible Pedestrian Signals

Support:

The primary technique that people who have visual disabilities use to cross streets at signalized locations is to initiate their crossing when they hear the traffic alongside them begin to move, corresponding to the onset of the green interval. The effectiveness of this technique is reduced by several factors including: increasingly quiet cars, right turn on red (which masks the beginning of the through phase), complex signal operations, and wide streets. Further, low traffic volumes make it difficult for pedestrians who have visual disabilities to discern signal phase changes.

Local organizations providing support services to pedestrians who have visual and/or hearing disabilities can often act as advisors to the engineer when consideration is being given to the installation of devices to assist such pedestrians. Orientation and mobility specialist or similar staff might be able to provide a wide range of advice. Information might range from assessing the needs of a single individual to commenting on the operation of proposed devices. [3]

Standard:

When used, accessible pedestrian signals (see Section 4D.3) which provide information in non-visual format (including audible tones, verbal messages, and/or vibrotactile information), shall be used in combination with pedestrian signal timing. Accessible pedestrian signals shall clearly indicate the direction of the pedestrian crossing served by devices, such as the tactile arrows.

Under stop-and-go operations, accessible pedestrian signals shall not be limited in operation by the time of day or day of week.

Guidance:

The installation of accessible pedestrian signals at signalized intersections should be based on an engineering study, which should consider the following factors:

a. Potential demand for accessible pedestrian signals.

b. A request for accessible pedestrian signals.

c. Traffic volumes during times when pedestrians might be present; including periods of low traffic volumes or high turn-on-red volumes.

d. The complexity of traffic signal phasing.

e. The complexity of intersection geometry.

Support:

Technology that provides different sounds for each non-concurrent signal phase has frequently been found to provide ambiguous information.

Standard:

When choosing audible tones, possible extraneous sources of sounds (such as wind, rain, vehicle back-up warnings, or birds) shall be considered in order to eliminate potential confusion to pedestrians who have visual disabilities.

Guidance:

Audible pedestrian tones should be carefully selected to avoid misleading pedestrians who have visual disabilities when the following conditions exist:

a. Where there is an island that allows unsignalized right turns across a crosswalk between the island and the sidewalk.

b. Where multi-leg approaches or complex signal phasing require more than two pedestrian phases, such that it may be unclear which crosswalk is served by each audible tone.

c. At intersections where a diagonal pedestrian crossing is allowed, or where one street receives a WALK indication simultaneously with another street.

Standard:

When accessible pedestrian signals have an audible tone(s), they shall have a tone for the WALK interval. The WALK interval tone shall have a faster repetition rate than the associated pushbutton locator tone. The audible tone(s) shall be audible from the beginning of the associated crosswalk.

Support:

A pushbutton locator tone is a repeating sound that informs approaching pedestrians that they are required to push a botton to actuate a WALK signal and that enables pedestrians who have visual disabilities to locate the pushbutton. (See Section 4E.8)

Guidance:

The accessible WALK signal tone should be no louder than the locator tone, except when there is optional activation to provide a louder signal tone for a signal pedestrian phase. (See Section 4.E.8)

Automatic volume adjustment in response to ambient traffic sound level should be provided up to a maximum volume of 89dB. [4] Where automatic volume adjustment is used, tones should be no more than 5dB louder than ambient sound.

Standard:

When verbal messages are used to communicate the pedestrian interval, they shall provide a clear message that the WALK interval is in effect, as well as to which crossing it applies.

The verbal messages that is provided at regular intervals throughout the timing of the WALK interval shall be the term 'walk sign,'' which may be followed by the name of the street to be crossed.

A verbal message is not required at times when the WALK interval is not timing, but, if provided:

a. It shall be the term ''wait.''

b. It need not be repeated for the entire time that the WALK interval is not timing.

Option: Accessible pedestrian signals that provide verbal messages may provide similar messages in languages other than English, if needed, except for the terms ''walk sign'' and ''wait.''

Standard:

A vibrotactile pedestrian device communicates information about pedestrian signal phasing through a vibrating surface by touch. Vibrotactile pedestrian devices, where used, shall indicate that the WALK interval is in effect, and for which direction it applies, through the use of a vibrating directional arrow or some other means.

Guidance:

When provided, vibrotactile pedestrians devices should be located next to, and on the same pole as, the pedestrian pushbuttom, if any, and adjacent to the intended crosswalk.

4E.8 Accessible Pedestrian Signal Detectors

Standard:

At accessible pedestrian signal locations with pedestrian actuation, each pushbutton shall activate both the WALK interval and the accessible pedestrian signals.

Guidance:

At accessible pedestrian signal locations, pushbuttons should clearly indicate which crosswalk signal is actuated by each pushbutton. Pushbuttons and tactile arrows should

[3] For guidance relative to techniques for making pedestrian signal information accessible to persons with visual impairment, including directly audible tones, transmitted speech messages, and vibration, refer to U.S. Access Board Document A–37b ''Accessible pedestrian Signals'' and the Federal Highway Administration.

[4] *Measurement of Highway-Related Noise*, FHWA–PD–96–046, DOT–UNTSC–FHWA–96–5. Available through the National Technical Information Service, see Preface.

have high visual contrast.[5] Tactile arrows should point in the same direction as the associated crosswalk. At corners of signalized locations with accessible pedestrian signals where two pedestrian pushbuttons are provided, the pushbuttons should be separated by a distance of at least 3 meters (10 feet). This enables pedestrians who have visual disabilities to distinguish and locate the appropriate pushbutton.

Pushbuttons for accessible pedestrian signals should be located as follows:

a. Adjacent to a level all-weather surface to provide access from a wheelchair, and where there is an all-weather surface, wheelchair route to the ramp.

b. Within 1.5 meters (5 feet) of the crosswalk extended.

c. Within 3 meters (10 feet) of the edge of the curb, shoulder, or pavement.

[5] See Department of Justice Americans with Disabilities Act Standards for Accessible Design.

d. Parallel to the crosswalk to be used (see Figure 4–9).

If the pedestrian clearance time is sufficient only to cross from the curb or shoulder to a median of sufficient width for pedestrians to wait *and* accessible pedestrian detectors are used, an additional accessible pedestrian detector should be provided in the median.

Standard:

Pushbutton locator tones shall be highly locatable and shall repeal at one-second intervals.

Guidance:

Pushbuttons should be audible locatable. Pushbutton locator tones should be intensity responsive to ambient sound, and be audible 2 to 4 meters (6 to 12 feet) from the pushbutton, or to the building line, whichever is less. Pushbutton locator tones should be no more than 5 dB louder than ambient sound.

Pushbutton locator tones should be deactivated during flashing operation of the traffic control signal.

Option: At locations with pre-timed traffic signals or non-actuated approaches, pedestrian pushbuttons may be used to activate the accessible pedestrian signals.

The audible tone(s) may be made louder (up to a maximum of 89dB) by holding down the pushbutton for a minimum of 3 seconds. The louder audible tone(s) may also alternate back and forth across the crosswalk, thus providing optimal directional information.

The name of the street to be crossed may also be provided in accessible format, such as braille, or raised print.

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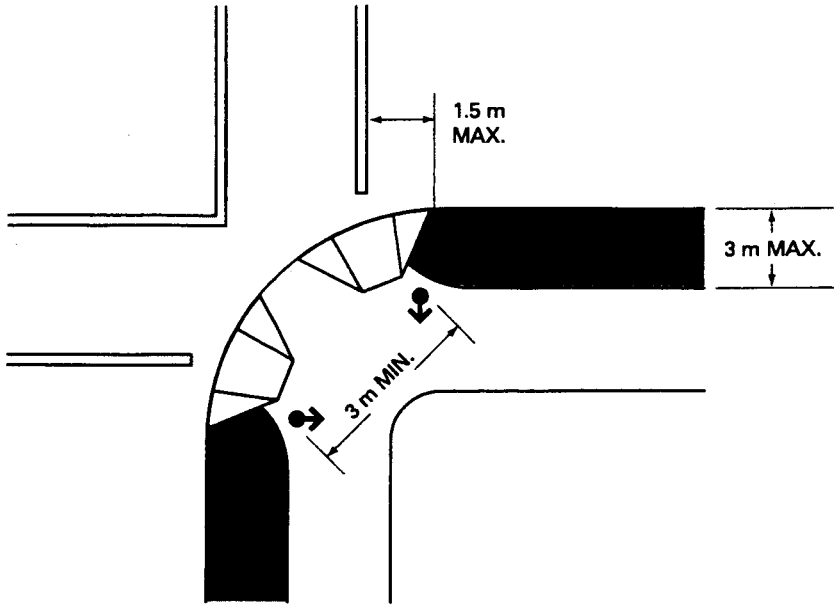
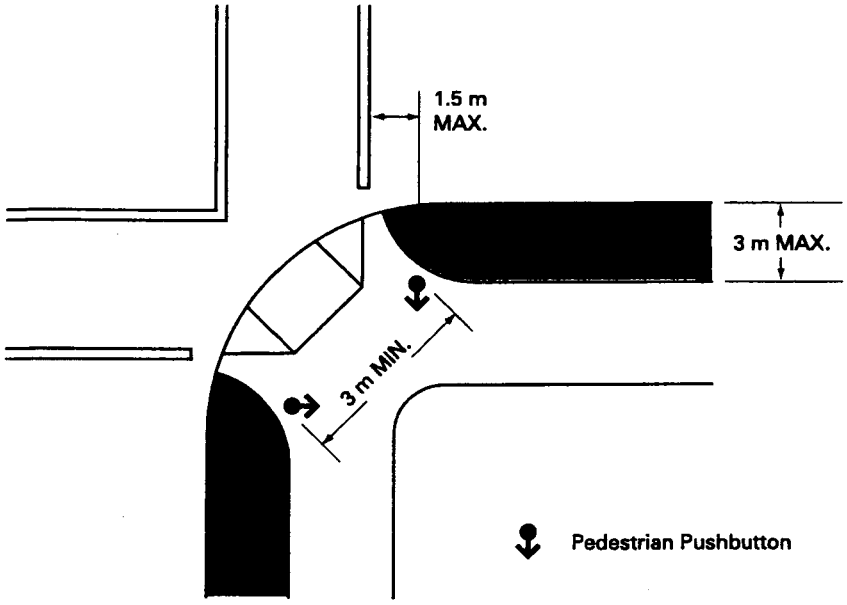


Two Curb



One Curb

Figure 4-9. Recommended Pushbutton Locations

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4E.9 Pedestrian Intervals and Phases

Standard:

When pedestrian signal heads are used, a WALK indication shall be displayed only when pedestrians are permitted to leave the curb or shoulder.

A pedestrian clearance time shall begin immediately following the WALK indication. The pedestrian clearance time shall consist of a pedestrian change interval during which a flashing DON'T WALK indication shall be displayed.

At intersections equipped with pedestrian signals, the pedestrian signal indications shall be displayed except when the vehicular traffic control signal is being operated as a flashing device. At those times, the pedestrian signal indications shall not be displayed.

Guidance:

The walk interval should be at least 7 seconds in length so that pedestrians will have adequate opportunity to leave the curb or shoulder before the pedestrian clearance time begins.

The pedestrian clearance time should be sufficient to allow a pedestrian crossing in the crosswalk to leave the curb or shoulder and travel at a normal walking speed of 1.2m (4 feet) per second, to at least the far side of the farthest traveled lane or to a median of sufficient width for a pedestrian to wait. Where significant numbers of pedestrians who walk slower than normal routinely use the crosswalk, a walking speed of less than 1.2 (4 feet) per second should be considered in determining the pedestrian clearance time.

Option: An alternative to using a lower walking speed to determine the pedestrian clearance time is to employ the use of passive pedestrian detection equipment in the crosswalks. Such equipment can detect pedestrians who need more time to complete their crossing. The equipment extends the length of the pedestrian clearance time for that cycle to allow pedestrians to complete their crossing before cross traffic begins.

Guidance:

Where the pedestrian clearance time is sufficient only for crossing from the curb or shoulder to the median, additional measures should be considered, such as median-mounted pedestrian signals, staggered crosswalks, or additional signing.

Option: Pedestrian clearance time may include the yellow change interval, if used, and the red clearance interval, if used.

If pedestrian volumes and characteristics do not require a 7-second walk interval, walk intervals as short as 4 seconds may be used.

On a roadway with a median of sufficient width for pedestrians to wait, a pedestrian clearance time that allows the pedestrian to cross only from the curb or shoulder to the median may be provided.

During the transition into preemption, the walk interval and the pedestrian change interval may be shortened or omitted as described in Sections 4D.13 and 8C.6.

Support:

The walk interval itself need not equal or exceed the pedestrian clearance time calculated for the roadway width, because many pedestrians will complete their crossing during the pedestrian clearance time.

4J.3 Design of Lane-use Control Signals

Standard:

All lane-use control signal indications shall be in units with rectangular signal faces and shall have opaque backgrounds. Nominal minimum height and width of each downward GREEN ARROW, YELLOW X, and RED X signal face shall be 450 mm (18 inches) for typical applications. The WHITE two-way and one-way left-turn ARROW signal indications shall have a nominal minimum height and width of 750 mm (30 inches).

Each lane to be reversed or closed shall have signal faces with a downward GREEN ARROW and a RED X symbol.

Each reversible lane that also operates as a two-way or one-way left-turn lane during certain periods shall have signal faces that also include the applicable WHITE two-way or one-way left-turn ARROW symbol.

Each nonreversible lane immediately adjacent to a reversible lane shall have signal indications that display a downward GREEN ARROW to traffic traveling in the permitted direction and a RED X to traffic traveling in the opposite direction.

If in separate units, the relative positions, from left to right, of the indications shall be RED X, YELLOW X, downward GREEN ARROW, two-way left-turn ARROW, one-way left-turn ARROW.

The color of lane-use control signal indications shall be clearly visible for 700 m (2300 ft) at all times under normal atmospheric conditions, unless otherwise physically obstructed.

Lane-use control signal units shall be located approximately over the center of the lane controlled.

If the area to be controlled is more than 700 m (2300 ft) in length, or if the vertical or horizontal alignment is curved, intermediate lane-use control signal indications shall be placed over each controlled lane at frequent intervals. This placement shall be such that road users will at all times be able to see at least one indication and preferably two along the roadway, and will have a definite indication of the lanes specifically reserved for their use.

All lane-use control signal faces shall be located in a straight line across the roadway approximately at right angles to the roadway alignment.

The bottom of any lane-use control signal unit shall be at least 4.6 m (15 ft) but not more than 5.8 m (19 ft) above the pavement grade.

On roadways having intersections controlled by traffic control signals, the lane-use control indication shall be placed sufficiently far in advance of or beyond such traffic control signals to prevent them from being misconstrued as traffic control signals.

Guidance:

In highly-developed commercial environments, signal faces with nominal height and width of 450 mm (18 in) or larger should be considered for additional target value.

Option: In areas with minimal visual clutter and with speeds of 70 km/h (40 mph) or less, lane-use control signal faces with nominal height and width of 300 mm (12 inches) may be used.

Other sizes of lane-use control signal faces with message recognition distances appropriate to signal spacing may be employed for unusual applications.

Signal faces with a YELLOW X symbol on an opaque background may be provided for operation as described in Section 4J.4.

Nonreversible lanes not immediately adjacent to a reversible lane on any street so controlled may also be provided with signal indications that display a downward GREEN ARROW to traffic traveling in the permitted direction and a RED X to traffic traveling in the opposite direction.

The indications provided for each lane may be in separate units or may be superimposed in the same unit.

4L IN–ROADWAY LIGHTS

4L.1 Application of In-Roadway Lights

Support:

In-Roadway Lights are special types of highway traffic signals installed in the roadway surface to warn road users that they are approaching a condition on or adjacent to the roadway that might not be readily apparent and might require the road users to slow down and

possibly come to a stop. This includes, but is not necessarily limited to, situations warning of marked school crosswalks, marked mid-block crosswalks, marked crosswalks on uncontrolled approaches, and other roadway situations involving pedestrian crossings.

Standard:

In-Roadway Lights shall not exceed a height of 20 millimeters (¾ inches) above the roadway surface.

Option: The flash rate for In-Roadway Light may be different than the flash rate of standard beacons.

4L.2 In-Roadway Warning Lights at Crosswalks

Standard:

In-Roadway Warning Lights at crosswalks shall be installed only at marked crosswalks with applicable warning signs. They shall not be used at crosswalks controlled by YIELD signs, STOP signs or traffic control signals.

In-Roadway Warning Lights at crosswalks shall be installed along both sides of the crosswalk and shall span its entire length.

In-Roadway Warning Lights at crosswalks shall initiate operation based on pedestrian actuation and shall cease operation at a predetermined time after the pedestrian actuation or with passive detection after the pedestrian clears the crosswalk.

In-Roadway Warning Lights at crosswalks shall display a flashing yellow indication when actuated. The flash rate for In-Roadway Warning Lights at crosswalks shall be at least 50 flash periods per minute. The flash rate shall not be between 5–30 flashes per second to avoid frequencies that might cause seizures.

For one-lane, one-way roadways, a minimum of two In-Roadway Warning Lights shall be installed on the approach side of the crosswalk. For two-lane roadways, a minimum of three In-Roadway Warning Lights shall be installed along both sides of the crosswalk. For roadways with more than two lanes, a minimum of one In-Roadway Light per lane shall be installed along both sides of the crosswalk.

In-Roadway Warning Lights shall be installed within 3 meters (10 feet) of the outside edge of the crosswalk. In-Roadway Warning Lights shall face away from the crosswalk if uni-directional, or shall face away from and across the crosswalk if bi-directional.

Guidance:

The period of operation of the In-Roadway Warning Lights following each actuation should be sufficient to allow a pedestrian crossing in the crosswalk to start crossing the traveled way and travel at a normal walking speed of 1.2 meters (4 feet) per second to at least the far side of the traveled way or to a median of sufficient width for pedestrians to wait. Where significant numbers of pedestrians who walk slower than normal routinely use the crosswalk, a walking speed of less than 1.2 m (4 feet) per second should be considered in determining the period of operation.

Where the period of operation is sufficient only for crossing from a curb or shoulder to a median of sufficient width for pedestrians to wait, additional measures should be considered, such as median-mounted pedestrian actuators.

The location of the In-Roadway Warning Lights within the lanes should be based on engineering judgment.

Option: On one-way streets, In-Roadway Warning Lights may be omitted on the departure side of the crosswalk.

Based on engineering judgment, the In-Roadway Warning Lights on the departure side of the crosswalk on the left side of a median may be omitted.

In-Roadway Warning Lights may be installed in the center of each travel lane, at the centerline of the roadway, at each edge of the roadway or parking lanes, or at other suitable locations.

Unidirectional In-Roadway Warning Lights installed at crosswalk locations may have a yellow light indication in each unit that is visible to pedestrians in the crosswalk. These lights may flash with and at the same flash rate as the light head in which each is installed.

[FR Doc. 99–33403 Filed 12–29–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 945

[FHWA Docket No. FHWA 99–5844]

RIN 2125–AE63

Dedicated Short Range Communications In Intelligent Transportation Systems (ITS) Commercial Vehicle Operations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA proposes to amend its regulations to require use of the FHWA Specification for ''Dedicated Short Range Communications (DSRC) for Commercial Vehicles'' as a provisional standard for Intelligent Transportation Systems (ITS) commercial vehicle projects using highway trust funds. The DSRC systems use microwave communications over very short distances to allow moving vehicles to communicate with roadside locations. In commercial vehicle applications, the DSRC devices provide identification of vehicles which allows electronic screening of the vehicle, for safety, regulatory compliance, and credentials at weigh stations, ports of entry, and international border crossings. The use of DSRC standards would promote interoperability among, and enable integration of the ITS systems for North American commercial vehicle applications. Interoperability provided by this provisional standard would also encourage business interoperability and cooperation.

DATES: Comments must be received on or before February 28, 2000.

ADDRESSES: Submit written, signed comments to the docket number that appears in the heading of this document to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Jones, ITS Joint Program Office (JPO), (202) 366–2128, e-mail address <william.s.jones@fhwa.dot.gov>; or Mr. Wilbert Baccus, Office of the Chief Counsel, (HCC–32) (202) 366–0780, e-mail address <wilbert.baccus@fhwa.dot.gov>, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer with 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 Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at *http://www.access.gpo.gov/nara*. The ITS critical standards are available online at *http://www.its.dot.gov*.

Background

In section 6053(b) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, at 2190, the Congress directed the Secretary of Transportation (Secretary) to develop and implement standards and protocols to promote widespread use of ITS technology as a component of the Nation's ground transportation systems.

In the Transportation Equity Act for the 21st Century (TEA–21), section 5206 of Public Law 105–178, 112 Stat. 107, at 457 (23 U.S.C. 502 Note), the Congress requires the Department to ''ensure the national interoperability'' of ITS services through standards. To carry out this mandate, the Congress stated that the Secretary could use the services of existing standards-setting organizations, as appropriate. The statutory provisions also provide that use of approved standards shall be established as a prerequisite for use of highway trust funds on certain ITS projects. In addition, the Congress required the department to identify all standards that were critical to national interoperability. This report was submitted to Congress, and made available in July 1999.

Recently, approved standards issued by the American Society for Testing and Materials (ASTM) and the Institute of Electrical and Electronics Engineers (IEEE) apply to DSRC systems and devices using microwave communications in the 902–928 megahertz (MHz) frequency band. The DSRC systems use microwave communications over very short distances to allow moving vehicles to communicate with roadside locations. They are currently in use for applications, such as, electronic tolling, electronic clearance of commercial vehicles at weigh stations.

As transportation agencies with responsibility for commercial vehicle administration and toll collection have procured systems and other devices based on the DSRC, they have had to cope with proprietary interfaces, which are the interface designs held as industrial secrets by equipment suppliers. Selection of a manufacturer by an agency has often made that agency a captive market of that manufacturer for procurement of future system upgrades and expansions. These agencies could only use devices from the initial manufacturer, since only that manufacturer would have the correct proprietary interfaces. When agencies procure different proprietary DSRC systems, this precludes interoperability among these agencies. This limits the usefulness of this technology for vehicles that cross jurisdictional boundaries, such as, State lines and international borders. Even within States, there can be interoperability issues if different agencies purchase from different suppliers.

In TEA–21, the Congress has given the U.S. DOT the responsibility to ''ensure national interoperability'' of ITS technologies through the development and promulgation of standards. Further, the Congress authorized the Secretary to issue ''provisional standards'' when the normal consensus standard development process was unsuccessful in reaching agreement on a standard.

There is a clear need for interoperability in at least two applications of DSRC technology within the ITS program as follows:

1. Interstate trucks that participate in the Commercial Vehicle Operations (CVO) program, which, for example, will allow vehicles to be electronically cleared for operation without stopping at State ports of entry or weigh/inspection stations, require national interoperability.

2. All vehicles, including passenger cars and trucks, in a common multitoll environment within a single State or multistate metropolitan area, require regional interoperability.

This rulemaking only addresses the national interoperability requirement for commercial vehicle applications of DSRC technology. For the CVO program to be successful, it is essential that these vehicles be able to travel from State to State, and within a State, using DSRC technology for processing at automated inspection stations and to be able to bypass State ports of entry if they meet the criteria for safety and weight, and possess the appropriate credentials. The only way to achieve this fundamental objective is to have a set of DSRC standards that all States utilize for their ITS CVO implementations. Thus, this application clearly falls within the TEA–21 definition of standards ''critical to national interoperability.'' The critical standards list defined by the ITS Joint Program Office (JPO), in response to TEA–21, includes CVO related standards.

With the imminent expansion of the CVO program, it is essential that the FHWA provide guidance to States that will meet the requirements of the law and achieve the minimum objectives of the statute. To implement the requirements of TEA–21, and to address the current applications of DSRC technology, the FHWA's objective is to achieve national interoperability for the ITS CVO applications and border crossing functions through the use of a ''Provisional Standard'' as defined in TEA–21.

When using DSRC, vehicles employ devices called tags, or transponders to communicate with readers, or roadside units. The operation of these devices can be specified with a standards profile consisting of three layers: the Physical Layer, the Data Link Layer and the Application Layer. (Per the Open Systems Interconnection Reference Model.)

The Physical Layer describes the transmission of data over the communications channel, for example, the media, the modulation format, the required transmission power and the physical configuration of the transmitter and receiver.

The Data Link Layer describes how the data is reliably and efficiently sent over the communications link, which includes framing and timing of the data, error control and flow control.

The Application Layer incorporates the specific user program, which in this case, refers to the definition of the various messages that must be communicated, such as those pertaining to commercial vehicle electronic clearance and international border clearance. This layer also potentially permits many other functions to be performed.

The DSRC systems can achieve interoperability if they conform to the same profile, and incorporate the same options within each standard that comprise the profile.

Current DSRC systems employ two different methods at the physical layer: backscatter and active. Backscatter systems use tags known as passive tags, which do not contain their own transmitter and power source. They use the energy received from the reader to generate a response. Active tags contain their own power source and transmitter to respond to the roadside unit.

Current DSRC systems also employ two different methods at the data link layer: asynchronous and synchronous. In asynchronous transmission, normally used in backscatter systems, tags respond to the reader when queried, without specific timing established between the tag and the reader for the response. In synchronous transmission, normally used on active systems, a specific timing is established for a tag to respond to a reader. It is the disparity

in these four options that preclude the interoperability of DSRC systems.

Under the auspices of the ASTM, the industry tried to generate a set of standards for DSRC for about eight years. However, because of the fundamental differences in implementing the technologies, the standards process deadlocked with no agreement attainable until late 1996, when the DOT became more active in the process.

The DOT recognized a need to have a standards-based DSRC for use by ITS Commercial Vehicle Operation program. This will enable commercial vehicles to use a common tag to be electronically processed while in motion at weight and inspection stations and at international borders.

In 1996, the CVO program was expanding due to the model deployments and the international border crossing programs. It was essential, therefore, that a standard be established. Thus, the DOT urged the community to come together and agree on a standard, or the DOT would mandate a provisional standard for CVO and border crossing applications.

The work of developing DSRC standards and building consensus among the stakeholders has been led by various standards development organizations (SDOs) with guidance and partial funding by the Department. The new standards development is being led by the ASTM and IEEE. The breadth of participation in this development approach has ensured the widest possible consensus base for the emerging standards, thus ensuring the ready acceptance of the application of these standards. This new activity started in 1996. These SDOs have worked under a cooperative agreement, with partial funding from the FHWA along with voluntary donations of time and travel expenses from committee participants, to develop very broad ranging direct user inputs to the standards development process in striving for broad consensus on requirements.

In an early attempt to break the standards deadlock, and to respond to the needs of the CVO community, Hughes Aircraft (Hughes), now Raytheon Systems Company, made public its proprietary protocol. Further, many of the CVO sites had already chosen the Hughes protocol for their applications. Mark IV Industries agreed to build tags to the Hughes protocol, which produced competition among suppliers for a single configuration of a tag for the first time. This version was submitted to the ASTM standards organization as a candidate standard, and was called ''ASTM Version 6.''

The Version 6 configuration was never approved by the committee. However, since the Hughes ''Version 6'' tag was employed in all CVO and international border crossing deployments, and it was the only device where there were two suppliers to compete in the CVO market, the ASTM Version 6 tag was chosen by the DOT as the interim device that would be used on all CVO applications until standards were formally adopted by the community.

There appears to be general agreement among the industry and the SDOs on the latest version of the application and Physical Layer standards, with the Physical Layer now approved by the ASTM, and the Application Layer standard (IEEE 1455) approved by the IEEE.

The Application Layer standard (IEEE P1455) is of particular importance. This standard is designed to allow a wide variety of applications to be implemented using a single device. Whereas, today, virtually all tags are customized to a particular application, e.g., tolls or CVO, and it is not easy to add applications. The IEEE standard facilitates the use of a single device for multiple applications.

The DSRC Physical Layer standard allows either active or passive technologies, or both, to be used.

Since all three tag types can be produced, it is likely that multiple tag configurations, that are not interoperable, will exist. The best way to afford the opportunity for interoperability is for DOT to specify a single configuration for a particular application when interoperability is required. Because the CVO community already has a large installed base, all using the active configuration, the DOT has selected the active configuration.

It is the Data Link Layer where the current standards process is stalemated. The current version of this standard allows the two fundamentally incompatible protocols, synchronous and asynchronous, to exist. Since there is no clear industry agreement on this protocol, interoperability can best be achieved by continuing to use the Data Link Layer functions found in the legacy systems that conform to ASTM Version 6.

Therefore, the recommended profile is to use a provisional standard that consists of the new ASTM Physical Layer in the active mode, the existing ASTM Version 6 Data Link layer in the synchronous mode, and the IEEE 1455 Application Layer. In addition, this provisional standard will be designed to ensure interoperability with the existing legacy equipment used in CVO that conforms to ASTM Version 6. This DSRC provisional standard is described in the FHWA Specification, ''Dedicated Short Range Communications for Commercial Vehicles.''

Purpose of this Rulemaking

In this NPRM, the FHWA proposes to amend its regulations to establish rules to ensure application of DSRC standards for CVO projects implemented with highway trust funds. The proposed regulations would apply DSRC standards to relevant systems, subsystems, devices, equipment and software to be acquired as part of those projects.

This rule covers the DSRC provisional standard defined in the FHWA specification for Dedicated Short Range Communications for Commercial Vehicles which incorporates the following protocols from existing standards efforts:

(1) ASTM PS 111–98, Standard Specification for Dedicated Short Range Communications Physical Layer Using Microwave in the 902–928 MHz Band (Active Mode Option),

(2) ASTM Version 6 data link layer functions, and

(3) IEEE P1455, Standard for Message Sets for Vehicle/Roadside Communication.

This configuration will be compatible and interoperable with ASTM Version 6 legacy CVO installations.

Costs and Benefits of the DSRC Interface Standards

The DSRC provisional standard includes some of the first protocols for wide use in the United States surface transportation industry providing for interoperability between products that have typically used proprietary interfaces even to the present day. Manufacturers will have some costs for developing and incorporating compliant interfaces. Only a small part of each of these devices will be affected, so the costs will be minimal. Many of these manufacturers have also been involved in development of the DSRC standards, thus ensuring that they are prepared to provide products that are in conformance.

On the benefits side, this provisional standard eliminates the need to purchase equipment with proprietary interfaces, thus freeing agencies of long-term commitments to specific vendors and their systems with proprietary interfaces. This standard also enables operation with reduced mutual interference, so that co-site and inter-site frequency coordination is greatly

simplified. The application layer portion of the provisional standard also makes possible the use of the device for applications other than CVO.

Interoperability will ensure that DSRC-based systems for CVO will become interchangeable for identical functions by having identical interfaces. This will allow States and carriers to rely on multiple manufacturers as sources of interoperable equipment, which would provide for increased competitiveness among manufacturers of ITS systems and devices. The competitiveness will in turn, encourage suppliers to strive for improved quality, functionality, reliability, and maintainability at lower cost. The agency specifically requests comment on the potential costs and benefits of this proposal.

Interface Compatibility

The FHWA would establish regulations that require conformance to the DSRC provisional standard, which is defined in the FHWA specification, ''Dedicated Short Range Communications for Commercial Vehicles,'' in CVO systems, subsystems, devices, equipment and software being procured in ITS projects using highway trust funds. In this proposed action, the interface standards would apply to procurements of new equipment, or major upgrades of existing equipment, that occur after January 1, 2001.

There is no intent to require the replacement of, or the retrofitting of changes to existing equipment solely to be compatible with the DSRC provisional standard. Incorporation of the DSRC provisional standard should be an orderly process during the normal cycle of replacement of the equipment. This replacement process will be at the discretion of the transportation agency. The new DSRC provisional standard compliant equipment and the existing DSRC equipment used in CVO will operate on the same communications facilities.

This regulation would require that all new or updated equipment, for which this standard applies, procured after January 1, 2001, shall conform with the FHWA specification, ''Dedicated Short Range Communication for Commercial Vehicles.'' This is interpreted as applying to any equipment which meets either of the following criteria:

(1) The specifications for the equipment are still in preparation on January 1, 2001 (i.e., specifications have not been approved and released to procurement and contracting prior to January 1, 2001).

(2) The equipment is the subject of an upgrade which is being procured after January 1, 2001. This means the specifications for the upgrade are still in preparation on January 1, 2001 (i.e., have not been approved and released to procurement and contracting prior to January 1, 2001).

There are various potential approaches to achieving DSRC conformity that could be utilized. It is the FHWA's objective to eventually have all DSRC equipment used for CVO applications conforming with the provisional standard. However, the exact path to that objective would be at the discretion of the implementing agency.

To facilitate the compliance process, the FHWA will conduct a testing program that will verify that the DSRC provisional standard, as embodied in the DSRC specification, performs the required functions and is backward compatible with the existing design of CVO DSRC equipment. There are no new Federal review processes required for complying with this proposed regulation. The specification of applicable standards is part of the existing processes which depend on the nature and scope of the project.

The FHWA believes that a federally established process for certifying manufacturer product conformance with DSRC standards is not necessary, and is left to the States and local agencies procuring the technology and their suppliers to determine.

Exemptions From the FHWA DSRC Standards Profile Specification

As the life cycle of newer ITS non-conforming devices nears an end and the transition to the DSRC provisional standard nears completion, the regulations would require open systems interfaces to the exclusion of proprietary interfaces in ITS systems, subsystems, devices, equipment and software implemented with the use of highway trust funds. In the specific case of this NPRM, open systems interfaces would be interpreted as including interfaces conforming with the FHWA DSRC specification. Note that the DSRC provisional standard is a small subset of the ITS standards that are soon to become available. Specific exemptions to be allowed, or disallowed, regarding the DSRC standards conformance requirements proposed in this NPRM are as follows:

1. Legacy System Exemptions. This policy would allow continued use of legacy (existing) devices having proprietary interfaces through their useful operating life during this transition to DSRC provisional standard conforming interfaces, and until such time as new products conforming to the DSRC provisional standard become available as commercial off-the-shelf items.

2. Grandfathered Interface Exemptions. Exemption of proprietary interfaces from DSRC provisional standard conformance in any legacy device applied to a CVO system would be limited to the useful operating life of the device and would not be construed as extending into the life of any replacement, upgrade, enhancement, or expansion of the legacy device.

Summation

The DSRC provisional standard is defined in the FHWA specification, ''Dedicated Short Range Communications for Commercial Vehicles.'' This action proposes to implement this specification, which describes the Physical Layer standard using the active tag option, the Data Link Layer standard in the synchronous option, the Application Layer (IEEE 1455) standard and backward compatibility with existing ASTM Version 6 equipment as a prerequisite for highway trust funding of CVO projects. Rules are proposed for implementation of this standard, and supplementary information is provided to lay this rulemaking open for review and comment. In this regulatory process, some choices and decisions must be made. Listed below are topics on which the FHWA would like inputs, suggestions, or recommendations in order to benefit from the experience and knowledge of State and local agencies, system operators, carriers, and in the vendor community.

(1) The FHWA requests comments on when the rules described in this NPRM should become effective and the reasons for that recommendation.

(2) The FHWA requests recommendations on how to achieve compliance with the described rules by the State and/or local agencies involved in commercial vehicle operations.

(3) The FHWA requests recommendations on whether or how to verify compliance with the described rules by the manufacturers.

(4) The FHWA requests recommendations on how to address the problems of products that are represented as conforming to the DSRC standards, but do not prove to be interoperable when they are operated with legacy equipment or other DSRC equipment. The FHWA seeks to establish interoperability and to avoid litigation to resolve issues.

(5) Assumptions have been made in the Regulatory Evaluation contained in the regulatory analysis for Executive Order 12866, Regulatory Planning and

Review. The FHWA would like to receive comments on the validity of those assumptions, along with reasoning and explanations for them.

(6) The FHWA seeks comments on a possible limitation period for completion of the transition from the proprietary interfaces with legacy devices to interfaces that fully conform with the DSRC provisional standard.

(7) The FHWA seeks comments from the manufacturers concerning the costs, both to the manufacturer and their customers, of complying with the rules described in this NPRM. Information concerning costs of both a one-time nature as well as potential recurring costs are sought.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket, relevant information that becomes available after the comment period closing date. Interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal, therefore, a full regulatory evaluation is not required. The implementation of these standards will not alter the functionality of the DSRC equipment, both the reader on the roadside and the tag on the vehicle. The recurring cost of these devices should be virtually the same as State governments are now paying for existing equipment. We do not anticipate any significant economic impact of the regulation proposed in this rulemaking document. Nevertheless, the FHWA solicits comments, information, and data on this issue.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on that evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. Any impact to small entities would likely be a positive one, due to the resulting ability of these entities to compete in the open market for ITS system integration work and other engineering services and to develop and market DSRC standards conforming devices useful in CVO deployment. Large corporations, through sales of their proprietary products and proprietary interfaces have previously dominated this market. Previously, large corporations that owned the proprietary interface designs were the only organizations able to manufacture, install, integrate, and service equipment with the proprietary interfaces. Although the large corporations may experience a small loss of engineering services business, this will be more than compensated for by the increased marketability of their DSRC standards profile-conforming products in the growing national ITS industry.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting 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 (2 U.S.C. 1531 *et seq.*).

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 and amendments thereto regarding intergovernmental consultation on Federal programs and activities apply to this program. Those regulations stipulate that Federal agencies shall provide opportunities for consultation by elected officials of State and local governments that would provide non-Federal funds for, or that would be directly affected by, proposed Federal assistance or direct Federal development. The regulations further state that the Federal agencies must communicate with the appropriate State and local officials as early in the program planning cycle as is reasonably feasible to explain specific plans and actions.

Since members of the ASTM, the IEEE, and the DSRC industry participated in establishing the need for the DSRC standards, in defining the requirements for the DSRC standards, and in development and approval of the DSRC standards, it is clear that requirements of the intergovernmental review regulations have been satisfied. In addition, the FHWA and ITS America have made information about the standards program and the standards widely and publicly available. Furthermore, publication of this action with request for comments further coordinates the action and opens the action to review and comment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3501–3520], Federal agencies must determine whether requirements contained in proposed rulemaking are subject to the information collection provisions of the PRA. The FHWA has determined that this proposed regulation does not constitute an information collection within the scope or meaning of the PRA. Implementation of this proposal would impose no paperwork burden on the States or private entities. The proposal merely sets forth the DSRC

interoperability standards for devices that collect the vehicle data that is already being transmitted either electronically, visually, or otherwise. As for the States assuring that vendors of the devices comply with these standards, the FHWA is not imposing any formal certification process on them. The States may accomplish assurances of vendor compliance as part of their usual and customary processes that they would adopt to implement the requirements of any Federal regulation.

United States International Trade Policy

The agency has analyzed the impact of this rulemaking on United States trade in accordance with Executive Order 12661 and finds no significant detrimental impacts on United States international trade policy.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 945

Communications, Highways and roads, Radio, Transportation-intelligent systems.

Issued on: December 15, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend 23 CFR chapter I by establishing a new subchapter K consisting of part 945 as follows:

SUBCHAPTER K—TRANSPORTATION OPERATIONS AND MANAGEMENT

PART 945—DEDICATED SHORT RANGE COMMUNICATIONS (DSRC) FOR COMMERCIAL VEHICLES

Sec.

945.1 Purpose.
945.3 Applicability and scope.
945.5 Definitions.
945.7 Policy.
945.9 Exemptions from the provisional standard.
Appendix A to Part 945—Specification for Dedicated Short Range Communications for Commercial Vehicles.

Authority: 23 U.S.C.315, and 502 note; sec. 6053(b), Pub. L. 102–240, 105 Stat. 1914, at 2190; sec. 5206(e), Pub. L. 105–178, 112 Stat. 107, at 457; and 49 CFR 1.48.

§ 945.1 Purpose.

The purpose of this part is to define the provisional standard that will be utilized to ensure national interoperability of all commercial vehicle operation (CVO) projects that incorporate Dedicated Short Range Communications (DSRC) technology.

§ 945.3 Applicability and scope.

(a) The specification ''Dedicated Short Range Communications for Commercial Vehicles'' shall be used on all commercial vehicle projects and international border crossing projects utilizing DSRC that are procured after January 1, 2001, and utilize funds from the highway trust fund.

(b) Procurement funds are for new equipment, whether it be replacement of existing equipment or new installations.

(c) This part does not require the retrofitting or replacement of existing equipment to be compliant with the provisional standard.

(d) This provisional standard does not apply to other applications of DSRC technology, such as electronic toll collection.

§ 945.5 Definitions.

(a) The terms used in this part are consistent with those commonly used in the standards community as defined by the Institute of Transportation Engineers (ITE).

(b) The terms that are unique to Intelligent Transportation Systems (ITS) are defined as follows:

Commercial Vehicle Operations (CVO) means any ITS project that includes all the operations associated with moving goods and passengers via commercial vehicles over the North American highway system and the activities necessary to regulate these operations.

Dedicated Short Range Communications (DSRC) means a technology employing microwave communications over very short distances to allow moving vehicles to communicate with fixed roadside locations.

Provisional standard means a specification prescribed by the U.S. DOT. In this instance the specification is ''Dedicated Short Range Communications for Commercial Vehicles.''

§ 945.7 Policy.

It is the policy of the Federal Highway Administration (FHWA) to identify the standards that are critical to ensure national interoperability. Commercial vehicle applications that enable electronic screening, including checking safety status, and other credentials associated with the licencing and regulation of commercial carriers shall use equipment that conforms to the FHWA specification for Dedicated Short Range Communications for Commercial Vehicles, as provided in the appendix to this part.

§ 945.9 Exemptions from the provisional standard.

The specification, ''Dedicated Short Range Communications for Commercial Vehicles'' does not apply to future implementations of, or the current standard effort operating in the 5.8 gigahertz frequency band.

Appendix A to Part 945 Specification for Dedicated Short Range Communications (DSRC) for Commercial Vehicles—November 1999

Ver 0.0.1

Federal Highway Administration

United States Department of Transportation, Federal Highway Administration, Intelligent Transportation Systems Joint Program Office

Contents

1 Overview
2 Background Information
3 Physical Layer
4 Data Link Layer
5 Transponder Resources
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Attachment A Compatibility Philosophy

1. Introduction

The primary objectives of this document are to specify the characteristics of the Dedicated Short Range Communication (DSRC) air interface which will be used in commercial vehicle applications and to specify the DSRC equipment that will be resident in a commercial vehicle. The air interface specification is focused on the interaction between equipment on-board a commercial vehicle called a transponder or On-Board Equipment (OBE) and fixed roadside equipment, called a beacon or Road Side Equipment (RSE). The specification uses a three-layer version of the Open Systems Interconnection interface model (i.e., physical, data link and application layers) which reflects the approach taken in current North American and international DSRC standards activities.

1.1 Overview of Specification

The air interface specification adheres to the general DSRC architecture in which the RSE controls the medium, allocating its use to OBEs within range of the RSE. As such, it was possible to take advantage of existing standardization efforts. Specifically, the physical layer specification is based on the characteristics of the active technology described in the ASTM standard PS 111–98. The primary deviation from the active portion of the standard is the elimination of the fast wake-up time requirement. The data link layer specification is based on the data link layer portion of the ASTM draft standard, ''Standard for Dedicated, Short Range, Two-Way Vehicle to Roadside Communications Equipment, Draft 6,'' dated 23 Februrary 1996. Primary deviations from this effort include elimination of the requirement for a lane-based mode. Finally, the application layer is a simplified version of the application layer defined in the IEEE 1455–99. It does not explicitly specify services or interfaces since the application layer and interface to the lower layer services are not exposed and thus not testable. It also redefines the vehicle service table used in the initialization process.

The equipment specification defines characteristics of the OBE such as minimum memory requirements and user interface devices along with a command set that allows the RSE to manage OBE resources. It is adopted directly from IEEE 1455–99; however, there are three significant extensions. First, the specification provides for backwards compatibility with existing deployments within a number of CVO programs including Advantage CVO, Help Prepass and numerous border crossing deployments. Compatibility with the existing deployments is maintained by preserving the internal memory structures and capabilities of the deployed OBEs. Thus, all OBEs conforming to this specification will be required to have internal memory (as defined by OBEs deployed in current CVO programs) and external memory defined in this specification. Attachment A discusses the implications of this specification to compatibility with existing OBEs and RSEs.

Second, the transfer of memory pages up to 64 Kbytes in length requires new logical link control features. Supported functions include a fragmentation counter, flow control, and additional status bits needed for longer DSRC sessions. The first sixteen bits of the Slot Data Message have been set aside exclusively to support these functions.

Third, the specification defines a file transfer application that supports transfers of large data files between a device on the commercial vehicle, such as an on-board computer, connected to the OBE and the roadside back-office application. The file transfer capability operates in a similar fashion to the mailbox application defined in IEEE 1455–99, but requires specialized capability referred to as a Transfer Page.

Note that all the deviations listed above are also identified in the introductory text for each relevant section and are underlined and highlighted in bold text.

1.2 Scope of Specification

Although the air interface and equipment specifications define the critical elements of the DSRC capability, there are several critical practical considerations that are not addressed by this specification. They include: (1) definition of other DSRC system interfaces, (2) memory page registration and (3) security architecture.

This specification does not address two important interfaces. On the roadside, the interface between the RSE and the back office application is not defined. On the vehicle, the interface between the OBE and an in-vehicle device (e.g., on-board computer, vehicle data bus) is not defined. This is consistent with the approach taken in IEEE 1455–99. It is expected that the interface to the back office application will be defined by a vendor, but its specification should not be proprietary. Every effort should be made to define an open specification. The interface between the OBE and an in-vehicle device will likely be based on one of several computer network or vehicular data bus standards.

One critical component of the IEEE 1455–99 OBE memory architecture is the use of paged memory. However, the allocation of pages to specific users is left to a currently undefined IEEE registration process. In order to develop an OBE with the capabilities necessary to support US Department of Transportation Federal Highway Administration (FHWA) sanctioned Commercial Vehicle Operations (CVO) applications as well as other public and private applications, it will be necessary for FHWA, vendors, and other agencies to register a number of CVO pages.

The final unaddressed practical consideration is the DSRC security architecture. Although it is anticipated that it will be necessary to control access to financial, personal and business sensitive information on the OBE, this specification does not define a security approach. (IEEE 1455–99 does not define a specific information security approach, but does provide opportunities in which a user could implement a variety of approaches.) IEEE is currently proposing to develop methods to provide access controls and privacy within the IEEE 1455–99 standard. It is expected that this specification will rely on the proposed effort to define the overall security architecture for DSRC used by commercial vehicles.

2. Background Material

2.1 References

The following documents shall be used, when applicable, in the process of developing equipment and systems that will be compliant with the Sandwich Protocol DSRC Standard. When the following documents are superseded by an approved revision, then that revision shall apply.

ASTM Preliminary Standard-111–98, Specification for Dedicated Short Range Communication (DSRC) Physical Layer using Microwave in the 920 to 928 MHz band

ASTM Draft Standard for Dedicated, Short Range, Two-Way Vehicle to Roadside Communications Equipment, Draft 6, dated 23 Februrary 1996

IEEE Standard 1455–99, Standard for Message Sets for Vehicle/Roadside Communications

2.2 Abbreviations and Acronyms

APDU—Application Protocol Data Unit
ASK—Amplitude Shift Keying
ASN.1—Abstract Syntax Notation One
AID—Application Identification
ASTM—American Society of Testing and Materials
BER—Bit Error Rate
BOA—Back Office Application
BST—Beacon Service Table
CEN—Center for European Normalization
CFR—Code of Federal Regulations
C/R—Command/Response
CRC—Cyclic Redundancy Check
CVO—Commercial Vehicle Operations
DSRC—Dedicated Short Range Communications
EID—Entity Identification
EIRP—Effective Isotropic Radiated Power
FC—Flow Control
FCC—Federal Communications Commission
FCM—Frame Control Message
FHWA—Federal Highway Administration
GMT—Greenwich Mean Time
ID—Identification
ITS—Intelligent Transportation Systems
IEEE—Institute of Electrical and Electronics Engineers
LED—Light Emitting Diode
LID—Link Identification
MRA—Media Request Activation
OBC—Onboard Computer
OBE—Onboard Equipment
OSI—Open Systems Interconnection
PPM—Parts Per Million
RF—Radio Frequency
RM—Resource Manager
RSE—Roadside Equipment
SDM—Slot Data Message
S/I—Signal-to-Interference
s-TDMA—Slotted ALOHA, Time Division Multiple Access
VRC—Vehicle Roadside Controller
VST—Vehicle Service Table

3. Physical Layer

3.1 Introduction

This standard defines the Open Systems Interconnection (OSI) layer 1, physical layer, for DSRC equipment, operating in two-way, half-duplex, active mode.

This standard establishes a common framework for the physical layer in the 902 to 928 MHz LMS band. This band is allocated for DSRC applications by the Federal Communications Commission (FCC) in Title 47, Code of Federal Regulations (CFR), Part 90, Subpart M and by Industry Canada in the Spectrum Management, Radio Standard Specification, Location and Monitoring Service (902–928 MHz), RSS–137.

The physical layer described within this standard is nearly identical to the ''Standard Specification for Dedicated Short Range Communication (DSRC) Physical Layer using Microwave in the 902 to 928 MHz band,'' ASTM PS 111–98, with regard to active technology. *Backscatter technology is not addressed in this physical layer specification. In addition, an exception was made in the wake-up time requirements to facilitate transition from existing products to this specification (see section 3.2.15).* Information not addressed by this document concerning active technology is identical to that addressed within ASTM PS 111–98.

3.2 Downlink Parameters

3.2.1 Carrier Frequencies: Values of the downlink carrier frequency.
Value:The RSE may be operated anywhere within the 915 to 918.75 MHz band.

3.2.2 Tolerance of Carrier Frequencies: Maximum deviation of the carrier frequency caused by any means, expressed in parts per million (ppm)
Value: +/·275ppm

3.2.3 RSE Transmitter Spectrum Mask: Maximum power emitted by an RSE transmitter as a function of the frequency.
Value: In-band power =<+44.77 dBm; Out of band power: =<·25 dBm transmitter power measured in 100 kHz.

3.2.4 RSE Transmitter Spectrum Mask for Modulated Carriers: Relative power emitted with a modulated carrier by an RSE transmitter as a function of the frequency.
Value: The in-band emissions shall be attenuated from the peak in-band power by the indicated value at each frequency offset in the classes listed below:

	Frequency Deviation (+/·)	Attenuation
Class A:	1.0 MHz	>=12 dB in 100 kHz
	1.5 MHz	>=20 dB in 100 kHz
	2.0 MHz	>=25 dB in 100 kHz
	2.5 MHz	>=33 dB in 100 kHz
	3.0 MHz	>=40 dB in 100 kHz
	3.5 MHz	>=44 dB in 100 kHz
	4.0 MHz	>=48 dB in 100 kHz
	4.5 MHz	>=52 dB in 100 kHz
	5.0 MHz	>=56 dB in 100 kHz
	5.5 MHz	>=60 dB in 100 kHz
	6.0 MHz	>=60 dB in 100 kHz
Class B:	1.0 MHz	>=12 dB in 100 kHz
	1.5 MHz	>=20 dB in 100 kHz
	2.0 MHz	>=35 dB in 100 kHz
	2.5 MHz	>=45 dB in 100 kHz
	3.0 MHz	>=55 dB in 100 kHz and have an output power <=·25 dBm
	3.5 MHz	>=60 dB in 100 kHz and have an output power <=·25 dBm
	4.0 MHz	>=63 dB in 100 kHz and have an output power <=·25 dBm

Any class may be used in a manufacturer's RSE. Not all classes have to be supported by all RSE.

Note 1: The resolution bandwidth of the instrument used to measure the peak in-band emission power and the frequency offset in-band emission power shall be 100 kHz and the video bandwidth shall be 100 kHz.

Note 2: Equipment complying with the different classes will require different separation distances.

3.2.5 OBE Minimum Operating Frequency Range: Minimum range of frequencies that must be received by the OBE receiver.
Value: All active OBE must meet the requirements of the slow and fast wake-up operations while receiving emissions from RSE operating on or between 915 and 918.75 MHz.

3.2.6 Maximum Effective Isotropic Radiated Power (EIRP): The maximum peak envelope power transmitted by the RSE referred to an isotropic antenna. The value is normally expressed in dBm, where 0 dBm equals 1 mW.
Value: The maximum EIRP. for each class is limited to the values listed below or a value less than listed if specified by the installation country's governing body.
Class A: for f = 915 and 915.75 MHz only, EIRP =<+40 dBm
Class B: for f= 918.75 MHz only, EIRP =<+44.77 dBm

3.2.7 Antenna Polarization: Locus of the tip of the vector of the electrical field strength in a plane perpendicular to the transmission vector. Examples are horizontal and vertical linear polarization and left and right-hand circular polarization.
Value: Limited to either Horizontal linear or Left-hand circular

3.2.8 Modulation: Keying of carrier wave by coded data.
Value: Binary Amplitude Modulation (Two-level Amplitude Shift Keying [ASK], with one level being off)

3.2.9 Eye Pattern for RSE: Description of the acceptable amplitude compared with the time envelope values of the modulated signal created by an RSE.

Parameter	Value
Class A&B:	
Maximum 'off' carrier to minimum 'on' carrier ratio	0.103

Parameter	Value
Maximum 'on' carrier to minimum 'on' carrier ratio	1.14
½ of bit period	1 microsecond
Allowed time variance	165 nanoseconds

3.2.10 Data Coding: Baseband signal presentation, such as a mapping of logical bits to physical signals.
Value: Manchester
3.2.11 Bit Rate: Number of bits per second.
Value: 500 kbps
3.2.12 Tolerance of Bit Clock: Maximum deviation of the bit clock expressed in ppm or percentage (%).
Value: +/·100 ppm
3.2.13 Bit Error Rate (BER): Averaged number of erroneous bits related to all transmitted bits. The realized BER assumes an established link, depends on the application, and does not consider any specific distribution of errors. Within the maximum horizontal range, the effective BER may be different from the reference value due to time variant and stochastic impacts.
Value: 10^{-6} in a non-fading channel (for reference only)
3.2.14 Signal to Interference (S/I): The signal-to-interference ratios over which the OBE must provide a BER of 10^{-5}, or better for downlink communications. Signal strength is limited to the range 210 millivolts/meter (·30 dBM with 0 dBi ant.) to 9377 millivolts/meter (+3 dBm with 0 dBi ant.) horizontal field strength. S/I measurements will be made with a signal strength 2 dB above the OBE sensitivity level.
In Band: Interference on the downlink frequency.
Value: S/I => 15 dB
LMS Band: Interference located in the 904 to 909.75 MHz and 921.75 to 928 MHz portions of the LMS Band.
Value: S/I => 8 dB
Out of Band: Interference located at the listed frequency offsets from 915 MHz.
Values: +/·13 MHz, S/I => 0 dB; +/·30 MHz, S/I => ·5 dB; +/·65 MHz; S/I => ·25 dB
3.2.15 Wake-up Process for OBE: The wake up process within the OBE switches the OBE main circuitry from standby mode (sleep mode) to the active mode.
Value: Wake-up is initiated by a received RF carrier at the OBE for the following specified amounts of time. Under this specification only Slow Wake-up is required. Fast Wake-up may be implemented at the vendor's discretion.
Slow Wake-up: <=50 msec within the power levels specified in the OBE receiver operating range for Slow Wake-up. (In testing this parameter an RSE Write message should be provided in slot 4 of the TDMA frame.)
Fast Wake-up: <= 2 msec within the power levels specified in the OBE receiver operating range for Fast Wake-up. (Fast Wake-up is not required for compliance with this specification.)
3.2.16 OBE Receiver Operating Range: Minimum and maximum signal strengths in which the OBE will respond to the RSE. These two values also specify the minimum dynamic range of the OBE receiver.
Value:
Slow Wake-up: Minimum signal strength: None—The OBE may wake-up at any signal strength less than the maximum indicated below and have a downlink BER less than 10^{-5}.
- Required Signal Strength: Downlink BER of 10^{-5} at 210 millivolts/meter (·30dBm with 0 dBi antenna) horizontal signal strength or greater.
- Maximum Signal Strength: Downlink BER of 10^{-5} at 9377 millivolts/meter (+3dBm with 0 dBi antenna) horizontal signal strength.

Fast Wake-up: Minimum signal strength: Downlink BER of 10^{-5} at 450 millivolts/meter minimum (·23dBm with 0 dBi antenna). (Fast Wake-up is not required for compliance with this specification.)
- Required Signal Strength: Downlink BER of 10^{-5} between 450 millivolts/meter (·23.38dBm with 0 dBi antenna) and 550 millivolts/meter maximum (·21.63 dBm with 0 dBi antenna) horizontal signal strength. (The OBE must not wake-up before the lower signal strength and must wake-up on or before the larger signal strength).
- Maximum Signal Strength: 9377 millivolts/meter (+3dBm with 0 dBi antenna) horizontal signal strength.

3.2.17 Preamble/Postamble: The preamble and postamble are sequences of bits that do not convey information. The preamble is a modulated carrier designed to facilitate notification of an incoming message and synchronization of the receiver with the incoming bit stream. The postamble is designed to facilitate recognition of the end of a message.
Value: All data frames shall be preceded by a preamble. The preamble shall consist of the following set of 8 bits: 01010101 Binary or 55 Hex. A postamble will not be used.

3.3 Uplink Parameters

3.3.1 Carrier Frequencies: Values of the uplink carrier frequency
Value: The OBE will generate a carrier of 915 MHz.
3.3.2 Tolerance of Carrier Frequencies: Maximum deviation of the carrier frequency caused by any means, expressed in parts per million (ppm)
Value: +/·819ppm for an OBE temperature range of ·40° to +75° C continuous and up to +85° C for up to 30 minutes. (The temperature range limitation is a deviation from ASTM PS 111–98.)
3.3.3 OBE Transmitter Spectrum Mask: Maximum power emitted by an OBE transmitter as a function of the frequency.
Value: In-band power: See Maximum EIRP; Out of band power: =<·25 dBm in 100 kHz.
3.3.4 RSE Receiver RF Bandwidth: Bandwidth of the RSE receiver
Value: 3 MHz nominal
3.3.5 Maximum EIRP: Maximum EIRP transmitted by the OBE. The value is normally expressed in dBm where 0 dBm equals 1 mW. All power values are referred to an isotropic antenna.

Value: The EIRP shall be 3 dBm +/·3 dBm for a range of 0 to +6 dBm measured as 170 mV/m to 350 mV/m at one meter with a 0 dBi horizontally polarized antenna.

3.3.6 Antenna Beamwidth: The angle, measured across the center of the antenna beam, at each end of which the signal is 3 dB less than the maximum level.

Value: The OBE transmit and receive antennas shall have a beamwidth of 140 degrees minimum in elevation and 70 degrees minimum in azimuth. The antenna boresight axis of the OBE transmit and receiver antenna field of view is composed of the common bisector of both field of view angles.

3.3.7 Vehicle Mounted Antenna Beam Orientation: The position of the antenna beam relative to the vehicle direction of travel.

Value: The antenna boresight axis, in the required mounting position, shall be within +/·10 degrees in azimuth from the direction of travel and between 0 and 70 degrees above horizontal.

3.3.8 Antenna Position Tolerance: Deviation of the OBE sensitivity as an effect of rotation about the horizontal, vertical, and boresight axes of the OBE.

Value: Decreases from maximum sensitivity when the OBE is rotated away from precise orientations as follows:
+/·25 degrees rotation around the horizontal axis: =<2 dB
+/·25 degrees rotation around the vertical axis: =<2 dB
+/·25 degrees rotation around the boresight axis: =<2 dB
Rotation around any combination of axes: =<4 dB

3.3.9 Antenna Polarization: Locus of the tip of the vector of the electrical field strength in a plane perpendicular to the transmission vector. Examples are horizontal and vertical linear polarization and left and right-hand circular polarization.

Value: Horizontal linear

3.3.10 Modulation: Keying of carrier wave by coded data.

Value: Binary Amplitude Modulation (Two-level ASK, with one level being off)

3.3.11 Eye Pattern for OBE: Description of the acceptable amplitude compared with the time envelope values of the modulated signal created by an RSE.

Class A&B:	Parameter	Value
	Maximum 'off' carrier to minimum 'on' carrier ratio	0.103
	Maximum 'on' carrier to minimum 'on' carrier ratio	1.14
	½ of bit period	1 microsecond
	Allowed time variance	165 nanoseconds

3.3.12 Data Coding: Baseband signal presentation, such as a mapping of logical bits to physical signals.

Value: Manchester

3.3.13 Bit Rate: Number of bits per second

Value: 500 kbps

3.3.14 Tolerance of Bit Clock: Maximum deviation of the bit clock expressed in ppm or percentage (%).

Value: +/·450 ppm

3.3.15 BER: Averaged number of erroneous bits related to all transmitted bits. The realized BER assumes an established link, depends on the application, and does not consider any specific distribution of errors. Within the maximum horizontal range, the effective BER may be different from the reference value due to time variant and stochastic impacts.

Value: 10^{-6} in a non-fading channel (for reference only)

3.3.16 S/I: The signal-to-interference ratios over which the OBE must provide a BER of 10^{-5}, or better for downlink communications. Signal strength is limited to the range 210 millivolts/meter (·30 dBM with 0 dBi ant.) to 9377 millivolts/meter (+3 dBm with 0 dBi ant.) horizontal field strength. S/I measurements will be made with a signal strength 2 dB above the OBE sensitivity level.

In Band: Interference on the downlink frequency.

Value: S/I => 15 dB

LMS Band: Interference located in the 904 to 909.75 MHz and 921.75 to 928 MHz portions of the LMS Band.

Value: S/I => 8 dB

Out of Band: Interference located at the listed frequency offsets from 915 MHz.

Values: +/·13 MHz, S/I => 0 dB; +/·30 MHz, S/I => ·5 dB; +/·65 MHz, S/I => ·25 dB

3.3.17 Preamble/Postamble: The preamble and postamble are sequences of bits that do not convey information. The preamble is a modulated carrier designed to facilitate notification of an incoming message and synchronization of the receiver with the incoming bit stream. The postamble is designed to facilitate recognition of the end of a message.

Value: All data frames shall be preceded by a preamble. The preamble shall consist of the following set of 8 bits: 01010101 Binary or 55 Hex. A postamble will not be used.

4. Data Link Layer

4.1 Introduction

The beacon shall control all transactions with the transponder, and implement a slotted ALOHA, time division multiple access (s–TDMA) data link control protocol as defined within this document. The protocol is based on a cyclic structure, known as a frame, as shown in Figure 4.1–1. Frames are transmitted continuously and contiguously. The frame consists of a Message Control Phase (with the Frame Control Message), a Transaction Phase (with data message slots), and an Activation Phase (with activation slots). The protocol permits multiple transponders to simulta-

neously request permission to perform a transaction. The beacon then commands up to four transponders to communicate in one or more specific message slots within the frame. At the conclusion of each transaction, a confirmation mechanism is used. If the transaction fails for any reason, a mechanism to repeat the transaction is initiated.

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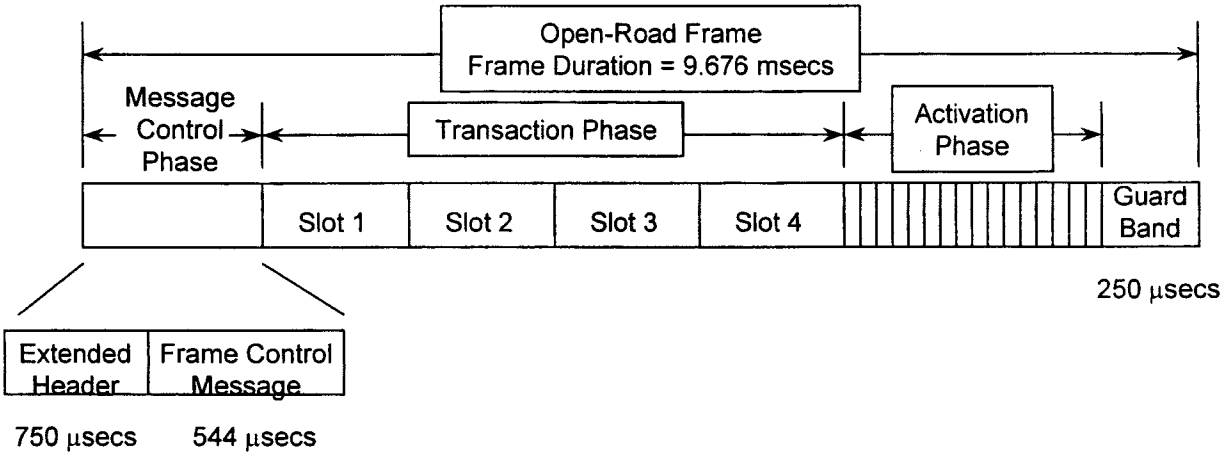
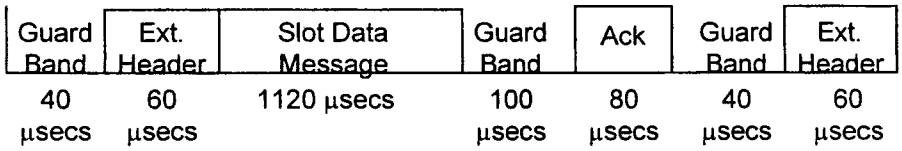
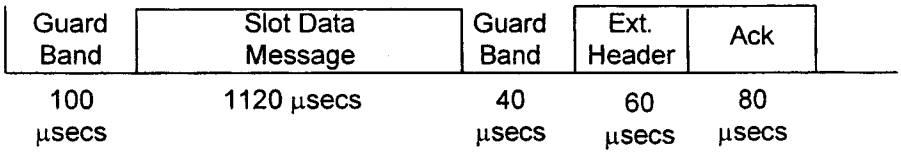
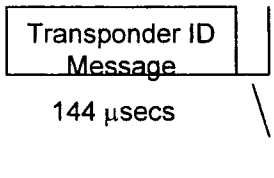




READER TO TRANSPONDER TRANSMISSIONS IN TRANSACTION PHASE SLOT



TRANSPONDER TO READER TRANSMISSIONS IN TRANSACTION PHASE SLOT



TRANSPONDER TRANSMISSIONS IN ACTIVATION PHASE SLOT

Figure 4.1-1 Frame Structure and Timing

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This specification is based on the data link layer described in the ASTM draft DSRC standard. However, it differs from the standard in two significant ways. *First, the specification alters the network entry philosophy (of the ASTM draft DSRC specification) to align with the approach described in IEEE 1455–99. Activation is no longer required by all compatible OBE's entering the read zone, but a decision to activate is made by each OBE (see section 4.5). Second, the specification identifies a logical link control sublayer which is used to facilitate the transfer of large data files (see section 4.8.5).*

4.2 Frame Structure

The DSRC protocol can be implemented as a dual frame structure to optimize performance for both wide area (open-road) and land-based applications. However, only the wide area protocol is required for compliance with this specification.

4.2.1 Wide Area Frame

There shall be four message slots and sixteen activation slots in a 9.676 millisecond frame. All OBEs shall be capable of transmitting or receiving in at least two message slots per frame.

4.2.2 Lane-Based Frame

There shall be one message slot and four activation slots. This option is not required under this specification, but may be needed to support some legacy applications.

4.3 Message Control Phase

The frame structure, synchronization, message slot assignments, transaction type, and data link control shall be commanded by the beacon during this phase via the Frame Control Message (FCM). Assignments are based upon requests received during Activation Phases of preceding frames. The beacon may assign multiple message slots and/or multiple frames to a transaction with a transponder. In this case, the slot command and Transponder ID will appear in multiple slot assignment fields in the FCM.

4.4 Transaction Phase

The slot command in the FCM shall indicate the type of transaction and in which slot(s) the transaction shall be performed. A transaction may be transmit or receive, addressed or broadcast, and internal or external data messages.

4.4.1 Message Acknowledgement

The beacon shall send an acknowledgement message after each scheduled addressed transponder transmission. The transponder shall send an acknowledgment message after each scheduled addressed transponder reception. The acknowledgment shall be set positive if a valid message is received (i.e., no Cyclic Redundancy Check [CRC] error and no link validation error). Otherwise, the acknowledgment shall be set negative. An incorrectly received acknowledgment shall be considered negative.

4.5 Activation Phase

The Beacon shall transmit a FCM at the beginning of each frame to define the frame structure, enable activation, and establish synchronization with transponders. In accordance with IEEE 1455 requirements, the reader suppresses activation by legacy OBE's and FHWA OBE's that do not contain the application information desired by the RSE. This is accomplished by using Frame Control bits 1 and 2 in the FCM to Inhibit Transponder Activation and Enable External Activation. Both normal and external activation may be permitted during a transition period when data from both FHWA OBE's and legacy OBE's must be read. To inform OBE's which memory pages are desired, the reader periodically transmits a beacon service table (BST) to the global ID using an External Memory Write. When transmitting the BST the Slot Command (section 4.8.7) must indicate the presence of a BST and ''Transaction Not Complete'' shall be asserted to guarantee sufficient processing time on the OBE. The BST structure is defined in Section 9.

The OBE processor examines the requested page ID's in the BST and determines whether or not the requested pages are present. If both of the requested pages are present, the OBE initiates External Activation by randomly choosing an Activation Slot and preparing to send an External Transponder ID message. The beacon shall listen for Transponder ID Messages in all of the activation slots at the end of the current frame, and shall make appropriate transaction assignments in the next available frame.

Upon receiving External Activation, the RSE allocates uplink slots to receive the VST. The VST consists of the requested pages. OBE Page 1 will be returned only when specifically requested. The OBE configuration bits identified in IEEE 1455–99 Table 9.5.2–1 will not be included. Since the VST is a response to an implicit Read Memory Page command, the standard command response format described in section 7.5 will be utilized. A ''No Request'' page ID (page 0) is always considered present on the OBE, but does not result in the transmission of data. (An RSE requesting Page 0 and Page 0 will not assign uplink slots when OBE activation is detected since the VST has no content.)

4.6 Guard Bands and Extended Headers

4.6.1 Guard Bands

Guard Bands, defined as a period of no RF transmission, shall be as follow:

- Following each Activation Phase—250μsec +10%,·0%
- Following each Transponder ID Msg—8μsec
- Preceding the Extended Header of each Originated Slot Data Message (SDM) or Acknowledgement—40μsec
- Preceding each Transponder-Originated SDM or Acknowledgement—100μsec

4.6.2 Extended Headers

An extended header, consisting of one of the following data patterns—all binary ''1's'', all ''0's'', or alternating 1's and 0's—shall be transmitted prior to the messages specified below. The preferred data pattern is ''0101 * * *''. The number of bits of extended header shall be as follows:

- Prior to the FCM—375 bits
- Prior to each Reader-Originated Acknowledgement Message—30 bits
- Prior to each Reader-Originated SDM—30 bits

4.7 Message Formats and Field Sequencing:

4.7.1 Frame Control Message

The Frame Control Message provides link control, frame parameters, and dictates the transaction assignments that are to be performed by transponders in the current frame.

Field definition	No. bits	Binary value
Header Code:		
Selsyn	8	01010101
Flag	8	10001101
Frame Control	4	-
Message Type	4	1100
Slot 1 Command	8	-
Slot 1 Transponder ID	32	-
Slot 2 Command	8	-
Slot 2 Transponder ID	32	-
Slot 3 Command	8	-
Slot 3 Transponder ID	32	-
Slot 4 Command	8	-
Slot 4 Transponder ID	32	-
Sleep Timeout	4	-
Spare	2	00
Activation Response Parameter	2	-
Validation Seed	64	-
CRC	16	-
Total bits	272	

4.7.2 Slot Data Message

The Slot Data Message contains a data packet to or from the transponder. Content of the Message Data is application specific. Unused bits should be set to zero. Note that for External Memory transactions 16 bits of the Message Data have been set aside for Logical Link Control functions. The number of Message Data bits is reduced to 496. For Internal Memory transactions none of the Message Data bits are used for Logical Link Control.

Field definition	No. bits	Binary value
Header Code:		
Selsyn	8	01010101
Flag	8	10001101
Data Link Header	4	1000
Message Type	4	01xx
Logical Link Control (Internal/External)	0/16	-
Message Data (Internal/External)	512/496	-
Validation Check	8	-
CRC	16	-
Total bits	560	

4.7.3 Acknowledgement Message

The Acknowledgement Message indicates whether or not the prior Slot Data Message was received properly. The format is the same for both the beacon and transponder. All SDMs shall be acknowledged with a positive or negative response, except for Broadcast messages.

Field definition	No. bits	Binary value
Header Code:		
Selsyn	8	01010101
Flag	8	10001101
Data Link Header	4	1000
Message Type	4	1001 (Positive Ack)
	.....	1000 (Negative Ack)
CRC	16	
Total bits	40	

4.7.4 Transponder ID Message

The Transponder ID Message is used by the transponder to notify the beacon that it is present in the communication zone, and to request establishment of a logical link to perform a transaction with the beacon. Battery condition detection

status is a vendor option. When detection is implemented, Message Type filed shall be coded as shown. Otherwise, Message Type filed shall return a 0001 response.

Field definition	No. bits	Binary value
Header Code:		
Selsyn	8	01010101
Flag	8	10001101
Transponder Type	4	
Message Type	4	0000 (Low Battery)
		0001 (Battery OK)
Transponder ID	32	
CRC	16	
Total bits	72	

4.7.5 External Transponder ID message (Media Request Activation message)

The External Transponder ID Message is transmitted by an OBE to notify the RSE that an attached application layer process has data to send. This message is equivalent to a system interrupt. This message is also referred to as a Media Request Activation (MRA) message and is transmitted in an Activation Slot.

Field definition	No. bits	Binary value
Header Code:		
Selsyn	8	01010101
Flag	8	10001101
Transponder Type	4	
Message Type	4	0010
Transponder ID	32	
CRC	16	
Total bits	72	

4.8 Field Formats and Bit Definitions:

All data fields shall be transmitted most significant byte first and most significant bit first.

4.8.1 Activation Response Parameter

This 2-bit field specifies the probability transponders will use to determine if they will transmit a Transponder ID message in the current frame, or defer activation to a future frame. This field permits the beacon to modulate the level of activity in systems where large numbers of transponders are in the communications zone. The field is coded as follows:

Code	Activation probability (in percent)
00	100
01	50
10	25
11	12.5

4.8.1.1 If the transponder chooses to respond in the current frame, the transponder shall interpret the Frame Control field to determine the current frame structure. The transponder shall then randomly select one of the activation slots in which to send the Transponder ID message.

4.8.1.2 If the transponder chooses to defer to a future frame, then no Transponder ID message shall be transmitted in the current frame.

4.8.2 Data Link Header

A 4-bit field reserved for future message control between the transponder and beacon. Field shall be set to a value of binary 1000 to define ''no operation''.

4.8.3 Frame Control

This 4-bit field identifies the type of beacon protocol and activation control.

Bit	Code	Definition
3	1	Wide Area Frame
	0	Lane-Based Frame (not used under CVO protocol)
2	1	Transponder Activation Inhibited
	0	Transponder Activation Enabled
1	1	External Activation Inhibited
	0	External Activation Enabled

Bit	Code	Definition
0	1	Extended Variable Framing
	0	Normal TDMA Framing

4.8.3.1 Frame Type—Bit 3 shall identify which frame structure shall be used for the current frame, as shown in Figure A–1.

4.8.3.2 Transponder Activation Enabled—If Bit 2 = 0, transponders entering the communications zone shall make an attempt to gain entry by transmitting an appropriate Transponder ID Message during the Activation Phase. The probability of responding during the Activation Phase, however, shall be governed by the Activation Response Parameter.

4.8.3.3 Transponder Activation Disabled—Bit 2 = 1, transponder shall not respond with a Transponder ID Message during the current Activation Phase. The remainder of the FCM shall still be interpreted and processed, however, and the transponder shall perform any command operations.

4.8.3.4 External Activation Enabled—If Bit 1 = 0, then transponders shall be allowed to respond with an External Transponder ID Message (Media Request Activation Message) during the current Activation Phase. The probability of responding during the Activation Phase, however, shall be governed by the Activation Response Parameter.

4.8.3.5 External Activation Inhibited—If Bit 1 = 1, then transponders shall not respond with an External Transponder ID Message (Media Request Activation Message) during the current Activation Phase. The remainder of the FCM shall still be interpreted and processed, however, and the transponder shall perform any commanded operations.

4.8.3.6 Normal TDMA Framing—If Bit 0 = 0, then remaining Frame Control field bits define normal protocol operation as shown in Figure A–1.

4.8.3.7 Extended Variable Framing—If Bit 0 = 1, then remaining Frame control bits must be set as follows: Bit 3 = 0, Bit 2 = 0, bit 1 = 1. This combination provides a means to permit a beacon to generate an extended variable frame messaging structure. This feature is designed for future expansion. The specific protocol is outside the scope of this standard.

4.8.4 Message Type

This 4-bit field identifies the specific type of DSRC message. The bits are coded as follows:

Code	Definition
0000	Transponder ID Message with Low Battery Indication
0001	Transponder ID Message with Battery OK Indication
0010	External Transponder ID Message (Media Request Activation Message)
0011	(unused)
0100	Normal Slot Data Message
0101	(unused)
0110	Reserved for Factory Programming Message
0111	Reserved for Agency Programming Message
1001	Positive Acknowledgment Message
1010	(unused)
1011	(unused)
1100	Frame Control Message
1101	(unused)
1110	(unused)
1111	(unused)

4.8.4.1 Reserved Codes—Message Type codes 0110 and 0111 are not user accessible and shall be reserved only for Factory and Agency programming functions.

4.8.5 Logical Link Control

Link control features have been added to support the transfer of large memory pages. These include a fragment counter for fragmentation/defragmentation and flow control. Several status bits have been added to clarify link operation. These link control bits are implemented only for external memory operations. Operations using internal memory will not implement these bit fields. The following bit fields have been defined:

a. Flow Control (FC), 1 bit—This bit is used by the OBE to request a pause in flow for either uplink or downlink operations. The bit is used by the RSE to indicate that the next uplink slot allocated to the OBE is intended to read the flow control status. When the RSE needs a pause in data flow due to an internal resource limitation, the RSE simply stops allocating slots.

—OBE Uplink Flow Control. A pause in uplink flow (''Stop allocating uplink slots'') is requested by the OBE by setting the Flow Control bit. No new data will be transmitted by the OBE after setting the bit; transmissions may be stopped (if an ACK was received) or data may simply be repeated if slot allocations continue. If the RSE is still assigning uplink slots to the OBE when the OBE is ready to continue, the data flow continues as before the stoppage with the Flow Control bit cleared. If the RSE has stopped assigning uplink slots to the OBE, the OBE requests a continuation of data flow by transmitting a MRA Message. Upon receiving the MRA, the RSE restarts the assignment of uplink slots. The OBE LLC status bits should reflect normal operation; Flow Control bit cleared and Fragment Counter set to the number of the current fragment. Valid Message Data starts with the first uplink slot.

—OBE Downlink Flow Control. No explicit signaling is provided for Downlink Flow Control. When the OBE needs a pause during a downlink operation, it begins replying to downlink slots with a negative acknowledgement (NACK). If the pause is short, the RSE repeats the unacknowledged slot. The OBE clears its backlog and continues acknowledging

downlink data. Layer 2 is never expected to accommodate a flow control delay of more than a few frames since transactions occur only as page transfers and the full page memory space must be available on the tag in order to initiate the transaction.

b. Sequence Number (S), 1 bit—Whenever a Layer 2 acknowledgment of a Slot Data Message is received, the Sequence bit is toggled to indicate the next transmission is new data. This bit permits Layer 2 (even though it's in the external processor, it's still Layer 2) to differentiate between successive, single-fragment transactions without resorting to examining the data.

c. Command/Response (C/R), 1 bit—Used by the RSE to command an application layer response consisting either of data or a confirmation that a command was successful. Setting the RSE C/R bit The bit is used by the OBE to indicate the status of the requested response, 1 indicates that the response is ready (and provided), 0 indicates that the OBE response is not yet available. When the response is not ready, the RSE may continue to assign uplink slots to receive the response. If slot assignments are available when the response becomes available, the OBE sets the C/R bit and returns the response. If the RSE has stopped assigning slots during the wait, the OBE transmits a Media Request Activation Message to indicate that the response is now available.

d. First (F), 1 bit—The ''First'' bit is set for the first fragment in a transaction. This permits the OBE to more easily identify the start of a broadcast transmission (so the OBE can tell when it has the whole message).

e. Activation (A), 1 bit—Set to 1 by the OBE on the first uplink slot assigned after activation of a new session. Set to 0 for all other uplink slots indicating the continuation of a session. This bit permits the RSE to identify an OBE that has declared a failure in an incomplete session and initiated a new session.

f. Fragment Counter (Frag), 11 bits—This is large enough to span a 64 K*bytes* page and header divided into 496 bit fragments (512 bit slots minus the 16 control bits per slot). The counter counts down from N–1 for an N fragment transaction. A zero counter-value indicates the last fragment. Frag0 is the least significant bit and is transmitted last.

Bit Number	7	6	5	4	3	2	1	0
First Byte	FC	S	C/R	F	A	Frag10	Frag9	Frag8
Second Byte	Frag7	Frag6	Frag5	Frag4	Frag3	Frag2	Frag1	Frag0

4.8.6 Message Data

This contains the packet of information that is transferred to or from the transponder. This data could be either a single internal transponder data packet, or external single or multi-packet application data, depending upon bit 4 of the associated Slot command in the Frame control Message.

For External Memory transactions the packet is a 496-bit field with 16 bits dedicated to Logical Link Control (4.8.4). For Internal Memory transactions the packet is a 512-bit field. For a Downlink Internal Message only, the first eight bits of the message are reserved for a driver interface command field. The coding is given below:

Field definition	Bit	Coding
Visual Signal Activation	7,6	00=Visual Signal Off 01=Activate Green 10=Activate Red 11=Activate Yellow
Audio signal Activation	5,4	00=Audio Signals Off 01=Activate Continuous 10=Activate Intermittent 11=Not Used
Data Field Indicator	3,2	00=Data Field Valid 01=Driver Interface Command Only—Ignore Data
Field	.....	10=Not Used 11=Not Used
Reserved	1,0	Reserved

4.8.7 Sleep Timeout

This 4-bit field defines the period of time that a transponder shall not attempt activation after a completion of the current transaction with the beacon. This field is coded as binary values from 0000 to 1111. Each value is then multiplied by 2 seconds, i.e., 0–30 seconds. (This mechanism for commanding sleep is required in addition to the IEEE 1455 Sleep Transponder command (6.4.8).)

4.8.8 Slot Command

This 8-bit field identifies the transaction assignment for a specific Message Slot. The bits are coded as follows:

Bit	Code	Definition
7	1	Transmit Message to Beacon
	0	Receiver Message from Beacon
6	1	Acknowledge Message
	0	Unacknowledged Message
5	1	Last Frame of Transaction
	0	Transaction Not Complete
4	1	Internal Memory/Application

Bit	Code	Definition
	0	External Memory/Application
3,2	00	Normal Slot
	01	Idle Slot
	10	Continuous Wave Slot
	11	(undefined)
1	1	BST Present
	0	BST Not Present
0	0	Reserved

4.8.8.1 Bit 7: Transmit/Receive—The transponder shall transmit or receive in the indicated slot depending on the value of this bit field.

4.8.8.2 Bit 6=1: Acknowledged Message—The transponder shall perform the commanded transmission or reception, with acknowledgment. Global ID is not permitted. Positive or negative acknowledgment status shall be passed to the application layer. If the transponder receives an error-free message during the associated slot, then the transponder shall transmit a positive acknowledgement at the end of the slot. Otherwise, the transponder shall transmit a negative acknowledgment. If the transponder transmits a message during the associated slot, then the transponder shall expect an acknowledgment from the beacon at the end of the slot. If no acknowledgment is received, then a negative acknowledgment shall be assumed.

4.8.8.3 Bit 6=0: Unacknowledged Message—The transponder shall perform the commanded transmission or reception without acknowledgment. No acknowledgment message shall be transmitted or expected. This bit shall be ignored when the beacon uses the Global ID to broadcast messages to all transponders.

4.8.8.4 Bit 5=1: Last Frame—The transponder shall attempt to complete the assigned transaction in the current frame, then process the sleep function. If the transaction is completed successfully, the transponder shall initiate the sleep function at the end of the frame, using the sleep timeout value included in the FCM. If the transaction is not completed successfully, the transponder shall not initiate the sleep function at the end of the frame.

4.8.8.5 Bit 5=0: Transaction Not Complete—Transponder shall maintain link activation as additional messages are pending to complete the transaction.

4.8.8.6 Bit 4 = 1: Internal Memory/Application—A single packet message will be sent from or received to the memory within the transponder. If the single packet is a transponder receive message, then the most significant 8 bits of the 512-bit field are reserved for transponder application layer control purposes. The remaining 504 bits are interpreted as the data field. If the single packet is a transponder transmit message, then the entire 512 bits shall be constructed using internal transponder memory and ID information.

4.8.8.7 Bit 4 = 0: External Memory/Application—Single packet or multi-packet messages shall be transferred to or from an attached application buffer, depending upon whether the Slot Command indicates receive or transmit. That is, none of the 512 bits in each packet are interpreted by the transponder. The data field is considered to be an end-to end message between the beacon and transponder-attached application process.

4.8.8.8 Bit 3 & 2: Slot Type—These two bits shall be coded as follows to determine what type of slot commanded:

Code	Definition
00	A normal communication slot, as commanded by bits 7 through 4.
01	The addressed transponder shall remain idle for the associated slot. In this case, bits 7, 6, and 4 shall be ignored.
10	The addressed transponder shall transmit a continuous wave signal for the 560-bit duration of the assigned message slot. In this case, bits 7, 6, and 4 shall be ignored.
11	Currently undefined. When these bits are set to 11, the transponder shall default to idle.

4.8.8.9 Bit 1: Broadcast Service Table—A BST as defined in Section 9 shall be transferred in this slot. (This slot is expected to be a global external write.)

4.8.9 Transponder ID

A 32-bit binary value that uniquely identifies the link address of each transponder. A mechanism shall be established by an approved authority or organization to allocate unique ID values among manufacturers. Unique ID values shall be in the hexadecimal range between 0000 0001 through FFFF FFFE, inclusive. Remaining addresses are reserved. Four types of transponder IDs are permitted:

4.8.9.1 Global ID—A reserved address with the hexadecimal value of 0000 0000. Every transponder shall decode this value. It shall be used exclusively for broadcast transmission from the beacon to all transponders in the communication zone.

4.8.9.2 Public ID—A permanent, unique 32-bit identifier that is used to determine the link address of each transponder. This identifier shall be programmed once into the unit during factory programming. This identifier shall be used as the Transponder ID only if the Transponder Type field indicates ''Public Link Entry''. Otherwise, this identifier shall not be used. The global ID value is not permitted.

4.8.9.3 Random ID—A 32-bit identifier that is chosen at random by the transponder, for the purpose of ''Anonymous Link Entry''. This identifier shall be chosen only once, upon wake-up, and shall not change value until the transponder exits the logical link (sleeps & re-awakens). This identifier shall be used as the Transponder ID only if the Transponder Type field indicates ''Anonymous Link Entry''. Otherwise, this identifier shall not be used. The Global ID value is not permitted.

4.8.9.4 Private ID—A permanent, unique 32-bit identifier which may be used exclusively to validate Agency Programming Messages (Message Type code 0111). This identifier shall be programmed into the unit during factory programming. The Global ID value is not permitted. The contents of the Private ID are not governed by this specification.

4.8.10 Transponder Type

This 4-bit field specifies the type of transponder, what capabilities are available for the transaction, and identifies which transponder ID is used for activation.

Bit	Code	Definition
3	1	Open-Road Frame capable
	0	Open-Road or Lane-Based capable
2	1	Anonymous Link Entry (Use Random ID for Transponder ID)
	0	Public Link Entry (Use Public ID for Transponder ID)
1,0	00	Extended Protocol Capable [1]
	01	Internal Read-Only
	10	Internal Read/Write
	11	Internal and External Read/Write

[1] Extended Protocol—Transponder Type field must be set to binary 0000 to signal the beacon of a capability to support an extended protocol. This feature is designed for future expansion. Any specific protocol is outside the scope of this standard.

4.8.11 Validation Check

This 8-bit field is generated by the link validation algorithm and is used by the beacon or transponder to validate a received Slot Data Message. All fields except the Header Code are included in the calculation.

4.8.12 Validation Seed

This 64-bit field contains the random number seed used to initialize the validation algorithm in a given frame. This seed is used in the validation of every Slot Data Message transmitted in the Transaction Phase. This feature provides uplink playback protection for the beacon.

4.9 Message Processing

4.9.1 Link Protocol Flow

The DSRC communications protocol permits two-way messaging between the beacon and one or more transponders in an application specific communications zone. Messages are separated into one or more data packets of 512 bits each.

4.9.1.1 Packet Communications may be accomplished by, but not limited to, any of the following means:

- Single packet per vehicle, one to four vehicles simultaneously each frame
- Multiple packets per vehicle per frame.
- Multiple packets per vehicle in multiple frames.
- Multiple packets between one or more vehicles in multiple frames.

4.9.1.2 Protocol flowcharts are shown in Figures 4.9.1.2–1 through 4.9.1.2–4.

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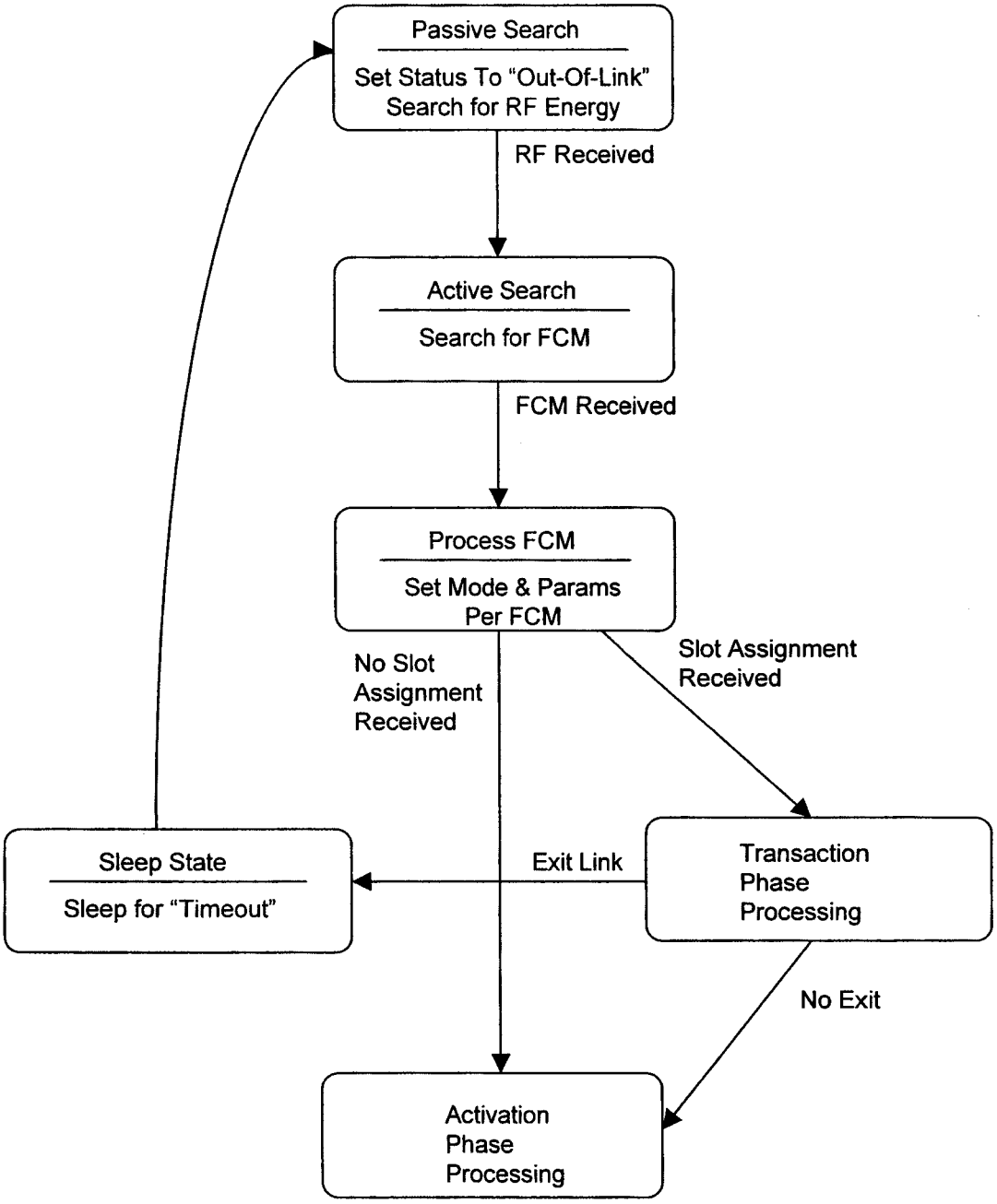

Figure 4.9.1.2-1 Top Level Protocol Flowchart

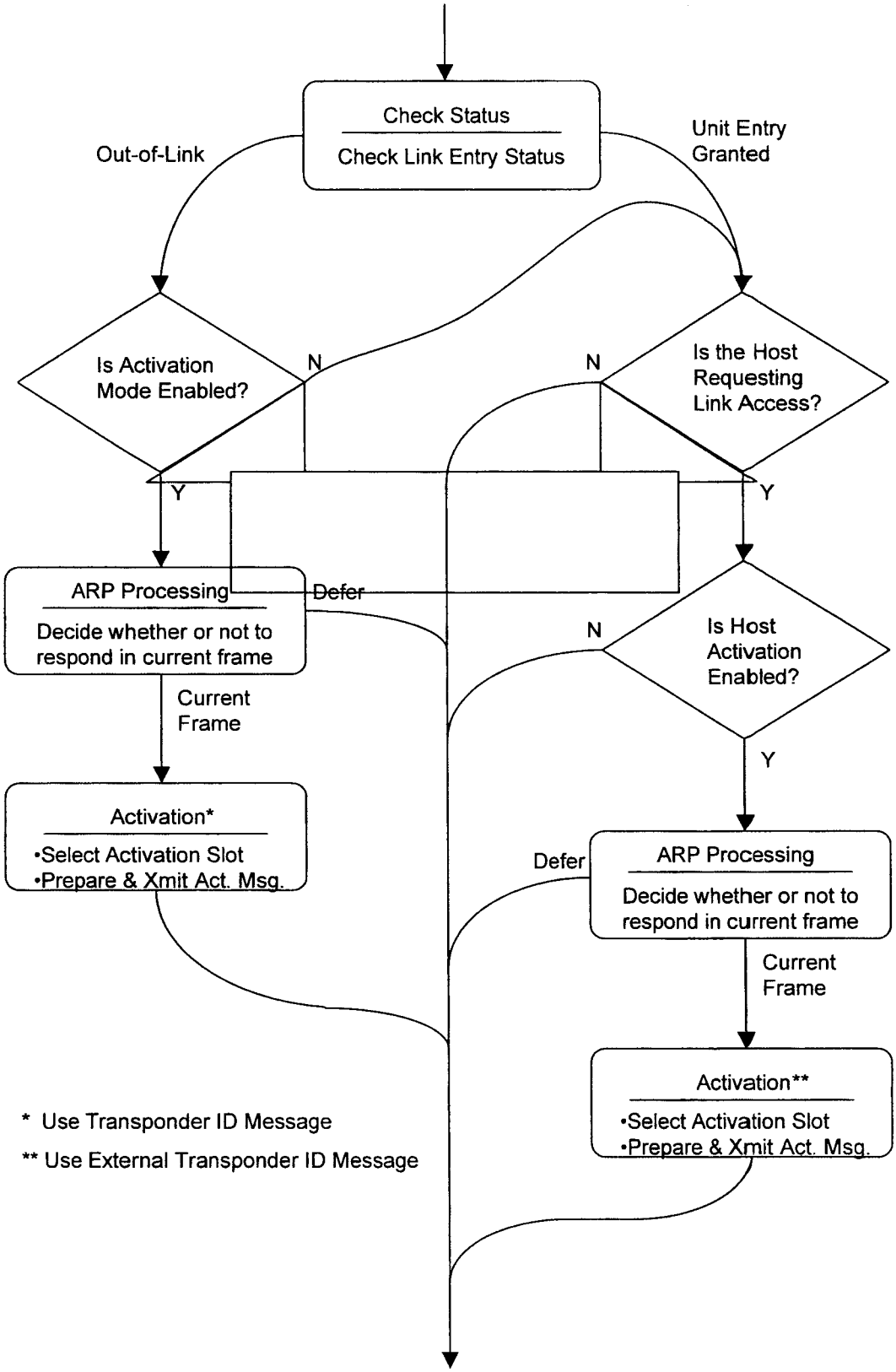

Figure 4.9.1.2-2 Transponder Activation Phase Processing

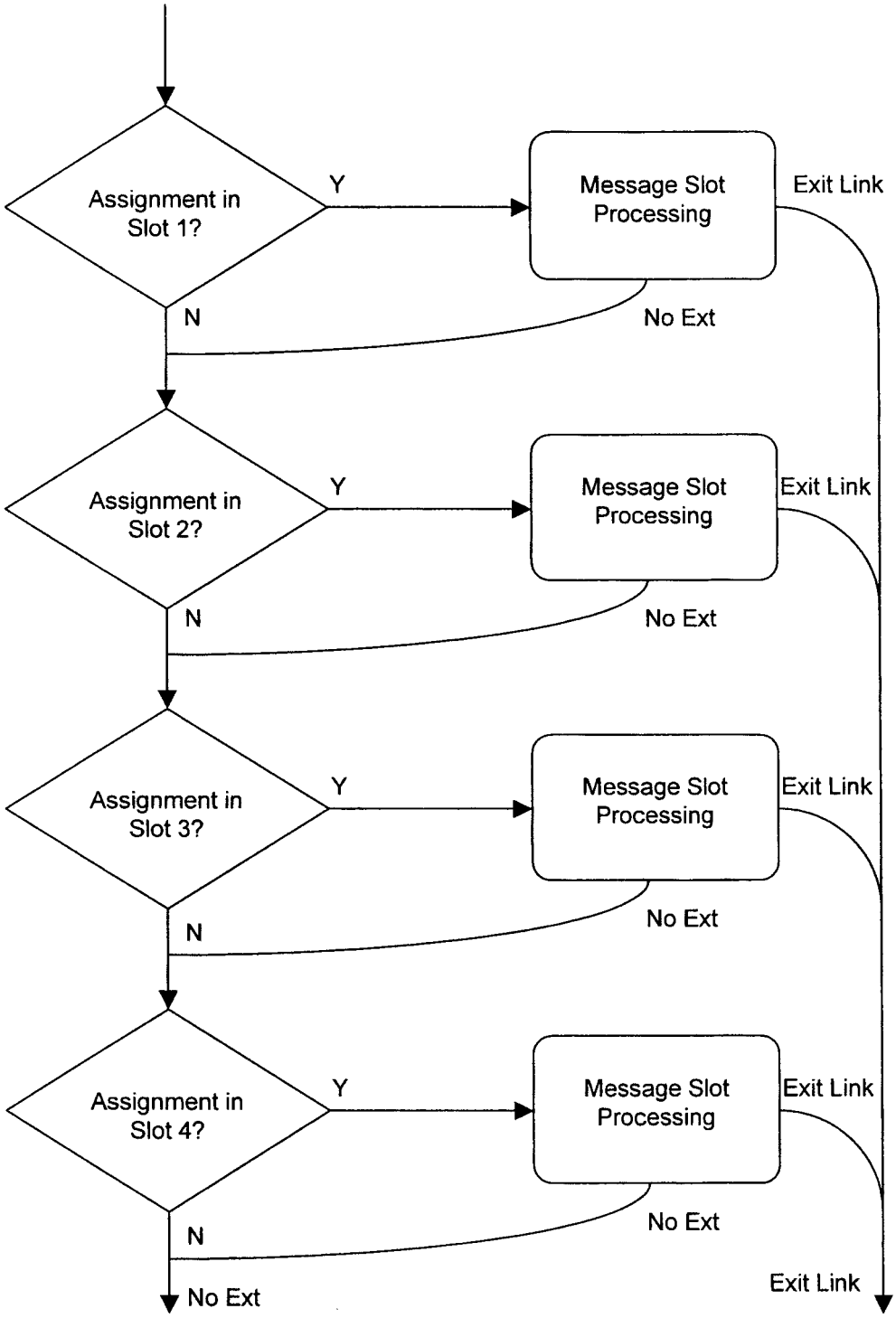

Figure 4.9.1.2-3 Transaction Phase Processing

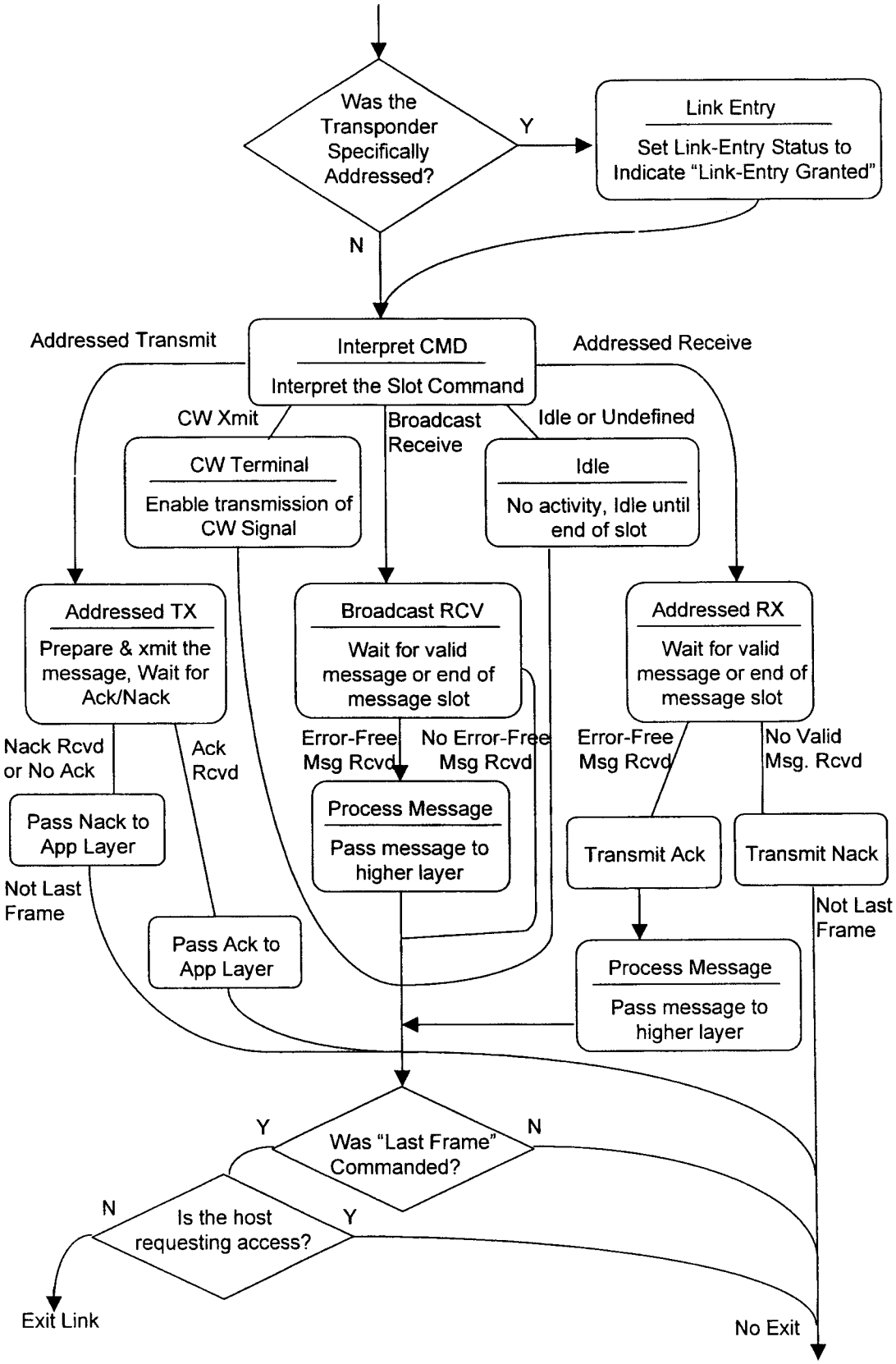

Figure 4.9.1.2-4 Message Slot Processing

4.9.2 Transponder ID Message

The Transponder ID Message is not used within the CVO protocol since only the External Transponder ID Message (MRA Message) is used. This message is nonetheless needed to maintain compatibility with legacy systems and is therefore required.

Upon first entering the beacon communication zone (after sleep timeout expires) and receiving a valid FCM, the transponder shall determine whether or not it is allowed to respond during the Activation Cycle. If the Frame Control field in the FCM indicates ''Transponder Activation Enabled'', then the transponder is allowed to respond in the Activation Cycle with a Transponder ID Message. In the case, the transponder shall use the Activation Response Parameter provided in the FCM in order to determine the response probability. The response probability shall be used to determine if the transponder will choose to respond in the current frame, or defer to a future frame. If the transponder chooses to defer to a future frame, then no activation message shall be transmitted in the current frame.

However, if the transponder chooses to respond in the current frame, the transponder shall interpret the Frame Control field in order to determine the current frame structure (i.e., how many activation slots). The transponder shall then randomly select one of the activation slots in which to send this message as shown in Figure 4.9.2–1. So long as the Frame Control field indicates ''Transponder Activation Mode'', the transponder shall repeat this process each frame until link entry is successful, as evidenced by an internal or external message slot assignment that is specifically addressed to the transponder. A message slot assignment with the Global ID of 0000 0000 shall not be considered sufficient to assume that a link entry is successful. However, any such message slot assignment shall be processed properly.

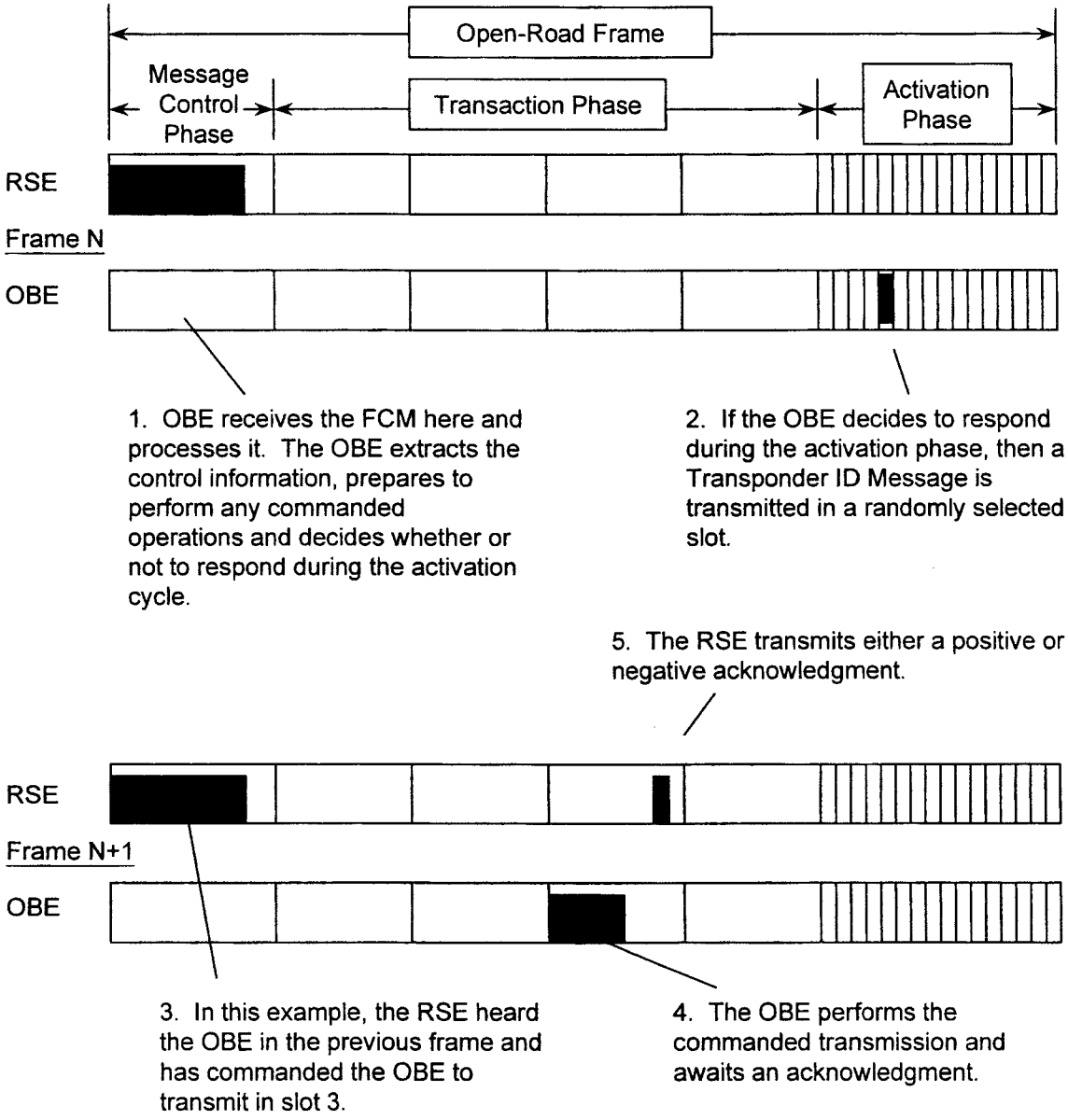

Figure 4.9.2-1 Sample Link Activation and Entry Sequence

If the Frame Control field indicates ''Activation Inhibit'', then the transponder shall refrain from responding during the Activation Cycle of the current frame.

4.9.3 External Transponder ID Message (Media Request Activation Message)

Upon receiving a transmit request from an attached application layer host, the transponder shall determine whether or not it is allowed to respond during the Activation Cycle. If the Frame Control field in the FCM indicates ''External Activation Enabled'', and if the transponder is currently in the link (i.e., the transponder has been previously assigned a message slot with its own Transponder ID), then the transponder is allowed to respond in the Activation Cycle with External Transponder ID Message.

In this case, the transponder shall use the Activation Response Parameter provided in the FCM in order to determine the response probability. The response probability shall be used to determine if the transponder will choose to respond in the current frame, or defer to a future frame. If the transponder chooses to defer to a future frame, then no activation message shall be transmitted in the current frame. If the transponder chooses to respond in the current frame, the transponder shall interpret the Frame Control field in order to determine the current frame structure (i.e., how many activation slots). The transponder shall then randomly select one of the activation slots in which to send this message. So long as the Frame control field indicates ''External Activation Enabled'', and the transponder remains in the link, The transponder shall repeat this process each frame until host link access is provided, as evidenced by an external message slot assignment. A message slot assignment with the Global ID of 0000 0000 shall not be considered sufficient to assume that link entry is successful. However, any such message slot assignment shall be properly processed.

If the Frame control field indicates ''External Activation disabled'', then the transponder shall refrain from responding during the Activation Cycle of the current frame.

4.9.4 Downlink Internal Message Slot

The Downlink Internal Message is not used within the CVO protocol since only external memory operations are performed. Likewise, the driver interface implemented through this message has been replaced for CVO operations with the IEEE 1455–99 user interface. This message and driver interface are nonetheless needed to maintain compatibility with legacy systems and are therefore required.

A message from the beacon to the transponder internal 512 bit message buffer. If the message was received without error then a positive acknowledgment shall be sent to the beacon if so commanded. If the data was received in error, the information shall be discarded and a negative acknowledgment sent to the beacon, if so commanded.

If the data field valid field in the driver interface command field indicates that the message data is valid, then the 256 least significant bits of the message shall be stored in the general-use portion of the transponder's internal memory. If the data field valid field in the driver interface command field indicates that the message data are not valid, the message data shall be discarded. However, the driver interface command shall be executed in all cases of a valid message reception.

Upon receipt of a valid Downlink Internal Message, the transponder shall activate the appropriate signals immediately. These signals shall be activated independently of the sleep function. Furthermore, the specified signal command shall override any previous signal command that is still active.

4.9.5 Downlink External Message Slot

A message from the beacon to a 512-bit buffer not located in the transponder. If the message was received without error then a positive acknowledgement shall be sent to the beacon if so commanded. If the data were received in error, the information shall be discarded and a negative acknowledgement sent to the beacon, if so commanded.

4.9.6 Uplink Acknowledgement Message

During an assigned message slot in which the transponder is scheduled to receive an addressed Slot Data Message, the transponder shall transmit an Acknowledgment Message with either a positive or negative indication. *Note that, during non-addressed message slots, acknowledgments are not expected, and should be ignored entirely.*

4.9.7 Uplink Internal Message Slot

A scheduled transmission in an assigned message slot from the transponder to the beacon. The entire 512-bit field shall be constructed using internal transponder memory and ID information. The least significant 256 bits of this field shall be copied directly from the General-use memory. The lower 192 bits of the most significant 256 bits shall be copied directly from the agency memory. The most significant 64 bits shall be used for transponder identification. Of these 64 bits, the most significant 32 bits shall be set equal to the Transponder ID (which could be either the Public ID or the Random ID). The lower 32 bits of the 64-bit field shall be set to zero (the Private ID shall never be transmitted). The bit positions of each field in the uplink message are defined below:

Field definition	Field size (bits)	Bit mumber
Public ID	32	480–511
All Zeros	32	448–479
Agency Memory Contents	192	256–447
General-Use Memory Contents	256	0–255

4.9.8 Uplink External Message Slot

A scheduled transmission in an assigned message slot from the transponder to the beacon. The transponder shall obtain the message packet from an external 512 bit buffer (application layer) and build the Slot Data Message.

4.9.9 Downlink Acknowledgement Message

During an assigned message slot in which the transponder is scheduled to transmit an addressed Slot Data Message, the beacon shall transmit an Acknowledgment Message with either a positive or negative indication. *Note that, during non-addressed message slots, acknowledgments are not expected, and should be ignored entirely.*

5. Transponder Resources

Transponders that are compliant with this document shall provide internal resources in accordance with the specifications described in this section. While a range of transponders having various capabilities may be defined in a manner compliant with those specifications, the basic structure and the capabilities definitions shall be adhered to in all cases. Not all resources defined in this section are mandatory in compliant transponders.

Many transponder identifiers provide for values that are available for registration. The registration process is controlled by the IEEE and is not defined within this document.

Note that this section is nearly identical to Clause 5 of IEEE 1455–99 with *one primary exception, the requirement to support a Transfer Page. The Transfer Page is intended to support the transfer of data files between the RSE and an on-vehicle data system or Onboard Computer (OBC) connected to the OBE (see Section 5.1.7).*

5.1 Transponder resources definition

This section functionally identifies and specifies the transponder resources requirements. These requirements shall in no way constrain the actual hardware implementation of transponders as long as the associated resources are partitioned in a manner compliant with this specification. A transponder compliant with this specification shall provide resources as defined in 5.1.1 through 5.1.12. These resources are illustrated in Figure 5.1–1.

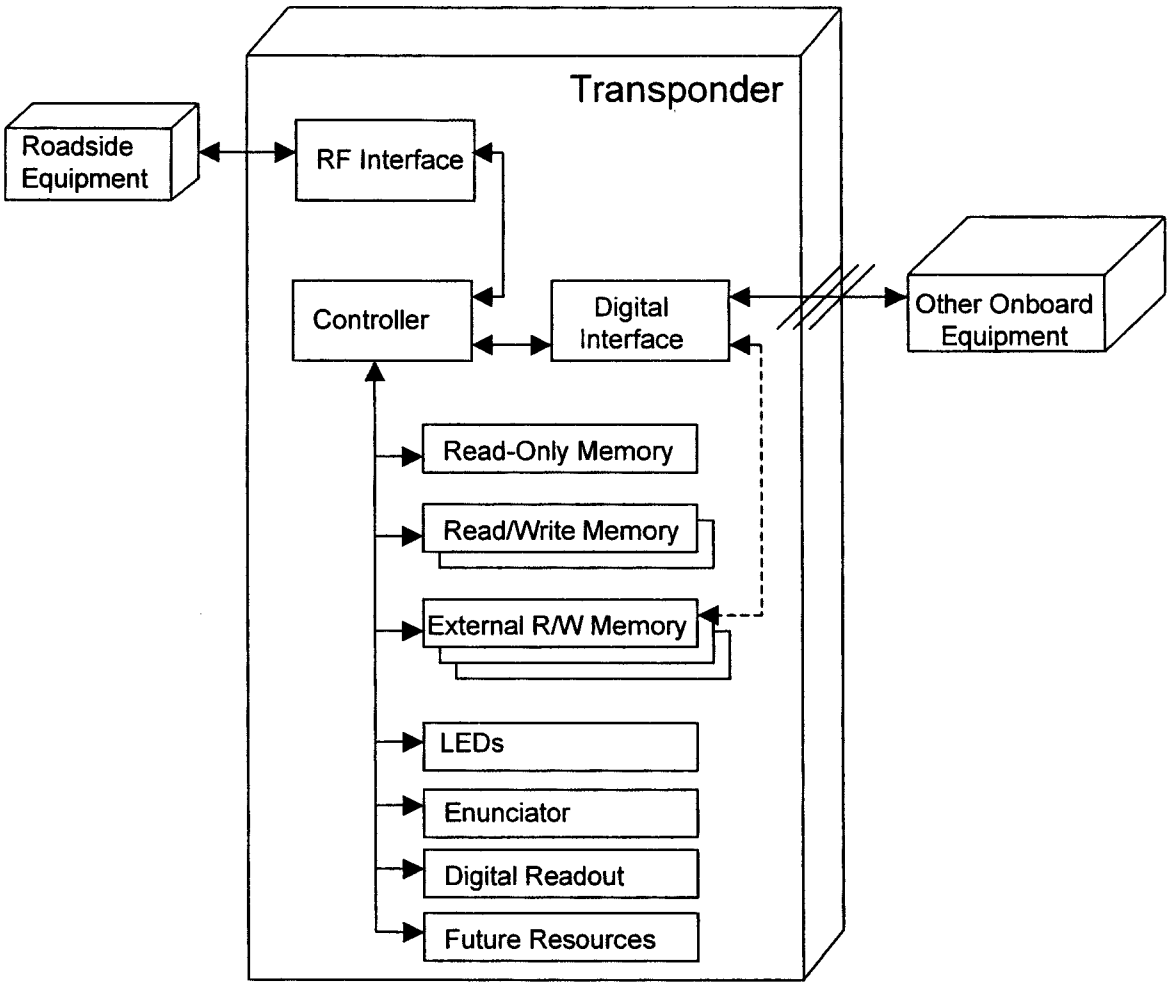

Figure 5.1-1 Transponder Resources

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5.1.1 Wireless interface

The transponder shall provide a wireless interface with the RSE. The characteristics of this interface are outside the scope of this specification. It is expected that this specification may be implemented in conjunction with a wide variety of radio frequency (RF) interfaces. However, the wireless interface must support the data transfers specified within this specification.

5.1.2 Controller

The controller shall interpret and implement commands (listed in Section 6) when received across the wireless interface. Implementation of those commands will typically require access to or control of the other transponder resources listed in this section. The controller may also implement the interface with other OBE.

5.1.3 External interface

Compliant transponders may provide an external interface. The availability and characteristics of this interface shall be indicated in the read-only memory (as defined in 5.2). If implemented, this interface shall provide other pieces of OBE with access to the transponder's resources and through those resources provide communications with the roadside.

The characteristics of this interface and the command set used across the external interface are outside the scope of this specification. However, it is anticipated that the command set will be comparable to that implemented across the wireless interface with the roadside.

5.1.4 Memory management and page identification

Memory within the transponder is formatted into partitions and pages. A partition is an area of memory that may be controlled by access credentials within which pages may be allocated. A page is an area of memory within a partition, which may also be protected with access credentials and from which data may be read or written.

As defined in 5.1.5 through 5.1.7, transponders may provide read-only memory, read/write memory, and/or extended read/write memory. While read-only memory and read/write memory pages are predefined, commands defined in Section 6 allow dynamic configuration of the extended read/write memory. This dynamic configuration may be accomplished by allocating partitions within the extended read/write memory or by reserving pages.

Pages may be reserved either within an existing partition or within the overall extended read/write memory area. A partition identifier is specified when a partition is allocated, and it is referenced when a page is reserved within the partition. A page identifier is specified when a page is reserved, and it is referenced when a page is accessed. A sample of partition identifiers is provided in Table 5.1.4–1.

TABLE 5.1.4–1—SAMPLE PARTITION IDENTIFIERS

Partition number	Partition designation
Hex (0000)	Reserved.
Hex (0001—FFFF)	Available for registration.

Compliant transponders shall comply with the following requirements:

- The minimum memory page size shall be 128 bits.
- The maximum memory page size shall be 64 Kbytes. This limitation is based upon the maximum length of a read/write memory page command.
- The first memory page shall always exist and shall be a read-only memory page as defined in 5.1.5.
- All memory pages shall have an associated 16-bit page identifier that can be used by the transponder commands described in Section 6.
- The first three transponder memory pages shall always be assigned the Page Identifiers hex (1) through hex (3).
- Page Identifiers hex (4) through hex (7) refer to predefined combinations of the first three memory pages.
- The page identifiers associated with the transponder user interface (UI) shall be assigned from values above hex (FEFF). These default values may be overridden by aliasing other page identifiers to the default identifiers using the commands defined in Section 6.
- Unreserved page identifiers may be assigned to agencies on an implementation-specific basis.

A sample of defined page identifiers is provided in Table 5.1.4–2. Page numbers shall be unique within a transponder, i.e., duplicate page numbers shall not be used in different partitions.

TABLE 5.1.4–2—SAMPLE PAGE IDENTIFIERS

Page number	Page designation
Hex (0)	Reserved.
Hex (0001 .. FFFF)	Specific values are defined in Table E.2 of IEEE 1455–99.

5.1.5 Read-only memory

Compliant transponders shall provide 16 bytes (128 bits) of read-only memory. The information within this region shall be formatted as specified in 5.2. The read-only memory shall be transmitted to the RSE within the VST (as defined in 9.5). The VST is returned by the OBE in response to a BST received from the RSE. The read-only memory may also be accessed using other memory access commands listed in Section 6.

This region of memory is ''read only'' from the roadside.

5.1.6 Read/write memory

Compliant transponders may provide zero, one, or two read/write memory regions. The availability of these memory regions shall be as indicated in the read-only memory as defined in 5.2.

When present, the read/write memory regions shall have the following characteristics:

- The short read/write memory region shall provide 16 bytes (128 bits) of storage.
- The long read/write memory region shall provide 32 bytes (256 bits) of storage.

The read/write memory images may be transmitted to the RSE within the VST command response, as defined in Section 6. The read/write memory regions may also be accessed using other memory access commands listed in Section 6.

5.1.7 Extended read/write memory

Compliant transponders may provide one or more extended read/write memory regions. The availability of these memory regions shall be as indicated in the read-only memory, as defined in 5.2. The extended memory may be configured into logical pages by the manufacturer and/or by issuance of the Reserve Memory Page command, as defined in 6.4.9. The size of a dynamically created page is specified as an operand of the Reservation command. Associated

with each page is a 16-bit page number. Permanent page numbers shall be reserved for specific purposes or agencies by registering the number. Table E.2 of IEEE 1455–99 provides a list of pre-assigned page numbers and their associated use. These pages may, optionally, have access credentials to protect the page for write or read/write access.

The list of reserved pages for a given transponder may be requested by issuing the Query Memory Configuration command, as defined in 6.4.11.

5.1.7.1 Transfer Page

This specification defines a new type of Extended Read/Write memory page called a Transfer Page. A Transfer Page is intended to support the transfer of data files between the RSE and an on-vehicle data system or Onboard Computer (OBC) connected to the OBE. On-vehicle data systems shall use the Transfer Page for data transfers to or from the roadside. The interface between the OBE and the OBC may be chosen at the vendor's discretion.

Definition: A Transfer Page is a scratchpad in the OBE memory. It can be written to and read from by both the DSRC interface and the OBC interface. Data written to a Transfer Page by one interface shall be transferred out via the other interface. Transfer Pages are registered as normal memory pages and accessed by the RSE by normal Read Memory Page and Write Memory Page commands. The OBE shall contain a list of page numbers that will be treated as Transfer Pages. The list may be fixed within OBE memory during manufacture or may be field programmable at the discretion of the vendor. The interface to the OBC must be implemented with a ''handshake'' protocol, assuring that data flow to and from the OBC is under control of the OBE and data transfers are reliably received in either direction. A Transfer Page conforms to the size constraints for Extended Read/Write Memory and is not protected by access credentials.

Operation: Files are broken down by the sending application into blocks appropriate to the defined size of the Transfer Page. Each block transfer is handled as a separate IEEE 1455 Read Memory Page or Write Memory Page command. Each block will include a Transfer Page Header. The Transfer Page Header is derived from the IEEE 1455–99 ITS Application/Utility Messages.

Downlink Flow Summary

—The BOA breaks the file into transfer page sized blocks.

—The BOA requests a page write to the OBE Transfer Page and passes the first block to the Resource Manager.

—The RM performs a page write operation to the Transfer Page using the IEEE 1455 Write Memory Page command.

—Upon receiving data in the Transfer Page, the OBE initiates transfer to the OBC. The IEEE 1455 Command Response is not returned to the RSE until the complete contents of the block have been written to the OBC and the required handshake has been fulfilled.

—Upon receiving confirmation that the first block has been successfully written to the OBE (and therefore to the OBC) the BOA requests another page write to the Transfer Page and passes the next block of the file. This process continues until the entire file is transferred.

Uplink Flow Summary

—The BOA requests a page write to the Transfer Page. The data contained on the page consists of OBC application commands requesting the uplink of the desired data files. As a result of these commands, the OBC writes a page-sized block of the requested data to the Transfer Page.

—The BOA requests a page read from the Transfer Page. The Resource Manager holds this request until a ''command successful'' indication is received from the previous RSE page write (indicating that the request has been written to the OBC) and then commands a page read of the Transfer Page.

When the BOA receives the page from the Resource Manager, it requests another read of the Transfer Page. This process continues until the entire file is transferred.

Transfer Page Header: The Transfer Page Header combines the function of the IEEE 1455 ITS Application Message Header and the ''RSE to Other OBE'' and ''Other OBE to RSE'' utility messages. Table 5.1.7.1–1 provides the layout of the header. Table 5.1.7.1–2 specifies the fields and values.

TABLE 5.1.7.1–1.—HEADER LAYOUT

Message identifier	OBE address	Message length	Error detect code	Message body
Bits 0 .. 7	Bits 8 .. 39	Bits 40 .. 55	Bits 56 .. 63	Remainder of page.

TABLE 5.1.7.1–2.—HEADER FIELDS AND VALUES

Field	Field name	Type	Length	Values
1	Message Identifer	Integer	8 bits	hex 01, other values are reserved for future use.
2	OBE Address	Bit String	32 bits	Vehicle bus address, vehicle device, or vehicle application.
3	Message Length	Integer	16 bits	(0..65535); Length of Message Body minus one, in bytes, does not include the header.
4	Error Detect Code	Bit String	8 bits	XOR Checksum of the Message Body.
5	Message Body	Octet String	1 to 65636 bytes	binary data.

5.1.8 Lamps

Compliant transponders may provide a red, a green, and a yellow lamp; it is not necessary for all lamps to be present. The availability of these lamps shall be as indicated in the read-only memory, as defined in 5.2. Lamps are controlled using the Set User Interface command specified in 6.4.6.

5.1.9 Enunciators

Compliant transponders may provide one or more enunciators. The availability of these enunciators shall be as indicated in the read-only memory, as defined in 5.2. Enunciators are controlled using the Set User Interface command specified in 6.4.6. Character readout

Compliant transponders may provide a digital readout. The availability of a digital readout shall be as indicated in the read-only memory, as defined in 5.2. The digital readout is controlled using the Set User Interface command specified in 6.4.6 and the Map User Interface command specified in 6.4.7.

The digital readout shall display Text String messages (defined in 8.7.1) that are stored in the memory page to which the digital readout is mapped. Controls may be provided that enable the user to scroll from one message to another within the mapped memory page.

5.1.11 Keypad

Compliant transponders may provide a keypad. The availability of a keypad shall be as indicated in the read-only memory, as defined in 5.2.

The data that are entered using the keypad shall be stored as a Text String message in the memory page to which the keypad is mapped. The memory-related commands specified in Section 6 shall be used to retrieve data entered at the keypad and to clear previously entered data.

5.1.12 Future resources

Future revisions of this specification may provide for additional UI resources. The availability of these resources is defined in 5.2; they shall be controlled using the Set User Interface command specified in 6.4.6 and the Map User Interface command specified in 6.4.7.

5.2 Read-only memory definition

Information within the read-only memory region shall be formatted as defined in Table 5.2–1 and described in 5.2.1 through 5.2.18.

TABLE 5.2–1.—READ-ONLY MEMORY FIELDS

Field name	Location (bits)	Length (bits)	Specification and description
T–APDU Tag	0–3	4	ASN.1 tag for an INITIALISATION.response (i.e., a VST) = hex (9).
Fill	4–7	4	Nonfunctional bits used to maintain byte boundaries.
Profile	8–15	8	Profile field of VST.
Number of Applications	16–23	8	Number of applications in the applications list = hex (1).
Application Identifier (AID)	24–31	8	Mailbox AID = hex (D).
EID/Revision Level	32–39	8	EID; shall be used for the IEEE Std 1455–1999 revision level.
Container Tag	40–47	8	Octet string tag = hex (4); used to encapsulate the VST parameter.
Octet String Length	48–55	8	The actual length (in octets) of the subsequent data in the octet string.
Octet String Data		Includes following fields.	An octet string used for ASN.1 compliance, which comprises the subsequent fields defined in this table.
Returned Pages Flag	56–57	2	Bits that correspond to the two memory images returned, as specified in the BST.
Reserved 1	58–60	3	Reserved by IEEE for future use.
Memory Configuration	61–63	3	Defines the availability of various memory regions.
Transponder Configuration	64–71	8	Defines the availability of various transponder peripherals, such as lamps and enunciators.
Service Agency	72–87	16	Identifies the unique agency that is primarily responsible for issuing statements corresponding to services received by the transponder's user.
Serial Number Type	88–91	4	Indicates how the serial number and manufacturer identifier should be interpreted.
Manufacturer Identifier	92–107	16	Identifies the manufacturer of the transponder.
Serial Number	108–127	20	Uniquely identifies the transponders produced under a single Manufacturer Identifier value.

5.2.1 T–APDU Tag

The T–APDU Tag field is required to provide ASN.1 compliance (see the ASN.1 definition of T–APDUs in Annex A of IEEE 1455–99). This field shall be set to hex(9) to indicate an INITIALISATION.response.

5.2.2 Fill

The Fill field is required to maintain byte boundaries. This field shall be set to hex (0).

5.2.3 Profile

The Profile field contains communications profiles as defined by the specific lower layer service. The values for this field are defined in Table E.3 of IEEE 1455–99, and a sample is shown in Table 5.2.3–1.

TABLE 5.2.3–1.—SAMPLE PROFILE FIELD VALUES

Value	Definition
Hex (0)	Reserved.
Hex (1)	Unspecified profile.
Hex (0 .. FF)	Available for registration.

5.2.4 Number of Applications

This field contains the number of applications in the subsequent application list. The value for this field shall always be set to hex(1).

5.2.5 AID

The AID field is required to provide compatibility with the CEN VST definition. This field shall be set to hex(D), which is the AID for the Mailbox application.

5.2.6 EID/Revision Level

The EID field is required to provide compatibility with the CEN VST definition. Within this specification, the EID/Revision Level field indicates the revision level of this specification with which the transponder complies. Values shall be interpreted as defined in Table 5.2.6–1.

TABLE 5.2.6–1.— EID/REVISION LEVEL FIELD VALUES

Value	Interpretation
Hex (0)	Reserved.
Hex (1)	Prerelease (field testing; current value).
Hex (2)	Initial release.
Hex (3 .. FF)	Reserved.

5.2.7 Container Tag

The Container Tag field is required to provide ASN.1 compliance. This field shall be set to hex (4), which indicates an octet string.

5.2.8 Octet String Length

The Octet String Length field, which is required to provide ASN.1 compliance, indicates the length of the subsequent octet string data. The low order bit of octet string length must always be set to zero for ASN.1 compliance (meaning that this octet is used for actual length designation). The remaining 7 bits of the Octet String Length field contain the actual length (in octets) of the subsequent data in the octet string. Therefore, the maximum length for the data is 127 bytes.

The Octet String Length field shall be overwritten dynamically by the OBE transponder application during VST transmission. It is overwritten with a value that represents the sum of the size of the memory images being returned in the VST, which includes the read-only memory.

5.2.9 Octet String Data

The Octet String Data field is descriptive only and has no actual bit representation in and of itself. The purpose of this descriptive field is to indicate that the octet string data that follow the Octet String Length field include the subsequent fields defined for read-only memory and represent the balance of the VST structure.

5.2.10 Returned Pages Flag

The Returned Pages Flag field indicates which memory pages requested in the BST are present in the transponder and, therefore, which memory pages are being returned as part of the VST. This field shall be interpreted as defined in Table 5.2.10–1.

TABLE 5.2.10–1.—RETURNED PAGES FIELD INTERPRETATION

Location (bits)	Interpretation
0	First page flag; a value of 1 indicates that the first page is returned within the VST.
1	Second page flag; a value of 1 indicates that the second page is returned within the VST.

5.2.11 Reserved 1

The Reserved 1 field is required to maintain byte boundaries. This field shall be set to hex (0).

5.2.12 Memory Configuration

The Memory Configuration field indicates which read/write memory regions are present. Values shall be interpreted as defined in Table 5.2.12–1.

TABLE 5.2.12–1.—READ/WRITE MEMORY CONFIGURATION FIELD VALUES

Value	Interpretation
Hex (0)	No read/write memory present.
Hex (1)	Short read/write memory present.
Hex (2)	Long read/write memory present.
Hex (3)	Short read/write and long read/write memory present.
Hex (4)	Extended memory present.
Hex (5)	Short read/write and extended memory present.
Hex (6)	Long read/write and extended memory present.
Hex (7)	Short read/write, long read/write, and extended memory present.

5.2.13 Transponder Configuration

The Transponder Configuration field indicates the configuration of installed transponder peripherals. The method of interpreting the field values is dependent upon the status of Bit 7. If Bit 7 is 1, then the remaining seven bits shall be individually interpreted to determine the peripherals configuration as defined in Table 8. If Bit 7 is 0, then the remaining seven bits shall be interpreted as an enumerated value using Table E.4 of IEEE 1455–99 (sample shown in Table 5.2.13–1).

TABLE 5.2.13–1A.—TRANSPONDER CONFIGURATION FIELD INTERPRETATION, BIT 7 SET TO 1

Location (bits)	Interpretation
7 (msb)	Always 1 when field is interpreted as binary flags rather than an enumerated value; if 0, then Table 9 applies.
6	Red, yellow, and green lamps all present.
5	Enunciator present.
4	External network interface present.
3	Character readout present.
2	Keypad present.
1	Reserved.
0 (lsb)	Reserved.

TABLE 5.2.13–1A.—TRANSPONDER CONFIGURATION ENUMERATED FIELD VALUES, BIT 7 SET TO 0

Value	Interpretation
Hex (0)	Reserved.
Hex (1 .. 7)	Available for registration. Specific values are defined in Table E.4.

5.2.14 Service Agency

The Service Agency field indicates the service agency that is responsible for collecting fees incurred by the person using this transponder. Values shall be interpreted as defined in Table E.5 of IEEE 1455–99.

5.2.15 Serial Number Type

The Serial Number Type field indicates the nature of the Manufacturer Identifier and the Serial Number fields when they are transmitted to the RSE. Those fields may be protected by encryption or masking, as indicated by the Serial Number Type field. The Serial Number Type field shall not be encrypted or masked. Values shall be interpreted as defined in Table 5.2.15–1.

TABLE 5.2.1–1.—SERIAL NUMBER TYPE FIELD VALUES

Value	Interpretation
Hex (0)	Reserved.
Hex (1)	Clear; Manufacturer Identifier and Serial Number fields are not altered.
Hex (2)	Encrypted; Manufacturer Identifier and Serial Number fields are encrypted.
Hex (3)	Masked; Manufacturer Identifier and Serial Number fields are masked.
Hex (4 .. F)	Reserved.

5.2.16 Manufacturer Identifier

The Manufacturer Identifier field indicates the manufacturer that produced the transponder. Values shall be interpreted as defined in Table E.6 of IEEE 1455–99. The Manufacturer Identifier field may be masked or encrypted when transmitted to the RSE.

5.2.17 Serial Number

The Serial Number field shall uniquely identify a transponder within a set of devices having the same Manufacturer Identifier field value. The method of assigning values to this field shall be entirely controlled by the manufacturer.

However, uniqueness shall be preserved. The Serial Number field may be masked or encrypted when transmitted to the RSE.

5.2.18 Unique identifier

The 40-bit sequence of data consisting of the Serial Number Type, Manufacturer Identifier, and Serial Number fields may be referred to as the transponder's unique identifier. The characteristics of the constituent fields shall be preserved as defined in 5.2.15 through 5.2.17.

5.3 Interoperability requirements

Compliant transponders meet all the requirements specified in this specification. Interoperable transponders additionally provide optional features. The following features defined in this subsection shall be provided in interoperable transponders:

—Read-only memory (128 bits), which shall not be protected by access credentials.
—Short read/write memory (128 bits), which shall not be protected by access credentials.
—Long read/write memory (256 bits), which shall not be protected by access credentials.
—Extended read/write memory (at least 512 bits).
—Red, yellow, and green lamps.
—An enunciator.

Interoperable transponders may also provide additional optional features such as using access credential protection. Additional interoperability requirements are specified in 6.6.

6. Transponder Commands and Memory Access

6.1 Basic concepts

Transponders that are compliant with this specification shall provide the capability to process the commands specified in this section (which is taken directly from Clause 6 of IEEE 1455–99). These commands reference the memory, processing, and UI resources that may be present on the transponder. The commands are independent of the BOA that may be utilizing those resources. The availability of the resources that may be referenced by commands is indicated by bits allocated in read-only memory that are defined in 5.2 and by the results of the Query Memory Configuration command.

The RSE shall not intentionally generate commands to the transponder that reference resources known to be absent from the addressed transponder.However, each of the commands defined in this section specifies the behavior that shall be exhibited when such absent resources are referenced.

The OBE is not in all cases required to provide the full set of behaviors specified for each of the commands specified in this section. For each command, abnormal behaviors are specified that include the method (if any) by which the OBE shall notify the RSE if a received command is optional and has not been fully implemented in the receiving OBE.

Some of the commands defined in this section, such as Read Memory Page and Write Memory Page, require transmission of an entire memory page image. The End Of Data message may be used to terminate the region of a memory page that contains valid messages. When an End Of Data message is present, the RSE and OBE may transmit only that initial portion of a memory page that contains valid messages. If this optional feature is not implemented, then the area of a memory image that does not contain valid messages shall be transmitted and shall be set to zeroes.

6.2 Command set template

Each command shall consist of the fields shown in Table 6.2–1 and described in 6.2.1 through 6.2.6.

TABLE 6.2–1.—COMMAND SET FIELDS

Command identifier	Command transaction identifier	Command length	Access control length	Access control	Command parameter
1 byte	1 byte	2 bytes	1 byte	1 to 32 bytes	Variable.

6.2.1 Command Identifier

6.2.1.1 Length

The length of the Command Identifier field shall be 1 byte.

6.2.1.2 Usage

The Command Identifier field shall identify the command to be performed and shall take on the values shown in Table 6.2.1.2–1. The high order bit (bit 7) of this field indicates the presence or absence of access credentials in the command. If bit 7 is 1, then the Access Control Length and Access Control fields shall be present after the Command Length field. If bit 7 is 0, then the Access Control Length and Access Control fields shall be omitted and the Command Length field shall be followed by the Command Parameter field.

TABLE 6.2.1.2–1.—COMMAND IDENTIFIERS (continued)

Codes	Codes with credentials	Meaning	OBE command support
Hex (0 .. F)	Hex (80 .. 8F)	Reserved	
Hex (10)	Hex (90)	Read Memory Page	Required to access memory other than through memory images returned in the VST.

TABLE 6.2.1.2–1.—COMMAND IDENTIFIERS (continued)—Continued

Codes	Codes with credentials	Meaning	OBE command support
Hex (11)	Hex (91)	Write Memory Page	Optional[1] (required if read/write memory is present).
Hex (12)	Hex (92)	Append Message	Optional[1] (required if read/write memory is present).
Hex (13)	Hex (93)	Initialize Circular Queue	Optional (required for circular queues).
Hex (14)	Hex (94)	Write Circular Queue	Optional* (required for circular queues).
Hex (15) .. (1F)	Hex (95) .. (9F)	Reserved	
Hex (20)	Hex (A0)	Set User Interface	Optional* (required if OBE has UI).
Hex (21)	Hex (A1)	Map User Interface	Optional.
Hex (22 .. 2F)	Hex (A2 .. AF)	Reserved	
Hex (30)	Hex (B0)	Sleep Transponder	Optional.
Hex (31 .. 3F)	Hex (B1 .. BF)	Reserved	
Hex (40)	Hex (C0)	Reserve Memory Page	Optional (required if extended memory is present).
Hex (41)	Hex (C1)	Release Memory Page	Optional (required if Reserve Memory Page command is implemented).
Hex (42)	Hex (C2)	Query Memory Configuration	Optional (required if Reserve Memory Page command is implemented).
Hex (43)	Hex (C3)	Reserve Memory Partition	Optional.
Hex (44) Hex (C4)	Release Memory Partition xID	Optional. (required if Reserve Memory Partition command is implemented).	
Hex (45 .. 6F)	Hex (C5 .. EF)	Reserved	
Hex (70 .. 7F)	Hex (F0 .. FF)	Available for manufacturer-specific testing.	Optional—shall not be used in production units deployed in the field.

[1] These commands are supported in broadcast mode.

6.2.2 Command Transaction Identifier

6.2.2.1 Length

The length of the Command Transaction Identifier field shall be 1 byte.

6.2.2.2 Usage

The Command Transaction Identifier field shall be an identifier that is uniquely calculated for each instance of a command. This identifier is returned in the command response and allows the resource manager to match a received response to a specific sent command.

6.2.3 Command Length

6.2.3.1 Length

The length of the Command Length field shall be 2 bytes.

6.2.3.2 Usage

The Command Length field shall specify the total length in bytes of the command instance, including all fields except the Command Identifier field, the Command Transaction Identifier field, and this Command Length field. The maximum value of this field effectively constrains the maximum size of a transferred memory image.

6.2.4 Access Control Length

6.2.4.1 Length

The length of the Access Control Length field shall be 1 byte.

6.2.4.2 Usage

The Access Control Length field shall specify the length of the Access Control field in bytes. This field, if present, will never be zero.

6.2.5 Access Control

6.2.5.1 Length

The length of the Access Control field shall vary up to 32 bytes, as specified by the Access Control Length field.

6.2.5.2 Usage

The Access Control field shall be used to provide access controls for command instances. The actual value of the Access Control field is implementation-specific and would typically follow some type of encryption and/or authentication scheme.

6.2.6 Command Parameters

6.2.6.1 Length

The length of the Command Parameters field shall be fixed for each command except for the Write Memory, Append Message, Write Circular Queue, and Set User Interface commands, which have variable parameter lengths.

6.2.6.2 Usage

The Command Parameters field shall be specific to each command set.

6.3 Command information flow

This specification provides for two communication modes. In the ''connected'' mode, all communications are prefaced by a BST/VST exchange that connects the RSE to a specific transponder. In the ''broadcast'' mode, transponder commands are broadcast from the RSE to all passing transponders without first establishing an RSE-to-OBE connection using a BST/VST. Transponders shall remain ready to receive a communication at all times, subject to vendor-specific power consumption optimization.

The connected mode is recommended because it allows the RSE to verify the transponder configuration before additional commands are transmitted to the transponder. However, the broadcast mode may be appropriate in certain applications where the communication opportunity is constrained.

Section 9 discusses all application layer services in detail. Annex C provides illustrations for the flow of commands from the resource manager to the OBE transponder application via the application layer.

6.3.1 Connected mode information flow

In the connected mode, the following RSE-to-OBE information flow shall be observed:

(a) The resource manager shall register itself as part of its startup sequence by using the RegisterApplicationBeacon service in the application layer. This registration causes the RSE application layer to construct a BST and initiate communication with potential OBE transponders.

(b) The connection is established when the OBE application layer returns a VST to the resource manager.

(c) The resource manager shall determine appropriate commands, based upon registration requests from the connected BOAs.

(d) The resource manager shall formulate the command instance using supplied information.

(e) The resource manager shall use the ACTION.request service in the application layer to transmit the command to the OBE. The OBE shall provide a response if required by the Mode field in the Action.request.

(f) The OBE shall process the command received from the resource manager as an ACTION.indication service and shall respond, if required, using the ACTION.response service of the OBE application layer.

(g) The resource manager shall process the received ACTION.confirm, potentially resending the command with appropriate access controls.

6.3.2 Broadcast mode information flow

The broadcast mode is used to transmit a command or a fixed set of commands to every transponder that passes through the RSE communication zone. In the broadcast mode, the following RSE-to-OBE information flow shall be observed:

(a) The resource manager may use the BroadcastData.request service of the RSE application layer to broadcast to the OBE.

(b) In that case, the OBE transponder application shall use the GetBroadcastData.request service of the OBE application layer to access a command or command set that was broadcast from the resource manager.

(c) The resource manager may also use the ACTION.request service of the RSE application layer to broadcast a command or command set in a broadcast mode. This may be accomplished by setting the LID field of the ACTION.request to a global LID; in this case a response from the OBE may also be requested by setting the Mode field of the ACTION.request.

(d) This ACTION.request will fail if the lower layer service associated with the application layer does not support the optional DATASEND RESPOND REPEAT or DATASEND NORESPOND REPEAT messages defined in 9.3.2. In this case, the RSE application layer may choose to repeat the command.

Also, subject to the capabilities of the lower layer media, the RSE must provide for the case that multiple transponders are within the communications zone at the time of transmission. The OBE transponder application shall use the ACTION.response service of the OBE application layer to send command responses back to the resource manager in response to a command received as a result of the resource manager sending that command using a broadcast ACTION.request.

6.4 Command definitions

The commands shall be created by the RSE and processed by the OBE as specified in 6.4.1 through 6.4.13. The command identifier values are shown with the Access Credential flag set to 0. The Command Parameter field locations are shown as if the Access Control Length and Access Control fields were not present. Details regarding command responses are provided in 6.5.

6.4.1 Read Memory Page (mandatory)

The Read Memory Page command shall initiate transmission of the specified OBE memory pages to the RSE.

6.4.1.1 Command set definition

The Read Memory Page command shall consist of the fields shown in Table 6.4.1.1–1.

TABLE 6.4.1.1–1.—READ MEMORY PAGE COMMAND FIELDS

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	hex (10) / Hex (90).
Command transaction Identifier	1	1	Identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes. A nonzero value indicates that the Page Identifier field will be offset by the indicated number of bytes (max. 32).
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	2	Identifies referenced memory page (as per specification in Table E.2).
Page identifier	End of Access Control field + 2		

6.4.1.2 OBE normal behaviors

The OBE shall access the memory page specified by the Read Memory Page command.

If the OBE successfully executes the Read Memory Page command, the OBE shall send a response with the Response Identifier field set to Command Success, the Response Data Length field set to the length of the read memory image, and the memory image itself in the Response Data field.

6.4.1.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions. See Table 6.5.3.4–1 for definitions.

Command Not Recognized
Access Control Error
Page Not Defined
Memory Access Error
Command Failed

6.4.2 Write Memory Page (optional)

The Write Memory Page command is suffixed by a memory image that shall be stored in the specified OBE memory page.

6.4.2.1 Command set definition

The Write Memory Page command shall consist of the fields shown in Table 6.4.2.1–1.

TABLE 6.4.2.1–1.—WRITE MEMORY PAGE COMMAND FIELDS (CONTINUED)

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (11) / Hex (91).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	2	Identifies referenced memory page (as per specification in Table E.2).
Page identifier	End of Access Control field + 2 xl		
Memory image	End of Access Control field + 3 .. n.		The information that shall consist of sequenced messages followed by zero-fill bytes or an End Of Data message identifier. The length of this image is only constrained by the maximum command length defined in 6.2.3.

6.4.2.2 OBE normal behaviors

The OBE shall store the memory image within the received command by completely overwriting the referenced agency memory page.

If the OBE successfully executes the Write Memory Page command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.2.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:
—Command Not Recognized
—Access Control Error
—Page Not Defined
—Page Length Mismatch
—Memory Access Error
—Command Failed

6.4.3 Append Message (optional)

The Append Message command is suffixed by a message image that shall be appended to the end of the previously used memory within the specified OBE memory page.

6.4.3.1 Command set definition

The Append Message command shall consist of the fields shown in Table 6.4.3.1–1.

TABLE 6.4.3.1–1.—APPEND MESSAGE COMMAND FIELDS

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (12) / Hex (92).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional). Number of access credential bytes.
Access Control	5 .. n	0/1 .. 32	(Optional). Access credentials.
Command parameter	End of Access Control field + 1	2	Identifies referenced memory page (as per specification in Table E.2).
Page identifier	End of Access Control field + 2		
Message Image	End of Access Control field + 3 .. n		The information that shall be appended to the specified memory page.

6.4.3.2 OBE normal behaviors

The OBE shall append the message image within the command to the end of existing messages in the specified page. Positioning within the page shall be determined by chaining through the stored messages until the first occurrence of either an End Of Data message or hex(00) following a message, where the next message header would begin. The message image shall be inserted at this point, overwriting the End Of Data message, if present. The new data shall be suffixed by either an End Of Data message or by zero filling the remainder of page.

If the OBE successfully executes the Append Message command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.3.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:
Command Not Recognized
Access Control Error
Page Not Defined
Insufficient Memory
Memory Access Error
Command Failed

6.4.4 Initialize Circular Queue (optional)

The Initialize Circular Queue command shall cause all of the memory within the specified OBE extended memory page to be cleared to zeros and shall set any control data to indicate that the queue is empty.

6.4.4.1 Command set definition

The Initialize Circular Queue command shall consist of the fields shown in Table 6.4.4.1–1.

TABLE 6.4.4.1–1.—INITIALIZE CIRCULAR QUEUE COMMAND FIELDS

Field name	Location (bytes)	Length (bytes)	Specification and description
Command identifier	0	1	Hex (13) / Hex (93).

TABLE 6.4.4.1–1.—INITIALIZE CIRCULAR QUEUE COMMAND FIELDS—Continued

Field name	Location (bytes)	Length (bytes)	Specification and description
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	2	Identifies referenced memory page (as per specification in Table E.2).
Page identifier	End of Access Control field + 2.		

6.4.4.2 OBE normal behaviors

The OBE shall clear the specified page to zeros and shall set any control data to indicate that the queue is empty.

If the OBE successfully executes the Initialize Circular Queue command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.4.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

Command Not Recognized
Page Not Defined
Access Control Error
Memory Access Error
Command Failed

6.4.5 Write Circular Queue (optional)

The Write Circular Queue command is suffixed by a message image that shall be written to the end of the circular queue within the specified OBE memory page.

6.4.5.1 Command set definition

The Write Circular Queue command shall consist of the fields shown in Table 6.4.5.1–1.

TABLE 6.4.5.1–1.—WRITE CIRCULAR QUEUE COMMAND FIELDS

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (14) / Hex (94).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	2	Identifies referenced memory page (as per specification in Table E.2).
Page identifier	End of Access Control field + 2		
Message image	End of Access Control field 3 .. n		The information that shall be written to the end of the circular queue in the specified memory page.

6.4.5.2 OBE normal behaviors

The OBE shall write the message image within the received command by locating the end of the current circular queue contained in the referenced memory page, placing the message image at the end of the queue, and updating any queue control information. Existing messages shall be deleted on a first-in-first-out (FIFO) basis if required to create sufficient available memory for the insertion of the message image. All memory in the page that is not used for message storage shall be set to zero.

If the OBE successfully executes the Write Circular Queue command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.5.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:
—Command Not Recognized
—Page Not Defined
—Access Control Error
—Insufficient Memory
—Memory Access Error
—Command Failed

6.4.6 Set User Interface (optional)

The Set User Interface command is suffixed by data specifying UI behaviors that shall be implemented by the OBE. The RSE may determine the UI elements that are available for a transponder by interpreting the Transponder Configuration field that is stored in the OBE read-only memory and transmitted to the RSE within the VST. The Transponder Configuration field is defined in Table 3. The RSE shall not address UI elements that are absent for a given OBE.

6.4.6.1 Command set definition I11The Set User Interface command shall consist of the fields shown in Table 6.4.6.1–1.

TABLE 6.4.6.1–1.—SET USER INTERFACE COMMAND FIELDS

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (20) / Hex (A0).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	2	Each command will affect only the addressed elements defined as follows:
User interface element	End of Access Control field + 2		Bit 0: Red lamp. Bit 1: Yellow lamp. Bit 2: Green lamp. Bit 3: Enunciator. Bit 4: Character display. Bits 5–15: Additional UI elements.
Type (ObeUICmdType)	End of Access Control field + 3	1	AbsoluteOff (0), AbsoluteOn (1), TimedCommand (2), Flashing Command (3), Reserved (4 .. 255).
Attributes:	End of Access Control field + 4 .. n	0	(Unused for Absolute Command).
Absolute command (0 bytes)	Control field + 4 .. n	2	Time period in 125 ms increments.
Timed command (2 bytes)		4	Cycle state bitmap, 125 ms per bit.
Flashing Command (5 bytes)		1	Repetition count (1 .. 255).

6.4.6.2 OBE normal behaviors

The OBE shall alter the UI element specified within the command parameter in the following fashion, depending upon the value of the type parameter:

—*Absolute Off command.* Turns the addressed UI element off. State is maintained until changed by a subsequent command.

—*Absolute On command.* Turns the addressed UI element on. State is maintained until changed by a subsequent command.

—*Timed command.* Turns the addressed UI element on for a specified period of time. The time period is specified in 125 ms increments.

—*Flashing command.* Cycles the state of the addressed UI element based upon a 4-byte bit map. Each bit in the map represents an interval of 125 ms (the total bit map represents 4 s). A repetition byte indicates the number of times the bit map cycle pattern should be performed (1 to 255 times).

If the OBE successfully executes the Set User Interface command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

The OBE may arbitrarily turn off any element after a preset period of time to preserve battery life.

The completion of a UI command shall not be affected by the reception of any other transmissions from the RSE except for an overriding UI command.

Table E.2 of IEEE 1455–99 defines a memory page associated with an enunciator. This is intended to support systems that provide a synthetic speech interface or other sophisticated auditory cues. The Set User Interface command

shall always be used to initiate changes to the UI, but the data in the enunciator memory page may be used to control the specific action.

Also, Table E.2 of IEEE 1455–99 defines a memory page associated with the character readout. The Set User Interface command shall always be used to initiate changes to the character display, but the specific information shown may be retrieved from the character display memory page.

6.4.6.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

Command Not Recognized
Access Control Error
Device Error
Command Failed

6.4.7 Map User Interface (optional)

The Map User Interface command shall cause the OBE to map a page of memory to the specified UI component. This reservation shall include the establishment of access control procedures. Mapping a page of memory to a specified UI element affects the behavior of the transponder when a Set User Interface command is subsequently received by indicating the information that is enunciated or displayed.

6.4.7.1 Command set definition

The Map User Interface command shall consist of the fields shown in Table 6.4.7.1–1.

TABLE 6.4.7.1–1.—MAP USER INTERFACE COMMAND FIELDS (CONTINUED)

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (21) / Hex (A1).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credentials bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	1	Defines the UI element to be mapped.
User interface element			0: Keypad. 1: Character Display. 2: Enunciator voice 1. 3–255: Reserved for additional UI elements.
Page identifier	End of Access Control field + 2	2	Identifies referenced memory page (as per specification in Table E.2 of IEEE 1455–99).

6.4.7.2 OBE normal behaviors

The OBE shall first determine whether the specified page identifier has already been reserved. If the page identifier exists, then that page shall be used for all subsequent UI actions that reference the specified UI element. The predefined UI page identifiers listed in Table E.2 of IEEE 1455–99 may always be used to reference the specific pages that have been currently selected using the Map User Interface command. See 5.1.8 through 5.1.11 for how the data within the UI memory pages shall be utilized.

If the OBE successfully executes the Map User Interface command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.7.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

Command Not Recognized
Access Control Error
Previously Reserved
Device Error
Command Failed

6.4.8 Sleep Transponder (optional)

The Sleep Transponder command shall cause the receiving transponder to sleep (disable RF reception and transmission) for a period of time specified in the command instance. (This mechanism for commanding sleep is required in addition to the Sleep Timeout mechanism in the Frame Control Message (4.7.1 and 4.8.7).)

6.4.8.1 Command set definition

The Sleep Transponder command shall consist of the fields shown in Table 6.4.8.1–1.

TABLE 6.4.8.1–1 SLEEP TRANSPONDER COMMAND FIELDS (CONTINUED)

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (30) / Hex (B0).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter:	End of Access Control field + 1	2	Sleep time duration in 125 ms increments.
Sleep duration	End of Access Control field + 2		

6.4.8.2 OBE normal behaviors

The OBE shall cause the transponder to cease responding to RF signaling for the specified period.

If the OBE successfully executes the Sleep Transponder command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field. Upon completion, the link shall be considered terminated.

When an RSE wishes an OBE to reinitialize, a sleep duration of 0 will result in the OBE reinitializing with the next Frame Control Frame that it receives.

6.4.8.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

Command Not Recognized
Access Control Error
Device Error
Command Failed

6.4.9 Reserve Memory Page (optional)

The Reserve Memory Page command shall cause the OBE to reserve a page of memory for the specified agency. This reservation shall include the establishment of access control procedures.

6.4.9.1 Command set definition

The Reserve Memory Page command shall consist of the fields shown in Table 6.4.9.1–1.

TABLE 6.4.9.1–1.—RESERVE MEMORY PAGE COMMAND FIELDS (continued)

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (40) / Hex (C0).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Partition identifier	End of Access Control field + 1 End of Access Control field + 2	2	Specifies the partition identifier in which the memory shall be allocated (as per specification in Table E.1). A value of 0 implies that the page shall be allocated within unpartitioned memory.
Command parameter	End of Access Control field + 3	2	Length (in bytes) of the memory page that is requested.
Page size	End of Access Control field + 4		
Page identifier	End of Access Control field + 5 End of Access Control field + 6	2	Specifies the page identifier that will be associated with the allocated memory (as per specification in Table E.2).

TABLE 6.4.9.1–1.—RESERVE MEMORY PAGE COMMAND FIELDS (continued)—Continued

Field name	Location (bytes)	Length	Specification and description
Page access credential type and length.	(End of Page Identifier field + 1)	0/1	(Optional.) Bits 0 .. 1 indicate the access credential scope: Bit 0 = Access Credentials applied to Read access Bit 1 = Access Credentials applied to Write access Bits 2 .. 7 : Number of access credentials bytes that shall be applied to reserved page; max value = 32.
Page access credentials	(End of Access Credential Type and Length + 1 .. n).	0/1 .. 32	(Optional.) Access credentials that shall be applied to reserved page.

6.4.9.2 OBE normal behaviors

The OBE shall determine whether sufficient unallocated memory exists in the specified partition to satisfy the request and that the page identifier is available. If so, the memory page shall be defined from the available memory in the specified partition. This reservation shall then be honored when subsequent page-related commands are received.

If the OBE successfully executes the Reserve Memory Page command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.9.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

—Command Not Recognized
—Access Control Error
—Partition Not Defined
—Page Not Defined
—Previously Reserved
—Device Error
—Command Failed
—Insufficient Memory

6.4.10 Release Memory Page (optional)

The Release Memory Page command shall cause the OBE to release a page of memory that had previously been reserved by the specified agency. This release shall require the same access controls (if any) that were specified at the time of page reservation.

6.4.10.1 Command set definition

The Release Memory Page command shall consist of the fields shown in Table 6.4.10.1–1.

TABLE 6.4.10.1–1.—RELEASE MEMORY PAGE COMMAND FIELDS (Continued)

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (41) / Hex (C1).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credentials bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	2	Identifies referenced memory page (as per specification in Table E.2).
Page identifier	End of Access Control field + 2		

6.4.10.2 OBE normal behaviors

The OBE shall release the previously reserved page, allowing it to be reserved by other agencies and returning the associated extended memory to the pool available for new reservation requests.

If the OBE successfully executes the Release Memory Page command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.10.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

—Command Not Recognized
—Access Control Error

—Page Not Defined
—Device Error
—Command Failed

6.4.11 Query Memory Configuration (optional)

The Query Memory Configuration command shall cause the OBE to return to the RSE the information that describes the organization of memory including reserved memory partitions, reserved memory pages, and free (unreserved) memory.

Execution of this command may be controlled by access credentials. When this command is successfully executed, it shall return a complete description of the transponder memory organization. The data returned in response to this command shall not be affected by credentials required for specific partition page or memory access.

6.4.11.1 Command set definition

The Query Memory Configuration command shall consist of the fields shown in Table 6.4.11.1–1.

TABLE 6.4.11.1–1.—QUERY MEMORY CONFIGURATION COMMAND FIELDS

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (42) / Hex (C2).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	(4)	0/1	(Optional.) Number of access credentials bytes.
Access control	(5 .. n)	0/1 .. 32	(Optional.) Access credentials.
Command parameter			None.

6.4.11.2 OBE normal behaviors

The OBE shall return the roadside information that describes the memory configuration.

If the OBE successfully executes the Query Memory Configuration command, the OBE shall send a response with the Response Identifier field set to Command Success, the Response Data Length field set to the length of the returned memory configuration data, and the memory configuration data itself shall be returned in the Response Data field (see 6.5.5).

6.4.11.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

—Command Not Recognized
—Access Control Error
—Device Error
—Command Failed

6.4.12 Reserve Memory Partition (optional)

The Reserve Memory Partition command shall cause the OBE to reserve a partition of extended memory for the specified agency. This reservation shall include the establishment of access control procedures.

6.4.12.1 Command set definition

The Reserve Memory Partition command shall consist of the fields shown in Table 6.4.12.1–1.

TABLE 6.4.12.1–1.—RESERVE MEMORY PARTITION COMMAND FIELDS

Field Name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (43) / Hex (C3).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credential bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter:	End of Access Control field + 1	2	Length (in bytes) of the memory partition that is requested.
Partition size	End of Access Control field + 2		

TABLE 6.4.12.1–1.—RESERVE MEMORY PARTITION COMMAND FIELDS—Continued

Field Name	Location (bytes)	Length	Specification and description
Partition identifier	End of Access Control field + 3 End of Access Control field + 4.	2	Identifies the partition identifier that will be associated with this request; Table 1 defines the valid range of values for partition identifiers.
Partition access credential length.	(End of Partition Identifier field + 3).	0/1	(Optional.) Number of access credential bytes that shall be applied to this partition; max value = 32.
Partition access credentials	(End of Partition Access Credential Type field + 1.. n).	0/1 .. 32	(Optional.) Access credentials that shall be required when reserving memory pages within this partition.

6.4.12.2 OBE normal behaviors

The OBE shall determine whether sufficient nonpartitioned memory exists to satisfy the request and whether the partition identifier is available. If so, the partition shall be defined from the available memory. This partition shall then be honored when subsequent partition-related commands are received.

If the OBE successfully executes the Reserve Memory Partition command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.12.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

—Command Not Recognized
—Access Control Error
—Previously Reserved
—Device Error
—Command Failed
—Insufficient Memory

6.4.13 Release Memory Partition (optional)

The Release Memory Partition command shall cause the OBE to release a partition of memory that had previously been reserved by the specified agency. This release shall require the same access controls (if any) that were specified at the time of partition reservation.

6.4.13.1 Command set definition

The Release Memory Partition command shall consist of the fields shown in Table 6.4.13.1–1.

TABLE 6.4.13.1–1.—RELEASE MEMORY PARTITION COMMAND FIELDS

Field name	Location (bytes)	Length	Specification and description
Command identifier	0	1	Hex (44) / Hex (C4).
Command transaction identifier	1	1	Uniquely identifies an instance of a command.
Command length	2 .. 3	2	Defines the total length (bytes) of all fields in this command excluding the length of the Command Identifier field, Command Transaction Identifier field, and this Command Length field.
Access control length	4	0/1	(Optional.) Number of access credentials bytes.
Access control	5 .. n	0/1 .. 32	(Optional.) Access credentials.
Command parameter	End of Access Control field + 1	2	Identifies the partition identifier that will be associated with this request; Table E.1 defines the valid range of values for partition identifiers.
Partition identifier	End of Access Control field + 2		

6.4.13.2 OBE normal behaviors

The OBE shall release the previously reserved partition and return the memory to the pool available for partitioning.

If the OBE successfully executes the Release Memory Partition command, the OBE shall send a response with the Response Identifier field set to Command Success. The response shall contain no data in the Response Data field.

6.4.13.3 OBE abnormal responses

The following Response Identifier field values defined in Table 6.5.3.4–1 may be returned for abnormal conditions:

—Command Not Recognized
—Access Control Error

—Partition Not Defined
—Device Error
—Command Failed

6.5 Standard command responses

Each command response shall consist of the fields shown in Table 6.5–1 and described in 6.5.1 through 6.5.5.

TABLE 6.5–1.—COMMAND SET FIELDS

Response command identifier	Response transaction identifier	Response identifier	Response data length	Response data
1 byte	1 byte	1 byte	2 bytes	Variable.

6.5.1 Response Command Identifier

6.5.1.1 Length

The length of the Response Command Identifier field shall be 1 byte.

6.5.1.2 Usage

The Response Command Identifier field shall contain the command identifier of the original command that was sent to the OBE and effected this response. Command Identifier field values are listed in Table 6.2.1.2–1.

6.5.1.3 Default value

The Response Command Identifier field has no default value.

6.5.2 Response Transaction Identifier

6.5.2.1 Length

The length of the Response Transaction Identifier field shall be 1 byte.

6.5.2.2 Usage

The Response Transaction Identifier field shall contain the transaction identifier of the received command to which the response is addressed.

6.5.2.3 Default value

The Response Transaction Identifier field has no default value.

6.5.3 Response Identifier

6.5.3.1 Length

The length of the Response Identifier field shall be 1 byte.

6.5.3.2 Usage

The Response Identifier field shall contain a value indicating the status of command execution in the OBE.

6.5.3.3 Default value

The Response Identifier field has no default value.

6.5.3.4 Response definitions

Table 6.5.3.4–1 lists the valid values and their interpretation. (See ObeResponse in A.2 for ASN.1 definitions.) A command response will only contain valid response data when the Response Identifier field is set to Command Success. All other values indicate failure conditions.

TABLE 6.5.3.4–1.—RESPONSE IDENTIFIER VALUES

Response name	Value	Specification and description
Reserved	hex (0)	
Command Success	hex (1)	Completion is normal.
Command Failed	hex (2)	Completion is abnormal due to some unspecified condition.
Command Not Recognized	hex (3)	The command was invalid or unsupported by the OBE. This response is used if the RSE references a UI element that is not present on a transponder.
Access Control Error	hex (4)	Access credentials may not have been supplied in a required situation or the supplied credentials may be invalid; a nonce value is returned from the OBE.
Page Not Defined	hex (5)	The page identifier does not match a reserved page in the OBE.

TABLE 6.5.3.4–1.—RESPONSE IDENTIFIER VALUES—Continued

Response name	Value	Specification and description
Partition Not Defined	hex (6)	The partition identifier does not match an existing partition in the OBE.
Device Error	hex (7)	A malfunction has occurred in the OBE hardware or software.
Memory Access Error	hex (8)	The requested memory is faulty.
Page Length Mismatch	hex (9)	The length of the memory image is greater than the length of the referenced memory page, or command execution would require crossing a page boundary.
Insufficient Memory	hex (A)	Available free memory is insufficient in the referenced page to perform the command.
Previously Reserved	hex (B)	The specified page or partition identifier has already been reserved by a previous Reserve command.
Reserved	hex (C .. EF)	Reserved.
Vendor Area	hex (F0 .. FF)	Available for vendor-specific failure conditions.

6.5.4 Response Data Length

6.5.4.1 Length

The length of the Response Data Length field shall be 2 bytes.

6.5.4.2 Usage

The Response Data Length field shall specify the total length (in bytes) of the data contained in the Response Data field. Only the Read Memory Page and Query Memory Configuration commands return response data. Response data may also be created for a nonce if required access credentials are incorrect. The Response Data Length field shall always be present even if the response contains no response data.

6.5.4.3 Default value

The default value of the Response Data Length field shall be zero (0) if the response contains no data.

6.5.5 Response Data

6.5.5.1 Length

The length of the Response Data field shall be variable.

6.5.5.2 Usage

Three cases exist for which response data are returned. These cases are described in 6.5.5.2.1 through 6.5.5.2.3.

6.5.5.2.1 Case 1

Command = Read Memory Page
Response Identifier = Command Success

In this case, the Response Data field contains the requested OBE memory image.

6.5.5.2.2 Case 2

Command = Query Memory Configuration
Response Identifier = Command Success

In this case the Response Data field contains a contiguous snapshot of the transponder memory configuration represented as a set of triplets, where each triplet in the set consists of three 16-bit values defined as follows:

(1) Block Size: The size in bytes of this memory block.

(2) Page Identifier: The page identifier associated with this block of memory. A value of hex(0) means the memory is unallocated.

(3) Partition Identifier: The partition to which this block of memory belongs. A value of hex(0) means no associated partition exists.

6.5.5.2.3 Case 3

Command = Any Command
Response Identifier = Access Control Error

In this case, the Response Data field contains a nonce value.

6.5.5.3 Default value

The Response Data field does not exist except for the three cases specified in 6.5.5.2.

6.5.6 Response definitions

The OBE normal behaviors, which are described for each command definition in 6.4, specifically state the values that shall be contained in the Response Identifier field. The response data, if any, that shall be returned in the response is also included in these descriptions.

The only abnormal response (any value for the Response Identifier field other than Command Success) that shall return a non-null Response Data field is the Access Control Error, which returns a nonce value.

The Received Transaction Identifier field of any response shall always be set to the value of the Transaction Identifier field of the command to which the OBE is responding.

6.6 Interoperability requirements

Compliant transponders shall meet all the requirements specified in this specification. Interoperable transponders shall additionally provide specified features. The following commands defined in this subsection shall be implemented in interoperable transponders:

—Read Memory Page
—Write Memory Page
—Set User Interface
—Sleep Transponder
—Reserve Memory Page (If Reserve Memory Page is not supported, then available extended memory shall be preallocated into pages by the manufacturer.)
—Release Memory Page (Required when Reserve Memory Page is present.)
—Query Memory Configuration

Interoperable transponders may also implement additional optional commands.

Additional interoperability requirements are specified in 5.3.

6.7 Error detection and processing

The following methods shall be applied on the OBE and RSE to detect and process errors that may be present in commands and command responses.

6.7.1 OBE command error detection processing

The OBE shall check commands received from the RSE for the following error conditions prior to execution:

Verify that the command identifier is defined.

Verify that the command length matches the length of the received information.

For commands having fixed parameters, verify that the command length matches the value defined in this specification.

For command parameters that have a limited value domain, verify that all command parameters have values defined within this specification.

Additional, vendor-specific error checks may be provided.

If any of these conditions is detected, the OBE shall reject the command and shall issue a command response with the appropriate response identifier.

6.7.2 RSE command response error detection processing

The RSE shall check command responses received from the OBE for the following error conditions prior to execution:

(a) Verify that the response command identifier is defined.

(b) Verify that the response identifier is defined.

(c) Verify that the response command identifier is the same as the command identifier used in the previously transmitted command having a matching response transaction identifier.

(d) Verify that the response data length matches the length of the received information.

Additional, vendor-specific error checks may be provided.

If any of these error conditions is detected, the RSE shall reject the command response. The RSE may retransmit the command that resulted in the erroneous command response, using the identical information. If the OBE receives such a duplicated command, it shall regenerate and transmit the appropriate command response, but shall not reexecute the defined command processing. Reception of an erroneous command response may indicate a flaw in the overall processing, and the command that generated the condition should generally not be retransmitted.

7. Resource Manager

The resource manager shall provide the roadside ''operating system'' that accepts, arbitrates, implements, and responds to requests for DSRC services that are received from one or more BOAs. The resource manager shall be the initiator of all commands to the OBE controller, acting as the master in a master-slave relationship. The functional relationships are illustrated in Figure 7–1.

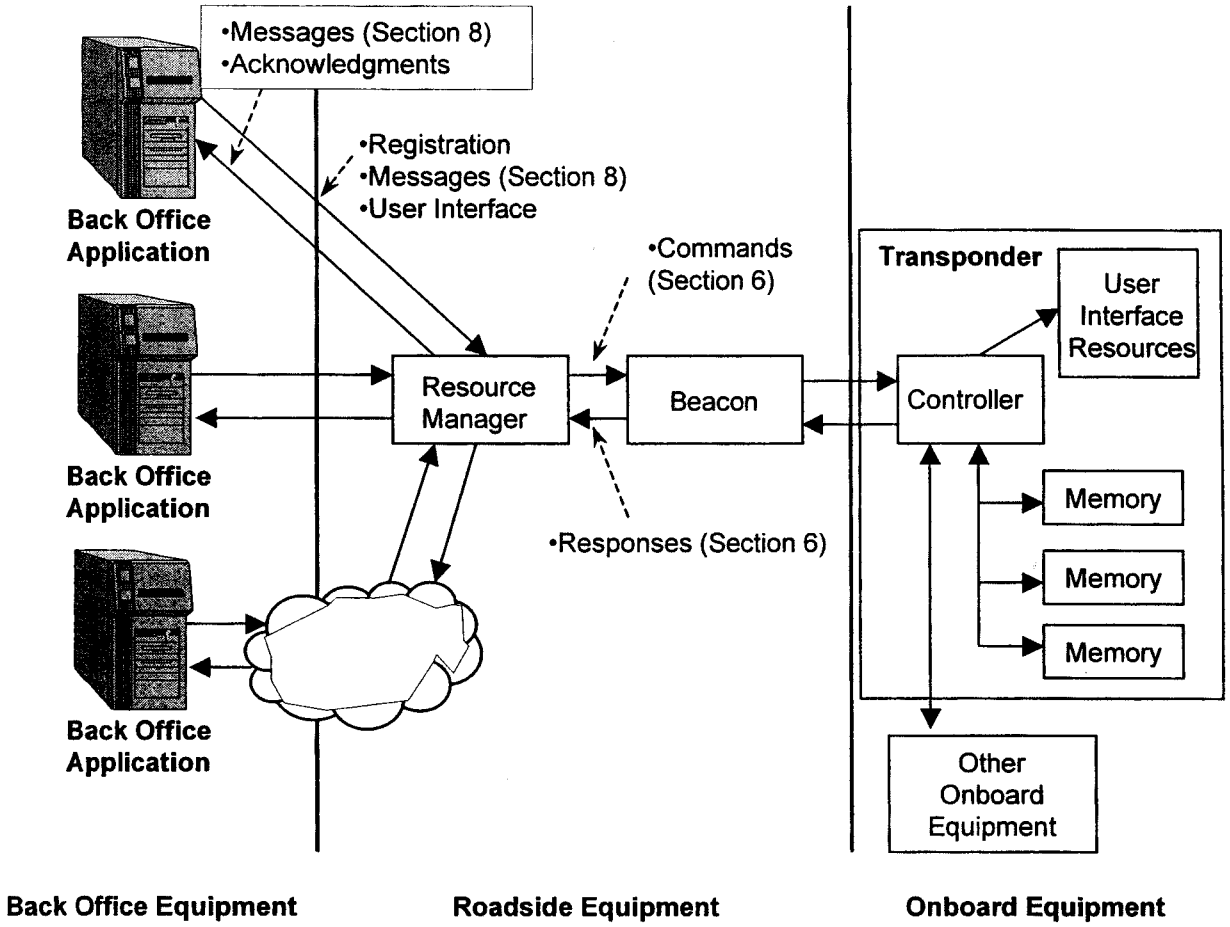

Figure 7-1 Resource Manager Relationships

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A typical DSRC roadside system shall consist of a single VRC controller connected to one or more readers with each reader connected to one or more antennas. Compliant DSRC roadside installations shall provide a resource manager function as specified in this section, and it is anticipated that the resource manager will in most cases be hosted within the VRC controller so that it may manage the transponder resources within an entire field of DSRC communications. However, this specification does not require any specific mapping of the resource manager to specific hardware.

Other equipment to accomplish functions such as automatic vehicle classification, weigh-in-motion, vehicle detection, etc., may exist at the roadside or in the roadway; however, this specification does not govern such equipment.

This section (which is taken directly from Clause 7 of IEEE 1455–99) specifies the characteristics of the resource manager function. An ITS application may include RSE other than that required for DSRC to perform functions such as vehicle classification or weigh-in-motion. This equipment is not governed by this specification.

7.1 Resource manager processing summary

The resource manager shall implement the following processing flow:

(a) The resource manager shall initially accept registrations from BOAs that specify the set of DSRC resources to which each BOA requires access. This registration process is further specified in 7.2.2.

(b) The resource manager shall then communicate with the connected beacons to configure each beacon's initial transactions with transponders that may pass within the beacon's communications zone. This communication process is further specified in 7.3.

(c) When a transponder enters a beacon's communications zone, the beacon will notify the resource manager and may also transmit one or more memory images that have been retrieved from the transponder. The resource manager may then request the retrieval of additional memory pages and may provide access credentials required for the retrieval.

(d) The resource manager shall then parse any received memory images and shall transmit the information contained within the memory images to the BOAs that have registered for it.

(e) In response, the BOAs may request that specific messages be deleted or that additional messages be stored within the specified transponder memory region.

(f) The resource manager shall then create a new memory image in response to the requests from the BOA and shall transmit that memory image to the beacon for storage within the transponder's memory region. [Steps (d), (e), and (f) are further specified in 7.4.]

(g) The resource manager shall also accept requests from the BOAs that the transponder's UI be manipulated. The resource manager shall arbitrate those requests when received from multiple BOAs and shall then communicate appropriate commands to the beacon for transmission to the transponder. This process is specified further in 7.5.

7.2 BOA interface

Since the BOA is the ultimate user of the DSRC information, it is essential that this specification allow for such information transmission. However, the actual specification of the interface between the resource manager and the BOA is beyond the scope of this specification. This subsection, therefore, specifies the capabilities that are required within all implementations of that interface and also provides guidance on how the interface might be implemented.

7.2.1 Physical media

BOAs shall be provided with a communications link via which they will—

—Be able to register themselves with the resource manager
—Be able to specify messages of interest it wants to receive
—Get the messages of interest as they are received
—Have a means of updating these messages upon receipt
—Have a means of specifying special actions that the resource manager must automatically perform upon receipt of these messages of interest

This specification does not govern the BOA interface; it is anticipated that the interface may be implemented using a variety of physical media. It is solely the responsibility of the system integrator and the user agency to select and implement the BOA interface using the media or combination of media appropriate for the cost, bandwidth, and physical limitations applicable to the DSRC installation.

7.2.2 Registration

Prior to receiving any transponder-derived information from the resource manager, the BOA shall register with the resource manager to define the types of information required and the conditions under which it should be transmitted. The classes of registration that are available and may be supported by the resource manager are listed in Table 7.2.2–1.

TABLE 7.2.2–1.—REGISTRATION PARAMETERS (CONTINUED)

Registration information type	Description and usage
Unique Identifiers of Interest	Specifies a set of transponders that are of interest to the registering application; data reports shall be made to the BOA only for transponders with included unique identifiers.
Unique Identifiers Not of Interest	Specifies a set of transponders that are not of interest to the registering application; data reports shall never be made to the BOA for transponders with included unique identifiers.
Service Agencies of Interest	Specifies a set of service agencies that are of interest to the registering application; data reports shall be made to the BOA only for transponders with included service agencies.
Service Agencies Not of Interest	Specifies a set of service agencies that are not of interest to the registering application; data reports shall never be made to the BOA for transponders with included service agencies.
Beacon Identifiers	Specifies a set of beacon identifiers that are of interest to the registering application; data reports shall be made to the BOA only for transponders that are in communication with an included beacon.
Message Identifiers	Specifies a set of message identifiers that are of interest to the registering application; only those messages identifiers registered by the BOA shall be reported to the BOA when a transponder communicates with a beacon.
Transponder Resources	Specifies a set of transponder resources, such as memory or peripheral configurations, that must be present in the transponder; the registering BOA shall be notified of messages only from transponders with these resources identified in the read-only memory.
Memory Page Identifiers	Specifies a set of transponder memory pages that are of interest to the registering BOA; only information that is stored within the memory pages registered by the BOA shall be reported to the BOA when a transponder communicates with a beacon.

These registration parameters essentially restrict the volume of information passed using the methods described in 7.2.3. Specific resource manager implementations need not implement all the registration parameters. However, the full set of unfiltered information defined in 7.2.3 may be transmitted to the BOA.

7.2.3 Information transmission to the BOA

In response to the registration information received from the BOA, the resource manager shall utilize the beacon interface specified in 7.3 to elicit transfer of information from the transponders that communicate with connected beacons. As a result of this communication, the resource manager will obtain one or more memory images. The resource manager shall then determine whether the communicating transponder matches the previously received registration filters.

If the transponder meets the registration constraints, then the resource manager shall process the memory images for which the BOA has registered to extract that information. For the read-only memory region, this processing shall consist solely of formatting the binary information contained within the memory region into appropriate data structures

for transmission. For all other memory regions, the resource manager shall parse the memory region to extract individual messages. Each message shall then be compared to the list of message identifiers that have been registered with the BOA. If the BOA has registered for a message that is present in the memory image, then the message shall be transmitted to the BOA. Messages may be reformatted for transmission to the BOA.

Once the resource manager has extracted all information within the transponders for which the BOA has registered, the resource manager shall assign an identifier to each message that will be transmitted to the BOA. The extracted information, including all messages and their identifiers, shall then be transmitted to the BOA using the selected communication channel.

7.2.4 Message reception from the BOA

After the BOA receives information from the resource manager that has been extracted from memory regions within a communicating transponder, the BOA may choose to alter the information stored within a specific memory region of a transponder. Two methods of alteration shall be provided:

(a) The BOA may request that a message be deleted from a specific memory region. This alteration is accomplished by specifying the corresponding message sequence number.

(b) The BOA may request that an additional message be stored within the transponder's memory region. This alteration is accomplished by creating the desired message and then passing it to the resource manager.

These memory image alteration requests shall be processed as specified in 7.4.

Due to vehicle movement and other factors, it is possible that the resource manager will be unable to accomplish the requested memory image alterations. If this condition is detected by the resource manager, it shall be reported to the requesting BOA.

7.2.5 UI requests from the BOA

After the BOA receives information from the resource manager that has been extracted from a communicating transponder, the BOA may choose to manipulate the transponder's UI. The resource manager shall provide service methods that allow the BOA to individually manipulate each of the UI resources defined in Section 5. These service requests shall be processed as defined in 7.5.

Due to vehicle movement and other factors, it is possible that the resource manager will be unable to accomplish the requested UI actions. If this condition is detected by the resource manager, it shall be reported to the requesting BOA.

7.2.6 Predefined transponder sessions

In some cases, the BOA may require the capability to predefine sequences of actions (which can be treated as a single logical action) that should be taken by the resource manager upon arrival of a transponder. Such a sequence is only executed when the transponder is within the beacon's communications field. This is likely to occur when the BOA is connected to the resource manager via a low-speed interface. In such a case, it is unlikely that the communication of individual sequential commands can be successfully accomplished during the period of time in which the vehicle is within the beacon's communications field.

The resource manager may provide for this requirement by implementing registration messages, configuration files, or custom software that implements the required sequences of actions. If this capability is provided, the resource manager shall still report all pertinent information received from or transmitted to the transponder using the processes defined in 7.2.4 and 7.2.5.

7.3 Beacon interface (nonmandatory)

It is anticipated that in many cases the resource manager will be implemented within a VRC controller that is physically distinct from, but connected to, the beacon. In this case, it will be necessary for the VRC controller to communicate with the beacon to control the beacon configuration, elicit information from each transponder that passes through the beacon's communication region, and transfer information to the beacon for storage on the transponders. However, this specification recognizes that in some cases the VRC controller and the beacon will actually be a single piece of equipment, hosting both the resource manager and the beacon functionality.

This specification anticipates that future efforts may be undertaken to specify a specification interface between the resource manager and the beacon. Absent such a specification, the following guidelines are recommended:

—The interface will typically correspond to the interface between the application layer and lower layer service as described in Section 9.

—The interface should allow the resource manager to initiate, terminate, monitor, and otherwise control the communications channel with the beacon.

—The interface should allow the resource manager to query the configuration and health of the beacon and any connected equipment.

—The interface should allow the resource manager to mute the beacon, i.e., cause the beacon to cease RF transmission and reception.

—The interface should allow the resource manager to specify that lower layer actions target a specific beacon.

—The interface should allow the beacon to transmit to the resource manager a transponder command response (specified in Section 6).

—In some DSRC systems, the vehicle speed and size of the beacon communications region will constrain the period of time during which the beacon may communicate with a transponder. The physical capabilities of the interface between the resource manager and the beacon should accommodate the correspondingly required transmission speeds.

7.4 Memory page management

The resource manager shall arbitrate, manage, and control all transponder memory regions that may be modified using the commands listed in Section 6. This capability shall be provided as follows, and in such a way as to meet the requirements specified in 7.2.3 and 7.2.4:

—The resource manager shall retrieve all memory regions that have been previously requested as part of BOA registrations. The resource manager shall not retrieve or process in any way memory regions that have not been requested as part of a BOA registration. The resource manager shall not write to pages that are unchanged.

—The resource manager shall parse all retrieved memory regions to isolate the messages stored within them.

—The resource manager shall transmit the messages to the BOAs that have previously registered for the messages. Messages that are stored within pages that have been reserved to a specific agency shall only be transmitted to BOAs that specify that page identifier as part of their registration parameters.

—If a BOA requests that messages be deleted from or added to a page, then the resource manager shall perform the memory consolidation process defined in 7.4.1. The resource manager shall only accept requests for changes to reserved memory pages from BOAs that specified the reserving page identifier as part of their registration parameters. If a page is not reserved, i.e., is a public page, then the resource manager shall accept requests for changes to that page from any (and potentially multiple) BOAs that request access to that page as part of their registration parameters.

—After performing the memory consolidation process, the resource manager shall transmit the modified memory image to the beacon for storage on the transponder. The resource manager may use the Write Memory Page, Append Message, or Write Circular Queue command as appropriate and as supported by the transponder.

7.4.1 Memory consolidation

After the resource manager has retrieved a memory region from a transponder, parsed the messages from that region, passed the messages to BOAs that have registered for them, and received requests for memory image updates from the BOAs, the resource manager will have three sets of information corresponding to the memory region:

—Existing messages. A list of messages that were stored within the memory region when it was received.

—Obsolete messages. A list of message sequence numbers corresponding to messages that one or more BOAs have requested be deleted.

—Requested messages. A list of messages that BOAs have requested be added.

The resource manager shall then create a list of new messages by performing the following steps:

(a) Each existing message shall be analyzed to determine whether it has expired. This shall be determined by comparing the message expiration date stored within the specified message to the date at which the analysis is performed.

(b) Each existing message that has not expired shall then be placed on the new message list if it is not present on the obsolete message list (in the resource manager).

(c) If room is available within the designated transponder memory region, all requested messages shall be added to the new message list. If insufficient room exists for all requested messages, the resource manager may add a subset of the requested message list to the new message list using a site-specific prioritization algorithm. The BOAs shall be notified if insufficient memory space exists for a message.

Once the new message list has been created, it shall be used to generate a new memory image of the designated transponder memory region.

7.5 UI management

The resource manager shall accept requests for UI services from the communicating BOAs as specified in 7.2.5. When the resource manager is servicing only a single BOA or when no conflicts exist in the UI requests received from multiple communicating BOAs, then the resource manager shall directly translate the UI service requests into the transponder UI commands specified in Section 6.

In some cases, conflicts may arise between BOAs that request access to the same UI resources. For example, an Electronic Toll Collection application might request illumination of the green lamp, while a Border Crossing application requests illumination of a red lamp. Site-specific rules shall be established for the arbitration of conflicting UI directives.

8. ITS application messages

8.1 Message concepts

Application messages are the data constructs that provide for communication between applications and positive identification of vehicles, containers, chassis, etc. Each application area, such as Electronic Toll Collection or Border Clearance, has messages that are unique to the application. In addition, there are utility messages that may be utilized in multiple applications. This section defines the general format of messages, specific message sets for each application area, and data element definitions for all messages.

Note that this section is the same as Clause 8 in IEEE 1455–99 with *the following two exceptions: (1) no ETC messages are specified (since this is a CVO focused specification), and (2) the CVO Electronic Screening Message Set has been slightly altered to align it with the Commercial Vehicle Information Systems and Networks architecture (see Section 8.6).*

8.1.1 Message format

Each application message shall consist of a header and a body. The header component is defined across all applications. The message body consists of the application data fields. Message body content is unique to each message type within each application. The specific data elements that are used in message headers are formally defined in 8.2.

8.1.2 Message encoding

The encoding and decoding of message fields into transfer syntax shall be performed by the application. All messages shall be encoded according to ASN.1 Packed Encoding Rules (PER), unaligned, as specified in ISO/IEC 8825–2:1996. The application may also encrypt the message body using an application-specific technique.

The specification of each application message includes an ASN.1 value specification of the message body with a specification header. Following the sample value assignments is a bit-level layout of the resulting encoding. Within

the bit-level layouts, a period (.) is used to indicate octet alignment and an ''x'' is used as a bit placeholder with no specific value.

8.2 Message headers

Two forms of the message header exist. The specification, or ''long form,'' header, which is 5 bytes long, is used to prefix messages that are stored in transponder memory pages that are at least 512 bits in length. The ''short form'' header, which is 3 bytes long, is used to prefix messages that are stored in transponder memory pages that are less then 512 bits in length. Message headers shall not be encrypted. Tables 8.2–1 and 8.2–2 provide a layout of each message type.

TABLE 8.2–1.—STANDARD MESSAGE FORMAT

Application identifier	Message identifier	Message expiration date	Message length	Error detect code	Message body
Bits 0..5	Bits 6..11	Bits 12..23	Bits 24..31	Bits 32..39	Variable

TABLE 8.2–2.—SHORT MESSAGE FORMAT

Message identifier	Message expiration date	Message length	Error detect code	Message body
Bits 0..4	Bits 5..11	Bits 12..15	Bits 16..23	Variable

8.2.1 Standard message header

Table 8.2.1–1 specifies the fields and the permissible field values for the standard header. Messages using long headers are constrained to 255 bytes in length (excluding the header) by the definition of the Message Length field.

TABLE 8.2.1–1.—STANDARD MESSAGE HEADER FIELDS (CONTINUED)

Field	Field name	Type	Length	Values
1	Application Identifier	Integer	6 bits	See Table 34
2	Message Identifier	Integer	6 bits	See Tables 35 through 38
3	Message Expiration Date	Integer	12 bits	(0..4095); Days since last decade; a message expiration date equal to hex(FFF) indicates that the message never expires.
4	Message Length	Integer	8 bits	(0..255); Length of message body, in bytes (does not include header)
5	Error Detect Code	Bit string	8 bits	XOR Checksum of the message body

Standard message headers shall have an application identifier and a message identifier that uniquely identify the message type. Table 8.2.1–2 lists values for the application identifier. Table 8.2.1–3 through Table 8.2.1–6 list values for message identifiers within each application.

The Message Expiration Date field shall specify the point in time after which the message may be deleted. This field supports a message lifetime of up to 180 days. The field shall be interpreted as follows:

—If the message expiration date is less than or equal to 3652 and the current date within the decade is greater than the message expiration date, then the message shall be deleted.

—If the message expiration date is greater than 3652 and the current date within the decade is greater than 180 and less than 3472, then the message shall be deleted.

—If the message expiration date is greater than 3652 and the current date within the decade is less than 180, then the message shall be deleted if the message expiration date is less than the current date within the decade plus 3652.

TABLE 8.2.1–2.—APPLICATION IDENTIFIERS

Code	Application
0	Reserved
1	Electronic Toll and Traffic Management (ETTM)
2	Commercial Vehicle (CV) Management
3	Common Utility Messages
4..59	Reserved
60	Private (Uncontrolled); Message identifiers associated with this application identifier are available for uncontrolled use
61	Private (Controlled); Message identifiers associated with this application identifier are available for registration
62..63	Reserved

TABLE 8.2.1–3.—MESSAGE IDENTIFIERS: ETTM (CONTINUED)

Code	Message description
0	Reserved
1	Toll System Entry
2	Toll Vehicle Classification
3	Toll Variable Pricing
4	Toll System Enroll
5..63	Reserved

TABLE 8.2.1–4.—MESSAGE IDENTIFIERS: CV MANAGEMENT

Code	Message description
0	Reserved
1	Border Trip Identification
2	Border Clearance Event
3	Border Lock Notification
4	Border Lock Status
5	Border Itinerary Identification
6	Commercial Motor Vehicle (CMV) Screening Identification
7	CMV Screening Event
8	CMV Screening Identification—Expanded
9	CMV Screening Event—Expanded
10..63	Reserved

TABLE 8.2.1–5.—MESSAGE IDENTIFIERS: COMMON UTILITY MESSAGES

Code	Message description
0	Reserved
1	Text String
2	RSE to Other OBE—Generic Data
3	Other OBE to RSE—Generic Data
4	End Of Data
5..63	Reserved

TABLE 8.2.1–6.—MESSAGE IDENTIFIERS: PRIVATE CONTROLLED

Code	Message description
0	Reserved
01..63	Available for registration of private reserved messages

8.2.1.1 ASN.1 specification

```
Dsrcmsg-Header ::=  SEQUENCE
{
application-ID      INTEGER (0..63),        —Dsrcmsg-ApplicationIdentity
message-ID          INTEGER (0..63),        —Dsrcmsg-MessageIdentifier
message-date        INTEGER (0..4095),      —Dsrcmsg-Date
message-length      INTEGER (0..255),       —Dsrcmsg-Length
message-checksum    BIT STRING (SIZE(8))    —Dsrcmsg-ErrorDetect
}
```

8.2.1.2 ASN.1 sample values

```
Dsrcmsg-Header ::=  SEQUENCE
{                                           —Begin Standard Header
application-ID      1,                      —ETTM Application Identifier
message-ID          1,                      —Toll Entry Message Identifier
message-date        0,                      —1/1/1990
message-length      0,                      —0 byte message body
message-checksum    '00'H                   —XOR checksum (not calculated)
                                            —End Header/Begin Body
}
```

8.2.1.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000001	application-ID
6	00.0001	message-ID

Bit	Bit value	Field definition
12	0000.00000000.	message-date
24	00000000	message-length
32	xxxxxxxx.	message-checksum
40		—[end of Header]

8.2.2 Short message header

Short message headers shall use the short message identifier instead of the application identifier and message identifier. Table 8.2.2–1 lists the fields and the permissible field values for the short message header. Messages using short headers are constrained to 30 bytes in length (excluding the header) by the definition of the Message Length field.

TABLE 8.2.2–1 SHORT MESSAGE HEADER FIELDS (CONTINUED)

Field	Field name	Type	Length	Values
1	Message Identifier	Integer	5 bits	See Table 40
2	Message Expiration Month.	Integer	7 bits	(0 .. 127); Months since last decade. A value of 127 indicates that a message never expires.
3	Message Length	Integer	4 bits	(1 .. 15); Length of message body in byte pairs (does not include header)
4	Error Detect Code	Bit string	8 bits	XOR checksum of the message body

Short message headers shall use the short message identifier instead of the application identifier and message identifier. Table 40 lists the permissible values for short message identifiers.

TABLE 8.2.2–2 SHORT MESSAGE IDENTIFIERS (CONTINUED)

Code	Message description
0	Reserved
1	Toll Entry
2	Toll Vehicle Classification
3	Toll Variable Pricing
4	Toll System Enroll
5	Border Trip Identification
6	Border Clearance Event
7	Border Lock Notification
8	Border Lock Status
9	Border Itinerary Identification
10	Reserved by IEEE for future use
11	CMV Screening Clearance Event
12	Reserved by IEEE for future use
13	CMV Screening Clearance Event-Expanded
14	Utility Text String
15	Utility RSE to Other OBE
16	Utility Other OBE to RSE
17	Utility End Of Data
18..31	Reserved by IEEE for future use

The Message Expiration Month field shall specify the point in time after which the message may be deleted. This field supports a message lifetime of up to 6 mo. The field shall be interpreted as follows:

- If the message expiration month is less than or equal to 120 and the current month within the decade is greater than the message expiration month, then the message shall be deleted.
- If the message expiration month is greater than 120 and the current month within the decade is greater than 6 and less than 114, then the message shall be deleted.
- If the message expiration month is greater than 120 and the current date within the decade is less than 7, then the message shall be deleted if the message expiration month is less than the current month within the decade plus 120.

8.2.2.1 ASN.1 specification

```
Dsrcmsg-Header ::=    SEQUENCE
{
short-message-ID      INTEGER (0..31),          --Dsrcmsg-ShortMessageIdentity
message-month         INTEGER (0..4095),        --Dsrcmsg-ShortDate
message-length        INTEGER (1..16),          --Dsrcmsg-ShortLength
message-checksum      BIT STRING (SIZE(8))      --Dsrcmsg-ErrorDetect
}
```

8.2.2.2 ASN.1 sample values

```
Dsrcmsg-Header ::=    SEQUENCE
{                                               --Begin Short Header
short-message-ID      1,                        --Toll Entry Message Identifier
```

```
short-message-month     0,          --1/1/1990
short-message-length    4,          --5 byte pair message body
message-checksum        '00'H       --XOR checksum (not calculated)
                                    --End Header / Begin Body
}
```

8.2.2.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	00001	short-message-ID
7	000.0000	short-message-date
12	0100.	short-message-length
16	xxxxxxxx.	message-checksum
24		—[end of Header]

8.3 Message data elements

This subsection describes the data elements used in the body of the application message. Each data element is accompanied by the corresponding ASN.1 name. A list of all the data elements and their ASN.1 attributes is provided in Annex A of IEEE 1455–99.

8.3.1 Common application data elements

The following elements are defined by this specification and were designed for use across DSRC applications.

8.3.1.1 Timestamp (Dsrc-Time)

DSRC date/time values shall be expressed as a 4 byte integer indicating the number of seconds since January 1, 1970 GMT.

8.3.1.2 Beacon Identifier (Beacon-Identity)

The roadside beacon shall have a unique identifier consisting of a 16 bit identifier registered to that agency followed by a 16 bit agency-unique serial number.

8.3.1.3 Transponder Identifier (Transponder-Identity)

The transponder shall have a unique identifier (see 5.2.18) consisting of 40 bits, which represent the Manufacturer Identifier and Serial Number fields (and associated subfields) defined for read-only memory (see 5.2).

8.3.2 Data elements—application-specific

Application data elements are specified using ASN.1 syntax in Annex A of IEEE 1455–99.

8.4 Electronic Toll Collection message set

There are no ETC messages required by this specification.

8.5 Commercial Vehicle Operations Border Clearance Message Set

Table 8.5–1 summarizes the messages that have been defined for the CVO Border Clearance application. This subclause details the specific formats, conditions, and uses for each message.

TABLE 8.5–1.—CVO BORDER CLEARANCE MESSAGE SUMMARY (CONTINUED)

Message name	Description
Trip Identification Number	Transmits the unique trip load number.
Border Clearance Event	Reports clearance event data to the vehicle.
Electronic Lock Notification	Notifies roadside that the vehicle has electronic locks.
Electronic Lock Status	Provides roadside with status of electronic lock.
Itinerary Verification	Shows percent likelihood that vehicle maintained its itinerary.
Warning/Notification	Indicates special attention for cargo or onboard sensor.

8.5.1 Trip Identification Number Message

The Trip Identification Number message contains the unique trip load number, consisting of the carrier's Dunn & Bradstreet number (DUNS) and a unique suffix. It is generated by a portable transfer device [e.g., a notebook computer or personal digital assistant (PDA)], stored in the transponder memory, and received by the beacon at a border clearance location. See Table 8.5.1–1.

TABLE 8.5.1–1.—TRIP IDENTIFICATION NUMBER MESSAGE

Field	Data element name	Type	Constraint
1	Triploat-DunsNumber	NumericString	Size (9)

TABLE 8.5.1–1.—TRIP IDENTIFICATION NUMBER MESSAGE—Continued

Field	Data element name	Type	Constraint
2	Tripload-CarrierSerial	NumericString	Size (6)

8.5.1.1 ASN.1 specification

```
Trip-Identification-Message::=   SEQUENCE
{
header                           Dsrcmsg-Header
duns-number                      NumericString (SIZE(9)),    —Tripload-DunsNumber
carrier-serial                   NumericString (SIZE(6))     —Tripload-CarrierSerial
}
```

8.5.1.2 ASN.1 sample values

```
Trip-Identification-Message::=   SEQUENCE
{                                                            —Begin Standard Header
application-ID                   2,                          —CVO Application Identifier
message-ID                       1,                          —Trip Identification Message Identifier
message-date                     0,                          —1/1/1990
message-length                   8,                          —8 byte message body
message-checksum                 '00'H,                      —XOR checksum (not calculated)
                                                             —End Header/Begin Body
duns-number                      123456789,
carrier-serial                   123456
}
```

8.5.1.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000001	application-ID
6	00.0001	message-ID
12	0000.00000000	message-date
24	00001000	message-length
32	xxxxxxxx.	message-checksum —[end of Header]
40	00010010.00110100.01010110	duns-number
64	01111000.1001	
76	0001.00100011.01000101.0110	carrier-serial
100	xxxx	octet alignment pad
104		—[end of Body]

8.5.2 Border Clearance Event message

The Border Clearance Event message reports border clearance information to the vehicle. It is generated by the border crossing location DSRC controller, stored in the transponder memory, and received by the beacon at another border clearance location. See Table 8.5.2–1.

TABLE 8.5.2–1.—BORDER CLEARANCE EVENT MESSAGE (CONTINUED)

Field	Data element name	Type	Constraint
1	Beacon-Identity	Bit string	Size (32).
2	Borderevent-Timestamp	Integer	Dsrc-Time.
3	Borderevent-DriverClearance	Boolean	Go/True—NoGo/False.
4	Borderevent-DriverClearanceFlag	Boolean	Valid/True—Invalid/False.
5	Borderevent-CargoClearance	Boolean	Go/True—NoGo/False.
6	Borderevent-CargoClearanceFlag	Boolean	Valid/True—Invalid/False.
7	Borderevent-TractorClearance	Boolean	Go/True—NoGo/False.
8	Borderevent-TractorClearanceFlag	Boolean	Valid/True—Invalid/False.
9	Borderevent-ReserveClearance	Boolean	Reserved for future use.
10	Borderevent-ReserveFlag	Boolean	Reserved for future use.
11	Transponder-DigitalSignature	Bit string	Size (64).

8.5.2.1 ASN.1 specification

```
Border-Clearance-Event-Message::=SEQUENCE
{
headerDsrcmsg-Header,            —Standard Header.
```

```
beacon-IDBIT STRING SIZE((32)),          —Beacon-Identity.
timestampDsrc-Time,                      —Borderevent-Timestamp.
driver-clearanceBOOLEAN,                 —Borderevent-DriverClearance.
driver-clearance-flagBOOLEAN,            —Borderevent-DriverClearanceFlag.
cargo-clearanceBOOLEAN,                  —Borderevent-CargoClearance.
cargo-clearance-flagBOOLEAN,             —Borderevent-CargoClearanceFlag.
tractor-clearanceBOOLEAN,                —Borderevent-TractorClearance.
tractor-clearance-flagBOOLEAN,           —Borderevent-TractorClearanceFlag.
reserve-clearanceBOOLEAN,                —reserved field.
reserve-flagBOOLEAN,                     —reserved field.
digital-signatureBIT STRING (SIZE(64))   —Transponder-DigitalSignature.
}
```

8.5.2.2 ASN.1 sample values

```
Border-Clearance-Event-Mes-
    sage::=SEQUENCE
{                                        —Begin Standard Header.
application-ID      2,                   —CVO Application Identifier.
message-ID          2,                   —Border Clearance Event Mes-
                                           sage ID.
message-date        0,                   —1/1/1990.
message-length      17,                  —17 byte message body.
message-checksum    '00'H,               —XOR checksum (not cal-
                                           culated).
                                         —End Header/Begin Body.
beaconID            '00020100'H,         —Agency=2; Serial=256.
timestamp           0,                   —00:00:00 1/1/1970 GMT.
driver-clearance    TRUE,                —GO.
driver-clearance-   TRUE,                —VALID.
  flag
cargo-clearance     TRUE,                —GO.
cargo-clearance-flag TRUE,               —VALID.
tractor-clearance   TRUE,                —GO.
tractor-clearance-  TRUE,                —VALID.
  flag
reserve-clearance   FALSE,               —Reserved—NOGO.
reserve-flag        FALSE,               —Reserved—INVALID.
digital-signature   0                    —Transponder-DigitalSignature.
}
```

8.5.2.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000010	application-ID.
6	00.0010	message-ID.
12	0000.00000000	message-date.
24	00010001	message-length.
32	xxxxxxxx	message-checksum.
		—[end of Header].
40	00000000.00000010	beaconID—Agency component.
56	00000001.00000000	beaconID—Serial component.
72	00000000.00000000.00000000.00000000	timestamp.
104	1	driver-clearance.
105	1	driver-clearance-flag.
106	1	cargo-clearance.
107	1	cargo-clearance-flag.
108	1	tractor-clearance.
109	1	tractor-clearance-flag.
110	0	reserve-clearance.
111	0	reserve-flag.
112	00000000.00000000.00000000.00000000	digital-signature.
144	00000000.00000000.00000000.00000000	
176		—[end of Body]

8.5.3 Electronic Lock Notification message

The Electronic Lock Notification message notifies the roadside that the vehicle contains electronic locks. It is generated by a portable transfer device (e.g., a notebook computer or PDA), stored in the transponder memory, and received by the beacon at a border clearance location. See Table 8.5.3–1.

TABLE 8.5.3–1.—ELECTRONIC LOCK NOTIFICATION MESSAGE

Field	Data element name	Type	Constraint
1	Lock-Quantity	Integer	(0 .. 15).

TABLE 8.5.3–1.—ELECTRONIC LOCK NOTIFICATION MESSAGE—Continued

Field	Data element name	Type	Constraint
2	Lock-Identity	Bit string	Size (40); Transponder-Identity; the value of the preceding Lock-Quantity field indicates the number of occurrences of this field.
3	Transponder-DigitalSignature.	Bit string	Size (64).

8.5.3.1 ASN.1 specification

```
Border-Lock-Notification-Message ::=SEQUENCE.
{.
headerDsrcmsg-Header,—Standard Header..
lock-quantityINTEGER (0..15)—Lock-Quantity..
lock-IDBIT STRING (SIZE(40)),—Lock-Identity (Transponder ID)..
digital-signatureBIT STRING (SIZE(64))—Transponder-DigitalSignature.
}.
```

8.5.3.2 ASN.1 sample values

```
Border-Lock-Notification-Message::=SEQUENCE
{                                                  ——Begin Standard Header
application-ID          2,                         ——CVO Application Identifier
message-ID              3,                         ——Electronic Lock Status Message ID
message-date            0,                         ——1/1/1990
message-length          14,                        ——14 byte message body
message-checksum        '00'H,                     ——XOR checksum (not calculated)
                                                   ——End Header/Begin Body
lock-quantity           1,                         ——Number of locks
lock-ID                 '0080000040'H,             ——Lock-Identity Man=2; Serial=4
digital-signature       0                          ——Transponder-DigitalSignature
}
```

8.5.3.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000010	application-ID
6	00.0011	message-ID
12	0000.00000000.	message-date
24	00001110	message-length
32	xxxxxxxx.	message-checksum
		——[end of Header]
40	0001	lock-quantity
44	0000.000010	lock-ID Manufacturer=2
54	00.00000000.00000000.00000100.	lock-ID Serial=4
80	0000	lock-ID Reserved
84	0000.00000000.00000000.00000000.0000	digital-signature
116	0000.00000000.00000000.00000000.0000	
148	xxxx.	fill
152		——[end of Body]

8.5.4 Border Lock Status message

The Electronic Lock Status message notifies the roadside regarding the status (e.g., Open, Close, Bad) of an electronic lock. It is generated by an electronic lock and received by the beacon at a border clearance location. See Table 8.5.4–1.

TABLE 8.5.4–1.—ELECTRONIC LOCK STATUS MESSAGE

Field	Data element name	Type	Constraint
1	Lock-Identity	Bit string	Size (40); Transponder-Identity
2	Borderevent-Timestamp	Integer	Size (32); Dsrc-Time
3	Lock-CurrentStatus	Integer	(0..7)
4	Lock-HistoryCount	Integer	(0..15); the value of this field indicates the number occurrences of Fields 5 and 6.
5	Lock-Status	Integer	(0..7) 0 Open 1 Closed 2 Bad

TABLE 8.5.4–1.—ELECTRONIC LOCK STATUS MESSAGE—Continued

Field	Data element name	Type	Constraint
6	Borderevent-Timestamp	Integer	Size (32); Dsrc-Time
7	Transponder-DigitalSignature	Bit string	Size (64)

8.5.4.1 ASN.1 specification

```
Border-Lock-Status-Message::=SEQUENCE.
{.
headerDsrcmsg-Header,——Standard Header.
lock-IDBIT STRING (SIZE(40)),——Lock-Identity (Transponder ID).
border-timeDsrc-Time——Borderevent-Timestamp.
lock-statusINTEGER (0..7)——Lock-Status.
lock-quantityINTEGER (0..15)——Lock-HistoryCount.
lock-status-h1INTEGER (0..7)——Lock-Status.
border-time-h1Dsrc-Time——Borderevent-Timestamp.
digital-signatureBIT STRING (SIZE(64))——Transponder-DigitalSignature.
}.
```

8.5.4.2 ASN.1 sample values

```
Border-Lock-Status-Mes-
  sage::=SEQUENCE
{                                    —Begin Standard Header
application-ID          2,           —CVO Application Identifier
message-ID              4,           —Electronic Lock Status Message ID
message-date            0,           —1/1/1990
message-length          23,          —23 byte message body
message-checksum        '00'H,       —XOR checksum (not calculated)
                                     —End Header/Begin Body
lock-ID                 '0080000040'H, —Lock-Identity Man=2; Serial=4
timestamp               0,           —00:00:00 1/1/1970 GMT
lock-status             0,           —Lock-Status=0; Open
lock-quantity           1            —Lock-HistoryCount=1
lock-status-h1          1            —Lock Status=1; Close
border-time-h1          0            —Borderevent-Timestamp
digital-signature       0            —Transponder-DigitalSignature
}
```

8.5.4.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000010	application-ID
6	00.0100	message-ID
12	0000.00000000	message-date
24	00001001	message-length
32	xxxxxxxx	message-checksum
		----- [end of Header]
40	0000	lock-ID Reserved
44	0000.000010	lock-ID Manufacturer = 2
54	00.00000000.00000000.00000100	lock-ID Serial = 4
80	00000000.00000000.00000000.00000000	timestamp
112	000	lock-status
115	0001	lock-count
119	0.01	lock-status-hl
122	000000.00000000.00000000.00000000.00	border-time-hl
154	000000.00000000.00000000.00000000	digital-signature
184	00000000.00000000.00000000.0000000.00	
218	xxxxxx	fill
224		---- [end of Body]

8.5.5 Itinerary Verification message

The Itinerary Verification message notifies the border clearance roadside on the percent likelihood that the vehicle maintained its preplanned itinerary. It is generated by an onboard computer and received by the beacon at a border clearance location. See Table 8.5.5–1.

TABLE 8.5.5–1.—ITINERARY VERIFICATION MESSAGE

Field	Data element name	Type	Constraint
1	Vehicle-ItineraryQuality	Integer	(0 .. 100); 100 indicates the highest confidence that the vehicle has followed a specified itinerary. 0 indicates a high confidence that the vehicle has significantly deviated from a specified itinerary. Other values indicate intermediate levels of confidence.
2	Borderevent-Timestamp	Integer	Size (32); Dsrc-Time.
3	Transponder-DigitalSignature.	Bit string	Size (64).

8.5.5.1 ASN.1 specification

```
Border-Itinerary-Message ::=SEQUENCE
{
header              Dsrcmsg-Header,          --Standard Header
itinerary-quality   INTEGER (0..255),        --Vehicle-Itinerary Quality;
                                               Max=100
border-time         0                        --Borderevent-Timestamp
digital-signature   BIT STRING (SIZE(64))    --Transponder-DigitalSignature
}
```

8.5.5.2 ASN.1 sample values

```
Border-Itinerary-Message ::= SEQUENCE
{                                            --Begin Standard Header
application-ID      2,                       --CVO Application Identifier
message-ID          5,                       --Border Itinerary Message ID
message-date        0,                       --1/1/1990
message-length      13,                      --13 byte message body
message-checksum    '00'H,                   --XOR checksum (not cal-
                                               culated)
                                             --End Header / Begin Body
itinerary-quality   64,                      --Itinerary Quality = 64%
border-time         0,                       --Borderevent-Timestamp
digital-signature   0,                       --Digital Signature = 0
}
```

8.5.5.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000010	application-ID
6	00.0101	message-ID
12	0000.00000000.	message-date
24	00001101	message-length
32	xxxxxxxx.	message-checksum
		-----[end of Header]
40	01000000	itinerary-quality
48	00000000.00000000.00000000.00000000.	border-time
80	00000000.00000000.00000000.00000000.	digital-signature
112	00000000.00000000.00000000.00000000.	
144		-----[end of Body]

8.6 CVO Electronic Screening message set

Table 8.6–1 summarizes the messages that have been defined for the CVO Electronic Screening (also referred to as Mainline Screening) application. This subclause details the specific formats, conditions, and uses for each message.

TABLE 8.6–1.—CVO ELECTRONIC SCREENING MESSAGE SUMMARY

Message name	Description
CMV Screening Identification	Sets and sends vehicle and cargo data.
CMV Screening Event	Reports clearance event data to the vehicle.
CMV Screening Identification Expanded	Sets and sends vehicle and cargo data.
CMV Screening Event Expanded	Reports clearance event data to the vehicle.

8.6.1 CMV Screening Identification message

The CMV Screening Identification message provides the information necessary to conduct electronic screening of CVs at CV check stations in North America. It is generated by a portable transfer device (e.g., a notebook computer or PDA), stored in the transponder memory, and received by the beacon at a CV check station. It is transferred from the transponder to the beacon at mainline speeds. See Table 8.6.1–1.

TABLE 8.6.1–1.—CMV SCREENING IDENTIFICATION MESSAGE

Field	Data element name	Type	Constraint
1	Carrier-Identity	IA5string	Size (24); this field may be repeated up to 3 times.
2	Vehicle-Identity	IA5string	Size (30); VIN.
3	Vehicle-CargoType	IA5string	Size (5); Hazmat Code.

8.6.1.1 ASN.1 specification

```
CMV-Clearance-Identification-Message ::= SE-
                QUENCE
{
header          Dsrcmsg-Header,          -- Standard Header
carrier-ID      IA5String (SIZE(24)),    -- Carrier-Identity
vin             IA5String (SIZE(30)),    -- Vehicle-Identity
cargo-code      IA5String (SIZE(5))      -- Vehicle-CargoType
}
```

8.6.1.2 ASN.1 sample values

```
CMV-Clearance-
  Identification-
  Message
  ::=SEQUENCE
{                                        -- Begin Standard Header
application-ID      2,                   -- CVO Application Identifier
message-ID          6,                   -- Clearance ID Message Identi-
                                           fier
message-date        0,                   -- 1/1/1990
message-length      59,                  -- 59 byte message body
message-check sum   '00'H,               -- XOR checksum (not cal-
                                           culated)
                                         -- End Header/Begin Body
carrier-ID          64,                  --
vin                 0,                   --
cargo-code          0,                   --
}
```

8.6.1.3 ASN.1 PER encoding

	Bit	Bit value	Field definition	
	0	000010	application-ID	
	6	00.0110	message-ID	
	12	0000.00000000.	message-date	
	24	00101011	message-length	
	32	xxxxxxxx.	message-checksum	
			—— [end of Header]	
	40	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	carrier-identity	
	72	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.		
	104	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.		
	136	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.		
	168	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.		
	200	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.		
	232	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	vehicle-identity	
	264	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.		
	296	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.		
	328	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.		
	360	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.		
	392	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.		
	424	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.		
	456	xxxxxxxx.xxxxxxxx		
	472	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	vehicle-cargo-type	
	504	xxxxxxxx		
	512		—— [end of Body]	

8.6.2 CMV Screening Event message

The CMV Screening Event message provides information documenting critical parameters of the last screening event. It is generated by the CV check station computer via a DSRC controller, stored in the transponder memory, and received by the beacon at a CV check station. See Table 8.6.2–1.

TABLE 8.6.2–1.—CMV SCREENING EVENT MESSAGE

Field	Data element name	Type	Constraint
1	Vehicle-GrossWeight	Integer	(0..16383); measured vehicle weight in 10 kg increments
2	Scale-Type	Integer	(1 .. 15); see Table 55
3	Vehicle-AxleNumber	Integer	(2 .. 17); measured number of vehicle axles
4	Beacon-Identity	Bit String	Size (32)
5	Mainlineevent-Timestamp.	Integer	Size (32); Dsrc-Time
6	Mainlineevent-Bypass	Boolean	Go/True 1=Bypass/True, 0=Pullin/False

TABLE 8.6.2–2.—SCALE TYPES

Values	Definitions
1	Jurisdictional weight.
2	Mainline WIM.
3	Ramp sorter WIM.
4	Slow rollover WIM.
5	Static scale weight.
15	Operator-entered weight.

8.6.2.1 ASN.1 specification

```
Screening-Event-Message ::=SEQUENCE
{
header              Dsrcmsg-Header,          -- Standard Header
gross-weight        INTEGER                  -- Vehicle-Gross Weight
scale-type          INTEGER                  -- Scale-Type
axle-number         INTEGER                  -- Vehicle-Axle Number
beacon-ID           BIT STRING (SIZE(32)),   -- Beacon-Identity
timestamp           Dsrc-Time                -- Mainline event-Timestamp
pullin-clearance    BOOLEAN                  -- Mainline event-Pullin Clear-
                                                ance

}
```

8.6.2.2 ASN.1 sample values

```
CMV-Screening-Event-Message ::=SEQUENCE
{                                            -- Begin Standard Header
application-ID      2,                       -- CVO Application Identifier
message-ID          7,                       -- Screening Event
                                                Message Identifier
message-date        0,                       -- 1/1/1990
message-length      12,                      -- 12 byte message body
message-checksum    '00'H,                   -- XOR checksum
                                                (not calculated)
                                             -- End Header/Begin Body
gross-weight        500,                     -- 5000 Kg
scale-type          1,                       -- Jurisdictional weight
axle-number         4                        -- Vehicle-Axle Number
beacon-ID           '00020100'H,             -- Agency=2; Serial=256
timestamp           0,                       -- 00:00:00 1/1/1970 GMT
pullin-clearance    TRUE                     -- Go
}
```

8.6.2.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000010	application-ID
6	00.0111	message-ID
12	0000.00000000	message-date
24	00001100	message-length
32	xxxxxxxx	message-checksum
		---- [end of Header]
40	00000111.110100	gross-weight
54	000100	scale-type
58	00100	axle-number

Bit	Bit value	Field definition
64	00000000.00000010	beacon-ID—Agency component
80	00000001.00000000	beacon-ID—Serial component
96	00000000.00000000.00000000.00000000.	timestamp
128	1	pullin-clearance
129	xxxxxxx -Fill	
136		---- [end of Body]

8.6.3 CMV Screening Expanded Identification message

The CMV Screening Expanded Identification message provides information that may become necessary to conduct electronic screening of CVs at CV check stations in North America and is used in conjunction with the CMV Screening Identification message (see 8.6.1). It is generated by a portable transfer device (e.g., a notebook computer or PDA), stored in the transponder memory, and received by the beacon at a CV check station. It is transferred from the transponder to the beacon at mainline speeds. See Table 8.6.3–1.

TABLE 8.6.3–1.—CMV SCREENING EXPANDED IDENTIFICATION MESSAGE

Field	Data element name	Type	Constraint
1	Vehicle-Component Identity	IA5string	Size (30); VIN
2	Driver-Identity	IA5string	Size (20)

8.6.3.1 ASN.1 specification

```
CMV-Screening-Expanded Identification-Message
                ::= SEQUENCE
{
header                  Dsrcmsg-Header,          -- Standard Header
vehicle-component-      IA5String (SIZE(30)),    -- Vehicle-Component Identity
  ID
driver-ID               IA5String (SIZE(20))     -- Driver-Identity
}
```

8.6.3.2 ASN.1 sample values

```
CMV-Screening-Expanded Identification-Message
                ::= SEQUENCE
{                                                -- Begin Standard Header
application-ID          2,                       -- CVO Application Identifier
message-ID              8,                       -- Screening Event
                                                    Message Identifier
message-date            0,                       -- 1/1/1990
message-length          50,                      -- 50 byte message body
message-checksum        '00'H,                   -- XOR checksum
                                                    (not calculated)
                                                 -- End Header / Begin Body
vehicle-component-                               --
  ID
driver-ID                                        --
}
```

8.6.3.3 ASN.1 PER Encoding

Bit	Bit value	Field definition
0	000010	application-ID
6	00.1000	message-ID
12	0000.00000000.	message-date
24	00001100	message-length
32	xxxxxxx.	message-checksum
		— [end of Header]
40	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	vehicle-component-ID
	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
	xxxxxxxx.xxxxxxxx	
280	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	driver-ID
	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
	xxxxxxxx.xxxxxxxx.xxxxxxxx.xxxxxxxx.	
440		—[end of Body]

8.6.4 CMV Screening Expanded Event Message

The CMV Screening Expanded Event message provides information documenting potentially critical parameters of the last clearance event and is used in conjunction with the CMV Screening Event message (see 8.6.2). It is generated by the CV check station computer via a DSRC controller, stored in the transponder memory, and received by the beacon at a CV check station. See Table 8.6.4–1.

TABLE 8.6.4–1.—CMV SCREENING EXPANDED EVENT MESSAGE

Field	Data element name	Type	Constraint
1	Vehicle-AxleNumber	Integer	(2 .. 17); measured number of vehicle axles
2	Vehicle-AxleWeight	Integer	(0 .. 4536); 10 kg steps; repeated for each axle
3	Vehicle-AxleSpacing	Integer	(0 .. 62); distance between axles in .5 m steps. Last value (for final axle) shall always be 0. Repeated for each axle.

8.6.4.1 ASN.1 Specification

```
CMV-Screening-Expanded Event-Message ::= SEQUENCE
{
header          Dsrcmsg-Header,     — Standard Header
axle-number     INTEGER,            — Vehicle-AxleNumber
axle-weight-1   INTEGER,            — Vehicle-AxleWeight
axle-weight-2   INTEGER,            — Vehicle-AxleWeight
axle-spacing-1  INTEGER,            — Vehicle-AxleSpacing
axle-spacing-2  INTEGER,            — Vehicle-AxleSpacing
}
```

8.6.4.2 ASN.1 Sample Values

```
CMV-Screening-Expanded Event-Message ::= SEQUENCE
{                   — Begin Standard Header
application-ID      2,              — CVO Application Identifier
message-ID          9,              — Screening Event Message Identifier
message-date        0,              — 1/1/1990
message-length      6,              — 6 byte message body
message-checksum    '00'H,          — XOR checksum (not calculated)
                    — End Header / Begin Body
axle-number         2               — Vehicle-AxlesNumber
axle-weight         100,            — 1000 kg
axle-weight         100,            — 1000 kg
axle-spacing        4               — 4 meters
axle-spacing        0               — terminal axle
}
```

8.6.4.3 ASN.1 PER encoding

Bit	Bit value	Field definition
0	000010	application-ID
6	00.1001	message-ID
12	0000.00000000.	message-date
24	00000110	message-length
32	xxxxxxxx.	message-checksum
		— [end of Header]
40	00010	axle-number
45	0011.11101000.0	axle-weight
58	0011111.010000	axle-weight
71	00.0100	axle-spacing
77	0000.00	axle-spacing
83	xxxxxx	octet alignment pad
88		—[end of Body]

9. Application Layer

9.1 Introduction

The purpose of the Application Layer is to provide communication services that allow the Resource Manager to communicate with the DSRC application on the OBE. The specification of the Application Layer is based on Clause 9 of IEEE 1455–99; however, it has been substantially modified for the following two reasons. First, a portion of the application layer functionality has been subsumed by lower layers. Second, the application layer and its interface to the other layers are not expected to be exposed and thus they will not be testable. Therefore, the application layer portion of this specification only provides limited guidance on the services and lower layer interface. *Specification compliant DSRC equipment does not need to support the capability discussed in this section, except formatting related to the initialization tables as described in section 9.4.*

9.2 DSRC Application Domain Assumptions

This specification makes the following assumptions about the domain of DSRC applications for which the Specification is intended:

- Point-to-Point Communication: Any session that includes the exchange of messages between a DSRC application on the RSE and the corresponding application on the OBE transponder is always through a single point-to-point communication between the two.
- Master-Slave: In all RSE-to-OBE point-to-point connections, the Resource Manager acts as the master and the OBE transponder application is the slave.

9.3 Architecture

9.3.1 Lower Layer Service

The Application Layer assumes there is a generic lower layer service. This lower layer service provides the minimum subset of the functionality defined by Layers 4 through 1 of the OSI model. Table 9.3.1–1 summarizes the minimum subset of the services, defined by OSI Layers 4 through 1, that the Application Layer assumes are provided within the lower layer service.

TABLE 9.3.1–1.—REQUIRED SUBSET OF OSI FUNCTIONALITY FOR THE LOWER LAYER SERVICE

OSI layer	Corresponding lower layer service
Layer 4 (transport)	• Fragmentation/Defragmentation. • Message sequencing. • Duplicate message handling.
Layer 3 (network)	Packet routing.
Layer 2(data link)	• Frame handling. • Transmission error detection. • Transmission error recovery.
Layer 1 (physical)	• Physical information transmission.

The Application Layer requires a service interface to the lower layer service. This service interface shall provide three basic classes of service for sending data from the RSE Application Layer and sending corresponding responses from the OBE Application Layer.

The specific syntax and semantics of the generic lower layer service implementation may be vendor specific. However, any conformant lower layer service must provide a lower layer service that corresponds to each of the required generic lower layer service classes defined in this section. The specific lower layer service implementation may also include additional services required for interoperability.

For the purposes of this Specification, the lower layer service classes are defined using the following generic service identifiers:

1. DATASEND RESPOND: This service class sends data from the RSE Application Layer and receives a confirmation that the data was received by the OBE and response data from the OBE.

2. DATASEND NORESPOND: This service class sends data from the RSE Application Layer with no subsequent OBE application confirmation that the data was received by the OBE.

3. SEND BST RESPOND REPEAT: This service class sends a BST from the RSE Application Layer and receives a confirmation, which includes a returned VST, that the BST was received by the OBE.

9.3.2 Application Layer Services

The Application Layer shall consist of an Application Layer kernel whose services are defined by a set of application kernel elements. An application kernel element represents a logical component of Application Layer functionality.

The application kernel shall consist of a transfer kernel element (T–KE), an initialization kernel element (I–KE), and a broadcast kernel element (B–KE).

The T–KE shall provide services to transfer information between the Resource Manager and the application running on the OBE transponder.

The I–KE shall provide services to initialize a session between the Resource Manager and an application running on the OBE transponder. The I–KE shall initialize the session by means of a BST. The size of one BST shall enable the transfer of the BST in one layer service primitive. A response to an I–KE initialization using a BST shall be in the form of a VST. The BST and VST are defined in section 9.4.

The B–KE shall provide services to broadcast unacknowledged information from the Resource Manager to a Broadcast Pool maintained by the OBE Application Layer as well as services for the OBE transponder application to access the Broadcast Pool.

9.4 Initialization Tables

9.4.1 Beacon Service Table

As part of the initialization of a point-to-point connection between the RSE and the OBE, the I–KE collects the Resource Manager application identification number, initial data, and protocol layer parameters relevant for the communication, and assembles a BST. The BST is cyclically transmitted by the RSE. Either the Application Layer or the lower layer service may control this cyclic transmission depending on the capability of the lower layer service.

The reception of the BST by an OBE transponder is the initiator of the point-to-point data transfer. The OBE transponder evaluates a received BST to determine if a connection should be made, and if so, sends back a corresponding VST. Table 9.4.1–1 describes the individual fields and their values, which shall comprise the BST.

In order to avoid compatibility problems with a subset of legacy OBEs, the Logical Link Control bits in the slot used to transmit the BST shall be set to hex 0100.

TABLE 9.4.1–1.—BST FIELD DESCRIPTIONS AND VALUES

Field Name	ASN.1 Type	Description	Size (bits)	Bit Sequence = Value
T–APDU	T–APDUs	A BST identifier required for compliance with the CEN ASN.1 definition of a BST.	4	0–3 = ASN.1 T–APDUs value for a choice of initialisation.request = hex(8)
Options Flag	BIT STRING (SIZE (1)).	A bit indicating that the optional nonmadatory applications list field is missing; required for compliance with the CEN ASN.1 definition of a BST.	1	4 = 0
beacon	BeaconID	An identifier composed of a Manufacturer Identifier (a unique identifier assigned by IEEE) and an Individual Identifier whose use is vendor specific.	43	5–20 = Manufacturer Identifier 21–47 = Individual Identifier
time	Time	The number of seconds from 01/01/1970 GMT	32	48–79 = time
profile	Profile	The profile that will be used to transmit the BST; profile definitions are specific to the lower layer service.	8	80–87 = profile
mandApplications	ApplicationList ...	Defines the RSE applications; the only application currently defined by this Specification is mailbox The ASN.1 encoding of the application list requires that the first octet defines the number of elements in the list which shall always be hex(1) The application list consists of the mailbox AID, an EID, and a parameter field; the Parameter field consists of a data type tag, a data length octet, and the data itself. The Parameter Field data defines two Page Identifiers that must be present on the OBE for the OBE to respond with a BST The Parameter Field then defines four Page Identifiers for which OBE memory images will be returned by the OBE in the VST The Page Identifiers shall be set to zero if they are unused.	136	• 88–95 = number in list = hex (2) • 96–103 = hex(0D) (mailbox AID) • 104–111 = EID • 112–119 = hex(4) = tag for Octet String • 120–127 = length of data = hex(0C) • 128–143 = 1st filter identifier • 144–159 = 2nd filter identifier • 160–175 = 1st return identifier • 176–191 = 2nd return identifier • 192–207 = 3rd return identifier • 208–223 = 4th return identifier
profileList	SEQUENCE OF Profile; only one Profile in the sequence.	A profile, in addition to the profile specified in the Profile field, that is supported by the RSE lower layer service; the ASN.1 encoding of profileList requires two octets.	16	224–231 = number of profiles in list = hex(1) 232–239 = value of profile

9.4.2 Vehicle Service Table (VST)

The VST is constructed by the I–KE on the OBE transponder in response to a BST received from the RSE. The VST shall be composed of only the requested pages; each prefaced by the 40-bit IEEE1455–99 Command Response header (section 6.5). The Response Command Identifier shall be set to hex (10). The Response Transaction Identifier shall be set to hex (00). Page 1 (the Read-only Memory) will be transmitted only when requested. The ''CEN configuration bits'' will not be transmitted.

Attachment A—Compatibility Philosophy

Introduction

The primary objective of this document is to specify the characteristics of Dedicated Short Range Communication (DSRC) equipment that will serve as a basis for nationwide compatibility for commercial vehicle operations (CVO). The most significant difference between the equipment specified by this document (referred to as FHWA equipment) and equipment previously deployed is the use of the IEEE 1455–99 application layer. It is anticipated that future FHWA CVO applications will be conducted exclusively with IEEE 1455 and will require equipment conforming to this specification. However, this document carries forward the physical layer and data link layer characteristics of deployed CVO DSRC systems. A goal of this specification is to allow for compatible operation with deployed CVO systems such as Advantage CVO, Help Prepass, and border crossing and to permit a smooth transition from legacy systems to equipment conforming to this specification. This appendix briefly reviews the system compatibility philosophy.

Physical Layer

Basic communications compatibility at the physical layer is assured by adoption of the ASTM PS111–98 physical layer. All active legacy systems are compatible with the Class A beacon described in PS111–98. The new Class B

downlink frequencies permitted under the ASTM standard, however, may not be compatible with legacy OBE's. Also, the specification for Fast Wake-up Time has been eliminated to facilitate the adaptation of legacy equipment to this specification.

Data Link Layer

Although this document adds new data link layer capabilities, the TDMA data link structure as defined in ''Standard for Dedicated, Short Range, Two-Way Vehicle to Roadside Communications Equipment, Draft 6,'' dated 23 February 1996, has been retained. The Draft 6 standard is relaxed in that only the Wide-Area Frame or ''open road'' mode is required by this document. The Lane-Based Frame is not required. To avoid conflicts in memory usage, both the ''internal'' and ''external'' memory commands defined in the ''Draft 6'' document have been retained. Internal memory commands are reserved for legacy operations and IEEE 1455 operations will be performed using external memory commands.

Legacy Roadside Operations

OBE's developed under this specification are compatible with deployed systems. Legacy RSE's operating in ''open road'' mode and using only internal memory commands will be able to read and write to the internal memory of FHWA OBE's (consisting of Public ID, Agency Memory, and General-Use Memory). Because IEEE 1455 operations are isolated in external memory, legacy RSE's may freely use the internal memory resources of the FHWA OBE's. The FHWA OBE internal memory has been reserved for use by legacy systems indefinitely. A FHWA OBE will not respond to legacy external memory commands.

Legacy On-Board Equipment

Legacy OBE's may be usable by FHWA RSE's. All legacy OBE's will respond to internal memory commands from FHWA RSE's using Class A beacons. Some legacy OBE's, however, may not respond to RSE's using a Class B beacon because of the higher downlink carrier frequency. Additionally, some legacy OBE's may suffer an uplink loss because the OBE carrier frequency is not within the tolerance of this specification. During a transition period, it is anticipated that sites such as international border crossings will support both legacy OBE's (with application data in internal memory) and FHWA OBE's.

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Part III

Department of Commerce

Bureau of Export Administration

15 CFR Part 710 et al.

Chemical Weapons Convention Regulations; Final Rule

Department of State

22 CFR Part 103

Chemical Weapons Convention and the Chemical Weapons Convention Implementation Act of 1998; Taking of Samples; Recordkeeping and Inspections; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 710 through 722

[Docket No. 990611158–9311–02]

RIN 0694–AB06

Chemical Weapons Convention Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule and request for comments.

SUMMARY: On April 25, 1997, the United States ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). This interim rule establishes the Chemical Weapons Convention Regulations (CWCR) to implement provisions of the Convention affecting U.S. industry and other U.S. persons. The CWCR include requirements to report certain activities involving Scheduled chemicals and Unscheduled Discrete Organic Chemicals, and to provide access for on-site verification by international inspectors of certain facilities and locations in the United States.

DATES: *Effective Date:* December 30, 1999.

Comments: Written comments must be submitted no later than January 31, 2000.

ADDRESSES: Written comments should be sent to the Regulatory Policy Division, Office of Exporter Services, Bureau of Export Administration, Room 2705, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: For questions of a general or regulatory nature, contact the Regulatory Policy Division, telephone: (202) 482–2440. For program information on declarations, reports, notifications, and chemical determinations, contact the Information Technology Team of the Treaty Compliance Division, Office of Chemical & Biological Controls and Treaty Compliance, telephone: (703) 235–1335; for program information on inspections and facility agreements, contact the Inspection Management Team of the Treaty Compliance Division, Office of Chemical & Biological Controls and Treaty Compliance, telephone: (202) 482–6114; for legal questions, contact Cecil Hunt, Acting Chief Counsel, Office of the Chief Counsel for Export Administration, telephone (202) 482–5301.

SUPPLEMENTARY INFORMATION:

I. Background

Chemical Weapons Convention

On April 25, 1997, the United States ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention). The Convention, which entered into force on April 29, 1997, is an arms control treaty with significant non-proliferation aspects. As such, the Convention bans the development, production, stockpiling or use of chemical weapons and prohibits States Parties from assisting or encouraging anyone to engage in a prohibited activity. The Convention provides for declaration and inspection of all States Parties' chemical weapons and chemical weapon production facilities and oversees the destruction of such weapons and facilities.

To fulfill its arms control and non-proliferation objectives, the Convention also establishes a comprehensive verification scheme and requires the declaration and inspection of facilities that produce, process or consume certain ''scheduled'' chemicals and unscheduled discrete organic chemicals, many of which have significant commercial applications. The Convention also requires States Parties to report exports and imports and to impose export and import restrictions on certain chemicals. These requirements apply to all entities under the jurisdiction and control of States Parties, including commercial entities and individuals. States Parties to the Convention, including the United States, have agreed to this verification scheme to provide transparency and to ensure that no State Party to the Convention is engaging in prohibited activities.

Specifically, the Convention requires States Parties to declare all facilities that produce Schedule 1 or Schedule 3 chemicals in quantities exceeding specified declaration thresholds, or that produce, process or consume Schedule 2 chemicals in quantities exceeding specified declaration thresholds. Schedule 1, 2 and 3 chemicals are set forth in the Convention's Schedules of Chemicals and have been selected for these Schedules based on degree of toxicity, history of use in chemical warfare and commercial utility. The Convention also requires States Parties to declare facilities that produce ''Unscheduled Discrete Organic Chemicals'' (''UDOCs'') in quantities exceeding specified thresholds. The requirement to declare UDOC facilities is intended to identify facilities capable of producing chemical warfare agents or precursors.

Certain ''declared'' facilities will also be subject to routine on-site inspections by international inspectors from the Convention's implementing body, the Organization for the Prohibition of Chemical Weapons (OPCW). All declared Schedule 1 facilities are subject to routine inspection. Declared Schedule 2 facilities are subject to inspection if they produce, process or consume Schedule 2 chemicals in quantities exceeding specified inspection thresholds. Declared Schedule 3 facilities are subject to inspection if they produce Schedule 3 chemicals in quantities exceeding a specified inspection threshold. Facilities producing UDOCs in quantities exceeding a specified threshold will be subject to inspection beginning April 29, 2000. With a few exceptions, inspection thresholds are higher than declaration thresholds.

The Convention also provides for challenge inspections of any facility or location under the jurisdiction of any State Party. Challenge inspections are intended to resolve questions of possible non-compliance with the Convention.

Finally, the Convention requires States Parties to provide information on exports and imports of Scheduled chemicals. States Parties must also, among other things, prohibit exports of Schedule 1 chemicals to non-States Parties, require advance notification of imports and exports of Schedule 1 chemicals, require End-Use Certificates for exports of Schedule 2 and 3 chemicals to non-States Parties, and ban the import from or export to non-States Parties of Schedule 2 chemicals after April 28, 2000.

Application of CWC Requirements to U.S. Commercial Entities and Individuals

The Chemical Weapons Convention Implementation Act of 1998 (''Act'') (22 U.S.C. 6701 *et seq.*), enacted on October 21, 1998, authorizes the United States to require the U.S. chemical industry and other private entities to submit declarations, notifications and other reports and also to provide access for on-site inspections. Executive Order (E.O.) 13128 delegates authority to the Department of Commerce to promulgate regulations, obtain and execute warrants, provide assistance to certain facilities, and carry out appropriate

functions to implement the Convention, consistent with the Act. The Department of Commerce will carry out CWC import restrictions under the authority of the International Emergency Economic Powers Act, the National Emergencies Act and E.O. 12938, as revised by E.O. 13128. The Departments of State and Commerce are implementing CWC export restrictions under their respective export control authorities. E.O. 13128 designates the Department of State as the United States National Authority (USNA) for purposes of the Convention and the Act.

Other Department of State and Commerce Regulations Implementing Requirements of the Chemical Weapons Convention

In addition to this interim rule, the Department of State is publishing a separate rule on the taking of samples during on-site inspections in the United States and the enforcement provisions for violations of the reporting and inspection requirements set forth in the Act, and also maintains the International Traffic in Arms Regulations (ITAR) (22 CFR 120–130).

Further, on May 18, 1999, the Bureau of Export Administration (BXA) of the Department of Commerce published an interim rule (64 FR 27138) amending the Export Administration Regulations (15 CFR 730–799) to implement the following trade restriction provisions of the CWC:

—Annual reporting of all exports of Schedule 1 chemicals;
—Advance notification of all exports of Schedule 1 chemicals;
—Prohibition on exports of Schedule 1 chemicals subject to Department of Commerce jurisdiction to non-States Parties;
—Prohibition on all reexports of Schedule 1 chemicals subject to Department of Commerce jurisdiction;
—Prohibition on exports of Schedule 2 chemicals subject to Department of Commerce jurisdiction to non-States Parties after April 28, 2000;
—Requirement that exporters obtain an End-Use Certificate prior to exporting any Schedule 2 or 3 chemicals to a non-State Party; and
—License requirements for the export of Schedule 1 chemicals under Department of Commerce jurisdiction to all destinations, including Canada.

Note that all existing export license requirements that apply to CWC Scheduled chemicals and UDOCs subject to Department of Commerce jurisdiction continue in effect. Further, the new CWC reporting requirements, such as the End-Use Certificate and prior notification requirements, are in addition to existing export license and supporting documentation requirements for exports of chemicals subject to Department of Commerce or Department of State export licensing jurisdiction.

The Chemical Weapons Convention Regulations (CWCR)

This rule implements reporting and inspection requirements and import restrictions. The CWCR:

—Apply to all U.S. persons and to facilities in the United States, except for facilities of the Departments of Defense and Energy and other U.S. Government agencies that notify the United States National Authority (USNA) of their decision to be excluded from the CWCR (such entities are referred to as ''persons and facilities subject to the CWCR''). United States Government facilities are those owned by or leased to the U.S. government, including facilities that are contractor-operated.
—Set forth the declaration and other reporting requirements that affect persons and facilities subject to the CWCR. The reporting requirements of this rule are consistent with the procedural provisions of section 401(a) of the Act. Section 401(a) of the Act requires submission to the Director of the USNA of such reports as the USNA may reasonably require to provide to the OPCW, pursuant to subparagraph 1(a) of the Convention's Annex on Confidentiality. Subparagraph 1(a) of the Confidentiality Annex provides that the OPCW shall require only the minimum amount of information and data necessary for the timely and efficient conduct by the OPCW of its responsibilities under the Convention. As required by Section 401(a) of the Act, the USNA, in coordination with the CWC interagency group, has determined that the reports required by the CWCR are those reasonably required to be provided to the OPCW. Declarations, notifications and other reports required under the CWCR will be due to the Department of Commerce at specified dates or within specified time frames for verification, aggregation and submission to the Director of the USNA. The USNA will transmit United States declarations, reports and notifications to the OPCW located in the Hague, the Netherlands.
—Require access for on-site inspections.
—Prohibit imports of Schedule 2 chemicals from non-States Parties after April 28, 2000.
—Contain recordkeeping requirements and administrative procedures and penalties related to violations of reporting and inspection requirements and importation restrictions.
—Implement section 211 of the Act, which authorizes revocation of the export privileges of any person determined to have violated the chemical weapons provisions of 18 U.S.C. § 229.

Reporting Requirements

Declaration Requirements. Facilities required to submit ''declarations'' are those that produce, process or consume certain chemicals in quantities that exceed specified thresholds. Four types of declarations are due to BXA when required by parts 712 through 715 of the CWCR: initial declarations, annual declarations on past activities, annual declarations on anticipated activities, and a one-time declaration of facilities that produced Schedule 2 or 3 chemicals for chemical weapons purposes at any time since January 1, 1946. The United States will transmit data on declared facilities to the OPCW. Such data will also be compiled to establish the U.S. national aggregate on production, processing and consumption of relevant chemicals. Export and import data contained in declarations will also be compiled and added to export and import information obtained from other reports to establish the U.S. national aggregate declaration on imports and exports of certain chemicals.

Initial declarations. Initial declarations are one-time declarations that are due to BXA BY March 30, 2000, except for the establishment of new Schedule 1 facilities, which requires submission of a technical description of the facility prior to producing above 100 grams aggregate. Any Schedule 2 or 3, or UDOC plant site that was not required to submit an initial declaration but that exceeded the applicable declaration or reporting thresholds for covered activities in a subsequent year, must submit only an annual declaration on past activities or an annual report on exports and imports. Facilities that produced more than 100 grams aggregate of Schedule 1 chemicals in calendar year 1997, 1998, or 1999 must submit an initial declaration (a technical description of the facilities). Note that the Schedule 1 Certification Form asks you to identify each year in which you produced in excess of 100 grams aggregate. Facilities that produced, processed or consumed more than specified quantities of a Schedule 2 chemical in any of the calendar years 1994, 1995, or 1996 must provide information on activities involving that Schedule 2 chemical that occurred in each of calendar years 1994, 1995, and 1996. Facilities that produced more than 30 metric tons of a Schedule 3 chemical in calendar year 1996 must provide information on activities involving this Schedule 3 chemical that occurred in 1996. Facilities that produced more than specified quantities of UDOCs in calendar year 1996 must provide ranges of production for 1996.

Annual declarations on past activities. Facilities that produced more than 100 grams aggregate of Schedule 1 chemicals, more than 30 metric tons of a Schedule 3 chemical, or more than

specified quantities of UDOCs in the previous calendar year, must submit an annual declaration on past activities. Facilities that produced, processed or consumed more than specified quantities of a Schedule 2 chemical in any of the three previous calendar years must submit an annual declaration on past activities for activities during the previous year. Annual declarations on past activities for calendar years 1997, 1998, and 1999 will be due to BXA March 30, 2000.

Annual declarations on anticipated activities and declarations on additionally planned activities. Facilities that anticipate engaging in production of Schedule 1 or Schedule 3 chemicals or production, processing or consumption of Schedule 2 chemicals above specified thresholds during the next calendar year must submit an annual declaration on anticipated activities. Facilities that have certain types of changes or additions to their annual declaration on anticipated activities must submit a declaration on additionally planned activities.

One time declaration of past production for chemical weapons purposes. Facilities that have produced Schedule 2 or Schedule 3 chemicals anytime since January 1, 1946, for chemical weapons purposes must submit a declaration by March 30, 2000.

Amended declarations and reports. The CWCR also provide for submission of ''amended declarations'' and ''amended reports'' to change, replace, or add information to previously submitted declarations or reports.

Notification Requirements. Facilities that intend to export or import Schedule 1 chemicals to or from States Parties must submit prior notifications of these activities. These notifications will be forwarded to the OPCW.

Other Reporting Requirements. U.S. persons and facilities subject to the CWCR that have exported or imported a scheduled chemical, but have not produced, processed, or consumed declarable quantities of that chemical, may nevertheless have an export or import reporting requirement. The USNA will NOT forward facility-specific information contained in these reports to the OPCW. BXA will include the export and import data in the compilation of the U.S. national aggregate declaration on exports and imports of relevant chemicals.

Initial reports on exports and imports. Initial reports for exports and imports are required for exports and imports of Schedule 2 and Schedule 3 chemicals above certain threshold quantities during calendar year 1996.

Annual reports on exports and imports. Annual reports for exports and imports are required for all exports and imports of Schedule 1 chemicals during the previous calendar year, and for exports and imports of Schedule 2 and 3 chemicals above certain threshold quantities. Annual reports on exports and imports for calendar years 1997, 1998, and 1999 will be due to BXA March 30, 2000.

Timing of submission of initial and annual declarations and reports. The first declaration and report package due to the Department of Commerce will include the initial declaration plus the annual declarations and reports for activities in calendar years 1997, 1998, and 1999. The first Schedule 1 annual declaration on anticipated activities for calendar year 2001 will be due to BXA on August 3, 2000. The first Schedule 2 and Schedule 3 annual declarations on anticipated activities for calendar year 2001 will be due on September 3, 2000. Certain facilities may also need to submit the one-time declaration on past production of Schedule 2 or Schedule 3 chemicals for chemical weapons purposes. CWC Declaration and Report Handbooks containing necessary multipurpose forms for declarations and reports will be available by mail and through the Internet. If there are discrepancies between the CWCR and the Handbooks (including instructions and form requirements), the CWCR prevail.

On-Site Inspection Requirements

This rule also sets forth the requirements and procedures for on-site inspections of U.S. facilities subject to the CWCR, consistent with sections 301 to 309 of the Act. On-site inspections will be conducted by inspectors from the OPCW's Technical Secretariat. The Department of Commerce will lead the Host Team accompanying and escorting the inspectors during inspections.

Types of inspections. There are two major kinds of inspections: (1) Initial and subsequent (''routine,'' under the Act) inspections of declared facilities whose level of production, processing or consumption of specified chemicals makes them subject to such verification as a routine matter; and (2) ''challenge'' inspections of any facility or location in the United States based on a request made by another State Party to clarify and resolve any questions concerning possible non-compliance with the Convention.

Notification and consent procedures. Pursuant to section 304 of the Act, before an inspection may take place, the USNA must authorize each inspection of a facility or location in the United States and provide actual written notification of each inspection to the owner and operator or other person in charge of the facility. For routine inspections of declared facilities, the USNA will provide such written notification within 6 hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide Host Team notice to facilities to be inspected. The Department of Commerce intends to seek an administrative warrant, as provided for by section 305 of the Act and in E.O. 13128, if the owner or person in charge of the facility does not consent to the inspection.

II. Public Comments on Proposed Rule

On July 21, 1999, the Bureau of Export Administration published in the **Federal Register** (64 FR 39104) a proposed rule, with request for comment, to establish the Chemical Weapons Convention Regulations (CWCR) to implement provisions of the Convention and the Act affecting U.S. industry and other U.S. persons. BXA received comments from 18 respondents. Following is a summary of those comments, along with BXA's responses.

Scope of the CWCR

One respondent questioned whether the definition of ''Chemical Weapons Convention'' includes any annexes that have not yet entered into force under the Convention, and stated that annexes approved after January 13, 1993, should not automatically be implemented by the CWCR. This rule implements those relevant articles and annexes of the Convention that entered into force on April 29, 1997, as reflected in parts 710 through 722 of the CWCR.

To clarify what U.S. government facilities are excluded from the CWCR, one respondent sought guidance on whether the term ''U.S. facilities that are contractor-operated'' includes facilities owned by the U.S. Government, but leased to private companies. The CWCR reporting, declaration, and inspection requirements do apply to facilities owned by a U.S. Government agency and leased to a private company or other entity, such that the private company or other entity may independently decide for what purposes to use the facilities. BXA has revised § 710.2 of this rule to clarify the scope of the CWCR.

Chemicals Subject to the CWCR

One respondent requested that all Schedule 1, Schedule 2 and Schedule 3 chemicals subject to the CWCR be

identified by the Chemical Abstract Service registry number (CAS number) to clarify declaration and reporting requirements. Supplement No. 1 to Part 712 (Schedule 1), Supplement No. 1 to Part 713 (Schedule 2), and Supplement No. 1 to Part 714 (Schedule 3) of the CWCR list certain chemicals by name or family that are subject to the CWCR. These Supplements also identify certain of these chemicals by CAS number. These Supplements mirror the Schedules of Chemicals found in the Convention. BXA agrees that it is desirable to provide CAS registry numbers for all chemicals subject to the CWCR. However, because there are, by conservative estimates, 25,000 or more chemicals subject to the CWCR, listing each chemical by name and CAS number is not practical. In addition, new chemicals are being developed and/or assigned CAS numbers daily. Therefore, any list published by BXA would be neither exhaustive nor current. BXA believes that Supplement No. 1 to Parts 712, 713 and 714 of the CWCR provide sufficient information for a qualified chemist to determine whether a chemical is subject to the CWCR. In addition, BXA will, upon request, provide a binding determination of whether or not a specific chemical is subject to the CWCR. (See § 711.3 of the CWCR.)

Confidential Business Information

Four respondents submitted comments on confidential business information (CBI) issues, which fall into four broad categories: the amount of information BXA should collect; location and consolidation of CBI provisions in the CWCR; protection of information made available to the OPCW; and protection of CBI within the United States in both Freedom of Information Act (FOIA) and non-FOIA contexts.

Amount of information BXA should collect: Two respondents requested BXA to collect only the minimum amount of information necessary to comply with the Convention and the Act. Consistent with section 401 of the Act, the U.S. Government is requiring only the minimal information necessary to satisfy the requirements of the Convention and Act. This is reflected in the provisions of the CWCR.

One respondent suggested that BXA not make lists of companies subject to CWC verification, for fear that such lists could be exploited by persons seeking to stigmatize the lawful production of chemicals. The respondent suggested if BXA did establish such lists, that BXA implement procedures for removing facilities from those lists when such facilities are no longer subject to declaration requirements. From time to time, BXA will need to create such lists, for example, to comply with certain U.S. national declaration requirements. However, BXA will create the minimum number of lists necessary, and will update the lists as appropriate, to ensure effective U.S. implementation of the Convention.

One respondent was concerned that language in the proposed rule on the conduct of inspections would not allow the site representative to shroud or remove from the site items that the site representative determined were irrelevant to the inspection, unless ''agreed by the U.S. Government Team.'' The respondent suggested deletion of the cited phrase. BXA has clarified this provision by changing it to read ''as determined by the Host Team,'' since the right to take protective measures, such as shrouding equipment not related to the purpose of an inspection, is a right granted to the State Party under the Convention.

Consolidation and location of CBI provisions in the CWCR: One respondent suggested consolidating the CBI provisions in Part 716 (routine inspections) and Part 717 (challenge inspections). Three respondents requested BXA to consolidate all provisions in the CWCR relating to CBI and place these consolidated provisions in part 710 to highlight their importance. BXA agrees that to avoid any ambiguity that may arise because of slight differences in wording, the CBI provisions should be consolidated. To highlight the importance of CBI, BXA is placing these provisions in a dedicated CBI part. Because part 710 serves as an introduction to the CWCR and does not have regulatory force, BXA is placing the CBI provisions in Part 718, entitled ''Confidential Business Information.'' BXA is creating new part 722, entitled ''Interpretations,'' to replace Part 718, originally reserved for interpretations.

Status of information made available to the OPCW: Three respondents suggested that all CBI made available to the OPCW during inspections be designated ''highly protected.'' The Convention provides that States Parties may designate information submitted to the Technical Secretariat as confidential, and requires the OPCW to limit access to, and prevent disclosure of, information so designated, except that the OPCW may disclose certain confidential information submitted in declarations to other States Parties if requested. The OPCW has developed a classification system whereby States Parties may designate their declarations as ''restricted,'' ''protected,'' or ''highly protected.'' The U.S. Government is directing the OPCW to accord ''protected'' status to all information contained in declarations, reports and advance notifications of exports and imports of Schedule 1 chemicals. The ''protected'' level of confidentiality is consistent with the level of protection designated by many other States Parties for their industrial declarations.

It is also the policy of the U.S. Government to designate CBI that it discloses to OPCW Inspection Teams as ''protected'' or ''highly protected,'' depending on the sensitivity of the information. However, the U.S. Government will not request ''protected'' status for information made available to OPCW Inspection Teams that is publicly available, such as company sales or marketing literature or information from the company's Internet web site. The ''protected'' or ''highly protected'' status will apply to CBI disclosed to Inspection Teams, irrespective of the form or medium in which it is made available to the OPCW, whether in oral, written or visual form.

Definition and identification of CBI: Three respondents requested clarification about the ''scope of coverage'' of CBI in the CWCR. Section 103(g) of the Act defines U.S. confidential business information as any trade secrets or commercial or financial information that is privileged and confidential. BXA has determined that CBI contained in information submitted to, or obtained by, the U.S. Government for CWC purposes will fall into one of two categories:

(1) information that falls under the types of information listed in Section 103(g)(1) of the Act, called ''section 103(g)(1) information''; and

(2) information that does not meet (1) but that meets all the criteria of section 103(g)(2) of the Act because it is a ''trade secret'' as described in 5 U.S.C. 552(b)(4) and is obtained from a U.S. person or through the U.S. Government or the conduct of an inspection in the United States, called ''section 103(g)(2) information.''

Information that satisfies the criteria of both sections 103(g)(1) and 103(g)(2) will be treated as section 103(g)(1) information.

BXA has determined that certain fields in the declaration and report forms meet the definition of section 103(g)(1) and has identified these fields in Supplement 1 to Part 718 of the CWCR. BXA will continue to determine whether additional types of information meet the requirements of section 103(g)(1) and will add to Part 718 any such types of information that can apply generally to entities subject to the CWCR. Section 103(g)(2) information

will likely involve specific circumstances, require case-by-case determination, and not lend itself to general use. Therefore, BXA cannot at this time provide additional clarification about the scope of coverage of section 103(g)(2).

Except for the section 103(g)(1) information BXA has identified in the declaration and report forms, the U.S. Government will not be able to distinguish CBI from non-CBI, as defined in the Act, and will require the assistance of industry in identifying such CBI, most notably in connection with inspections.

Two respondents objected to the implicit limitation of the scope of CBI in Supplement No. 1 to Part 711 of the proposed rule. BXA intends this chart to serve as general guidance by indicating the fields of information on declaration and report forms that BXA has identified as section 103(g)(1) information. BXA is revising the supplement (to new part 718) to add a note indicating that information in other fields on the forms may also be considered CBI when such information has been specifically identified by submitters and a rationale has been provided for the CBI status of such information.

In a related matter, two respondents urged BXA to indicate that CBI need not be ''marked,'' but one respondent recommended that items not specifically identified in 103(g)(1) be marked. This rule requires companies to identify information they consider to be CBI that BXA has not specifically identified in Supplement No. 1 to Part 718 as section 103(g)(1) information. In addition, entities hosting on-site inspections will need to specifically identify to the Host Team any CBI contained in information made available to the U.S. Government to ensure proper handling and treatment of such CBI.

One respondent requested BXA to provide a box on the declaration/reporting forms so a company could check the box to indicate the form contained CBI. Checking a box would not serve to specifically identify the information on the completed form that meets the definition of CBI. BXA must reject this suggestion and require the system of identification set out in this preamble and in this rule.

One respondent asked BXA to state that all information provided to the U.S. Government for whatever purpose is confidential when it meets the CBI definition of the Act. The Act defines CBI, not for all purposes, but for specific purposes. BXA is unable to comply with this request. Certain data defined as CBI in a CWC compliance context might not qualify as a ''trade secret'' or otherwise be deemed confidential when obtained by the U.S. Government in non-CWC compliance contexts (e.g., publicly available research, patent, or sales data).

One respondent urged BXA to acknowledge that CBI would arise in a variety of contexts. BXA agrees that CBI will exist in tangible and intangible forms. BXA believes that Part 718 adequately covers CBI.

Protection of CBI by the U.S. Government in non-FOIA contexts: All four respondents expressed concern about U.S. Government protection of CBI in situations other than requests for information under the Freedom of Information Act (FOIA), such as Department of State and Commerce enforcement proceedings or litigation in which the U.S. Government is not a party. Three respondents requested BXA to draft CBI provisions in this regulation as a broad, blanket non-disclosure requirement, except where expressly permitted by section 404 of the Act (*i.e.*, to the OPCW, U.S. law enforcement agencies, and appropriate congressional committees).

Section 404 of the Act provides exemptions from the disclosure requirements of FOIA. BXA cannot guarantee non-disclosure of information in all circumstances, such as in instances of judge-issued subpoenas. Information and documents related to CWC administrative enforcement cases will be handled and protected according to procedures set forth in part 719 of the CWCR.

In a related issue, three respondents requested BXA to specify that the Act is a ''confidentiality statute'' for purposes of regulations administered by the Office of the Secretary of Commerce in 15 CFR Part 15 (Legal Proceedings). Part 15 sets forth procedures governing the production of Department of Commerce records or testimony by Department of Commerce employees in legal proceedings in which the United States is not a party. Federal agencies may establish such procedures under section 301 of Title 5, United States Code, to provide for the custody, use and preservation of its records. BXA has determined that it is unnecessary to specify whether the provisions of the Act fall under the meaning of ''confidentiality statute,'' as used in 15 CFR section 15.17 because this, in and of itself, does not provide any protection other than that already available under the Act and other statutes. The Departmental regulations do not enhance existing statutory protections, but merely provide a mechanism whereby the Department can determine whether any evidentiary privileges or statutory requirements of privacy or confidentiality apply, or if there is any other legal basis for withholding information.

One respondent stated that the U.S. Government should request the United States magistrate judge to seal all records of warrants proceedings in order to guard against public disclosure of any CBI contained in the warrant or in material submitted in support of the issuance of the warrant. BXA intends to request that warrant proceedings be sealed if the warrant or related material includes CBI.

Protection of CBI requested under the Freedom of Information Act: Section 404 of the Act does not provide a statutory exemption from FOIA disclosure requirements for all information that is reported to, or otherwise obtained by, the U.S. Government, but only for ''certain Convention information'' (*i.e.*, that which is defined as ''confidential business information'' in section 103(g) of the Act). BXA will withhold from disclosure pursuant to a FOIA request only CBI, as defined in section 103(g), that has either been identified by BXA or by the person from whom the information is obtained.

National Interest Determination: Two respondents requested BXA to narrowly define the term ''national interest,'' or to provide factors that the U.S. Government would consider in determining disclosure under the national interest disclosure provision. BXA cannot provide a definitive list of factors, since these would depend on specific circumstances, could change over time, and would need the concurrence of other agencies.

Two respondents suggested specific language for the consolidated CBI provisions, building upon language in the proposed rule. BXA is adopting some, but not all, the provisions in the suggested text. Under the suggested text, the notification and hearing procedures that apply to CBI disclosed in the ''national interest'' would also apply to disclosures to appropriate committees of Congress and law enforcement agencies. BXA rejects this suggestion. The Act does not require such notice and hearing procedures in the latter cases and provides no discretion regarding disclosure to such entities. Application of these procedures would only serve to delay authorized disclosures, without affecting the outcome. Moreover, delay in disclosure to other law enforcement agencies could hamper the actions of such law enforcement agencies, thereby thwarting the intention of the statute. BXA notes, however, that section 404 of the Act contains provisions limiting

further disclosure by such Congressional committees and law enforcement agencies of CBI released to them.

Recordkeeping

One respondent requested clarification on whether the declaration responsibilities for the production of Schedule 2 and 3 chemicals for chemical weapons purposes at any time since January 1, 1946 reside with the company that originally may have produced the chemicals. Four respondents addressed the proposed rule's requirement that the facility prepare declarations for activities dating back to 1994. The respondents state that the records and information necessary to prepare declarations may not be available because: (1) necessary information was not collected at the time of the activity, since no regulatory requirement to do so was in effect; (2) if collected at the time of the activity, the information has been discarded following normal business practices; or (3) due to changes in ownership or control of a facility, the current custodian of the information may no longer be affiliated with a facility subject to the CWCR. One respondent referenced a Supreme Court ruling which states that legislative rules, such as the CWCR, may not have a retroactive effect unless explicitly provided for by statute. The respondents request that BXA acknowledge that information necessary to prepare declarations or reports for previous years may not be available and that failure to prepare and submit declarations or reports for this reason should not constitute a violation under the CWCR.

BXA agrees that if records necessary to prepare a declaration and report are not available because one or more of the three factors cited in the preceding paragraph took place prior to the effective date of this rule, failure to prepare and submit the declaration or report should not constitute a violation under the CWCR. However, BXA has the authority under the Act to require the preparation and submission of a declaration or report for activities that occurred before the regulatory requirement becomes effective and, to the extent that information necessary to prepare the declarations and reports is available, the U.S. Government has the authority to impose an administrative sanction for willful failure or refusal to do so. Such a requirement is not ''retroactive'' under the Administrative Procedure Act, because it does not alter the past legal status of a past action (*i.e.*, disposal of records or failure to create records). In addition, the Technical Secretariat of the OPCW recently has confirmed that declarations and reports for activities occurring as early as 1994 may be useful to it in carrying out its verification and monitoring responsibilities. This rule includes new language in § 711.4 which addresses these issues.

One respondent requested that the 5-year record retention period be limited to 3 years. This rule maintains the 5-year requirement to correspond with the statute of limitations applicable to enforcement actions (28 U.S.C. 2462). Four respondents stated that part 721 was too vague and broad, and might be interpreted as requiring documents to be retained that are not necessary to enforcement or other administration of the CWCR. BXA has revised part 721 to clarify the types of documentation required to be retained, the location of documents, and the use of copies of documents to meet the record retention requirements. Finally, one respondent questioned the meaning of ''formal or informal'' requests for documents that would preclude their disposal or destruction. By ''formal,'' the CWCR means a subpoena. By ''informal,'' the CWCR means a verbal or written request by the investigating agency for a particular document or documents.

Declarations and Reports

One respondent requested an explanation of how the term ''report'' is used in the CWCR and a clearer description of the types of information that will be submitted to the OPCW. The term ''report'' is used to describe several different types of activities under the CWCR and the Act. The Act refers to reports to describe all types of requirements under the Convention, including declarations on production, processing and consumption, as well as reports on exports and imports. For reports required by the Act, this rule uses the following terms: (1) declarations; (2) reports on export and import activities; (3) notifications; (4) end-use certificates; (5) reports on inspection-related costs; and (6) post-inspection reports. BXA submits individual declarations for each declared facility to the USNA for transmission to the OPCW. These declarations contain facility-specific information, including facility name and address, and information on production, processing, consumption, and, in certain instances, export and import of specific chemicals. In addition, BXA submits to the USNA a national aggregate declaration on exports and imports, which combines information from facility declarations as well as information from reports submitted by other facilities and trading companies. The national aggregate declaration does not include facility-specific information, but only aggregate information by chemical or by country.

This rule provides that Schedule 1 and Schedule 3 facilities may include their export and import information with their declarations on past activities, or may submit the information separately as reports. Whether submitted as part of a declaration or as a report, Schedule 1 and Schedule 3 export and import information is included only in the national aggregate declaration; BXA does not submit facility-specific Schedule 1 or Schedule 3 export and import information from declarations or reports to the USNA for transmittal to the OPCW. (It should be noted, however, that notifications of Schedule 1 exports and imports are submitted to the USNA for transmittal to the OPCW.) For certain declared Schedule 2 plant sites, BXA does submit facility-specific production, processing, consumption, export and import information to the USNA for transmittal to the OPCW as part of the annual declaration on past activities. The Schedule 2 national aggregate declaration only includes information on exports and imports by chemical and by country. These different requirements are due to differences among the declaration provisions of the Verification Annex of the Convention for Schedule 1, 2 and 3 chemicals.

Initial Declarations

One respondent requested clarification of the initial declaration requirement for Schedule 1 facilities. For Schedule 1 facilities, unlike Schedule 2 and 3 facilities, the initial declaration does not include any production or other Schedule 1 chemical activity information; it only provides a technical description of the facility. Production and other activity information is provided in the annual declarations. For the annual declarations on past activities for calendar years 1997, 1998, and 1999, facilities are required to submit declarations only for those years during which they produced more than 100 grams aggregate of Schedule 1 chemicals.

One respondent requested clarification that for the Schedule 2 initial declaration, plant sites are not required to submit a declaration for all three years (1994, 1995, and 1996), but are only required to submit a declaration for the year(s) in which one or more plants on the plant site produced, processed, or consumed a

Schedule 2 chemical above the applicable threshold. BXA recognizes that the Schedule 2 initial declaration requirement, as well as the annual declaration on past activities, is burdensome on facilities and may appear unnecessary. However, Part VII of the Convention's Verification Annex requires initial declarations to be submitted for all three years (1994, 1995, and 1996) by plant sites comprised of one or more plants that produced, processed or consumed a Schedule 2 chemical above the applicable threshold in any one of those three previous calendar years. This initial declaration requirement will establish a profile on the plant site that will be used by the OPCW to monitor activities. The profile may be updated based on the plant site's subsequent submission of annual declarations on past activities. In order to maintain an accurate profile, a plant site must comply with the initial declaration requirement as described in the note to § 713.3(a)(1)(i). A plant site must declare each chemical that it produced processed or consumed over the applicable threshold quantity in any one of the calendar years 1994, 1995, or 1996, and must submit three Forms 2–3—one for each of the calendar years 1994, 1995, and 1996—for each chemical. For each year or years that a plant site did not produce, process or consume the declared chemical over threshold, it must declare ''0'' quantity only for those activities that triggered the declaration requirement. It should leave blank on Form 2–3 those questions relating to activities that did not exceed the applicable threshold quantity in any one of the three previous years. Plant sites that submit an initial declaration are subject to on-site verification if their activities exceed the applicable inspection threshold quantities set forth in part 716.

Declaration and Approval Requirements for Schedule 1 Facilities

One respondent requested clarification of whether a Schedule 1 facility would be subject to declaration requirements if all of its Schedule 1 production occurred prior to April 29, 1997, when the Convention entered into force. If a facility produced more than 100 grams aggregate of Schedule 1 chemicals in calendar year 1997, it must submit an initial declaration and an annual declaration on past activities for 1997.

A respondent requested that BXA clarify that Schedule 1 facilities must declare consumption and storage of Schedule 1 chemicals only if they produced more than 100 grams aggregate of Schedule 1 chemicals. This is correct, but BXA does not agree that the rule requires clarification.

One respondent also requested BXA to state the grounds for disapproval of a Schedule 1 facility. The Convention requires States Parties to approve all Schedule 1 facilities. However, the Act does not authorize the U.S. Government to require a facility to stop or limit its production of Schedule 1 chemicals. Therefore, BXA cannot disapprove a Schedule 1 facility.

Mixtures and other exemptions to declaration and reporting requirements

Four respondents requested that BXA include a low-concentration threshold for mixtures containing Schedule 1 chemicals to reduce the burden on all companies of identifying, quantifying and accounting for trace amounts of Schedule 1 chemicals contained in complex product mixtures and waste streams at very low concentrations. One respondent expressed concerns about BXA not approving facilities that produce Schedule 1 chemicals as unwanted byproducts in the manufacture of another chemical, since the aggregate of such production could exceed the Convention's 10 kg limit for Schedule 1 chemicals. BXA believes that the production, export, and import of trace amounts of Schedule 1 chemicals as unavoidable by-products or impurities do not pose a threat to the object and purpose of the Convention, would capture industries totally unrelated to those involved in the intentional production of Schedule 1 chemicals, and would result in the inspection of facilities under a verification regime established for facilities that intentionally produce Schedule 1 chemicals. Therefore, this rule includes in part 712 a 0.5 percent ''round to zero'' rule for Schedule 1 chemicals produced as unavoidable by-products or impurities.

One respondent requested that BXA establish a uniform 30 percent low concentration exemption for Schedule 2 activities because the current two-tiered reporting system included in the proposed rule (10 percent for production, consumption, imports, exports; 30 percent for processing) would create legal and compliance problems for industry. Moreover, it puts U.S. companies at a competitive disadvantage with other major chemical producers and traders which have adopted a uniform 30 percent mixtures rule. BXA agrees that the two-tiered mixtures rule is unnecessarily complicated, creates an uneven playing field with our major industrial competitors, and will capture downstream consumers that pose no risk to the object and purpose of the Convention. BXA also believes that adopting a 30 percent low concentration exemption for declarations and reports on Schedule 2 transfers is consistent with the U.S. Government's non-proliferation objectives. Therefore, this rule establishes in part 713 of the CWCR a 30 percent mixtures exemption for production, processing, consumption, export and import of Schedule 2 chemicals. However, should conditions change, BXA will review the 30 percent low concentration exemption for Schedule 2 exports and imports to ensure that our non-proliferation interests are not being undermined.

One respondent requested BXA to clarify whether the mixtures rules contained in §§ 713.3(a)(2) (i) and (ii) are applicable to § 713.1 of the CWCR. The respondent was concerned that a complete prohibition on the importation of all Schedule 2 chemicals could create a situation where importers unknowingly violate the CWCR and become subject to penalties for importing of Schedule 2 chemicals. BXA agrees with the respondent. This rule adopts a 10 percent low concentration exemption for imports of Schedule 2 chemicals from non-States Parties after April 28, 2000. This exemption mirrors the mixtures rule contained in the Export Administration Regulations for exports of Schedule 2 chemicals to non-States Parties after April 28, 2000.

Four respondents requested an exemption for UDOC mixtures similar to that already existing for Schedule 3 chemicals. They noted the inconsistency between having an 80% threshold for Schedule 3 chemicals while maintaining a 0% threshold for UDOCs, which pose a much less threat to the object and purpose of the Convention. The respondents also wanted to use the mixtures rule to clarify what the term ''discrete'' means. Furthermore, the respondents stated that identifying, quantifying, and accounting for low concentrations of UDOCs contained in complex mixtures is excessively burdensome and provides no benefits to the object and purpose of the Convention. BXA does not accept these comments and this rule does not contain a UDOC mixtures exemption. The Convention does not specifically permit a mixtures rule similar to that for Schedule 2 or 3. Further, § 710.1 of the CWCR contains the Convention's definition of a discrete organic chemical. This rule does not provide specific exemptions for individual UDOCs. If companies have specific questions about whether their products

are covered by the CWCR, they should request a chemical determination from BXA. However, BXA believes that a specific exemption for UDOCs produced by synthesis as normal ingredients, by-products, or impurities in the manufacture of foods designed for consumption by humans and/or animals is warranted since such plant sites pose no threat to the object and purpose of the Convention. This rule does not include an exemption for facilities that produce UDOCs solely as consumer goods packaged for retail sale and requests that the public comment on the impact of the CWCR on such producers.

One respondent requested four additional exemptions to the declaration requirements for Schedule 3 chemicals: materials that are not produced by synthesis; materials that are not isolated for use or sale as a specific end product; process intermediates that are transformed at the same plant site; and components of waste streams (or substances formed in waste streams). At this time, BXA believes it is unnecessary to add additional exemptions for Schedule 3 chemicals beyond the 80% threshold that currently exists. If the OPCW acts to set a universal Schedule 3 threshold which is lower than 80% and if Congress amends the Act, BXA will consider additional exemptions. For purposes of the CWCR, the term ''production'' should be understood to include a scheduled chemical (*i.e.*, a Schedule 1, Schedule 2, or Schedule 3 chemical) produced by a biochemical or biologically mediated reaction. Further, Schedule 3 chemicals not isolated above 80% purity, whether used or sold as specific end products or as intermediates or disposed of as waste, are currently excluded by the Act and this rule. Finally, excluding Schedule 3 process intermediates, with concentrations greater than the applicable threshold (80% in the United States), would be inconsistent with the object and purpose of the Convention.

Another respondent suggested that in order to avoid double counting of UDOCs, a UDOC produced in salt form and pure form should only be counted once for declaration purposes, and that the substance to be declared would be the final ''species'' isolated for use or sale outside the facility. The CWCR require declaration of only the final UDOC produced in whatever form for use or sale. If a facility is producing UDOC(s) for use within the facility, that UDOC must be declared if produced in quantities greater than the threshold specified in part 715 of the CWCR.

Amended Declarations and Reports

One respondent requested clarification on whether or not the submission of amended declarations and reports will, in itself, trigger an enforcement action. An amended declaration or report will be used by BXA to replace the information on a declaration, or the aggregate national declaration that was previously submitted to the OPCW. Submission of an amended declaration or report is considered a change, a replacement, or an addition to previously submitted information. Amended declarations and reports will not automatically trigger an enforcement action.

One respondent requested clarification on the types of changes to a previously submitted declaration on the production of UDOCs that would require submission of an amended declaration or report. This rule clarifies in § 715.2 of the CWCR that for declarations involving UDOCs, only changes of production quantity into a higher range, the addition of a new PSF-chemical (phosphorus, sulfur, and fluorine) produced above 30 metric tons at a PSF plant not previously declared, changes to previously reported activities and end-use purposes, or the addition of new activities or end-use purposes require an amended declaration or report under part 715 of the CWCR.

One respondent requested clarification on the types of changes to declarations or reports that will not require submission of an amended declaration or report because they are considered minor or insignificant information. This rule makes such clarification in §§ 712.6, 713.7, and 714.6 of the CWCR. Changes to previously submitted information on chemicals, activities and end-use purposes, or the addition of new chemicals, activities and end-use purposes require submission of an amended declaration or report. For Schedule 1, 2, or 3 facilities subject to inspection, changes that may affect verification activities, such as changes of the owner or operator, company name, address, or inspection point of contact, require submission of an amended declaration. For Schedule 1, 2, or 3 facilities not subject to inspection and UDOC plant sites, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, points of contact, non-substantive typographical errors, etc., do not require submission of an amended declaration or report and may be corrected in subsequent declarations or reports that are submitted to BXA.

Timing of Submission of Declarations and Reports

One respondent suggested that the deadline for initial declarations and reports, and annual declarations and reports on past activities for calendar years 1997, 1998, and 1999, should be extended from 90 days to 150 days after the date of publication of the interim rule. The respondent notes that it will be difficult to coordinate preparation of declarations for its many facilities within the United States. Although BXA understands the respondent's concern that it will be difficult to coordinate declarations and reports from many different facilities in the United States, the U.S. Government has committed to the OPCW that it will meet its international obligations and submit data declarations as soon as possible. In the early phases of the regulatory planning process, BXA contemplated requiring industry to submit declarations within 30 days after publication of the interim rule. However, industry representatives advised BXA that industry would need 90 days to meet its obligations, and BXA therefore extended the deadline for submission of initial and annual declarations on past activities. This respondent also requested that the submission deadline for declarations and reports should be the ''postmarked'' date. This rule requires that declarations and reports due to BXA be postmarked by certain dates.

One respondent requested that additionally planned activities be declared to BXA 10 days in advance of the beginning of the additional or new production, processing or consumption of Schedule 2 chemicals or the additional or new production of Schedule 3 chemicals, rather than 21 days in advance as specified in the proposed rule. Because this rule requires that declarations and reports be postmarked by specified dates, BXA does not believe that 10 days is enough time for the U.S. Government to declare such activities to the OPCW. Therefore, this rule requires additionally planned activities be declared 15 days in advance of the beginning of the activities.

Several respondents requested an extension of the due dates for submission of annual declarations on past activities from February 13 to February 28, or later. The respondents believe that industry has a more burdensome and time-consuming task in preparing declarations than the U.S. Government. They noted that the U.S. Government has an electronic means to process, compile and aggregate the data

and does not need 45 days to accomplish this task. The respondents further stated that in early February, many companies may not have compiled all of the necessary data available to complete declarations because of ordinary business cycles, inventory control systems, or other reasons, and to comply with the February 13th due date, many companies will have to institute new changes to corporate policies and procedures that may affect many aspects of their business. BXA agrees with the respondents' arguments regarding the distribution of time under the Convention's 90-day time frame. This rule reflects in Table 1 to parts 712 through 715 of the CWCR the new due date of February 28 for annual declarations and reports on past activities. Note that annual declarations and reports for past activities for calendar years 1997, 1998, and 1999 are due to BXA by March 30, 2000.

Two respondents stated that declarations and reporting requirements should be based on the effective date of publication of the CWCR in calendar year 2000. They further state that the initial and first annual declaration of past activities should be combined into a single declaration for Schedule 2, Schedule 3, and UDOCs to prevent undue burdens on industry. BXA supports the respondents' concerns about the burden declarations and reports are on U.S. industry, and has already taken steps to minimize the burden. For example, this rule includes a recordkeeping provision that requires U.S. industry to provide information for years up to the effective date of the rule for which they do have records and states that BXA will accept whatever degree of precision is found in existing records. The final section of the Cost Benefit Analysis of the costs and benefits of alternatives, as well as Section 2.5.2 of the final Regulatory Flexibility Analysis, provides examples of how BXA has interpreted the CWC requirements as narrowly as possible so that all companies will be declaring on the same basis for calculating Schedule 2 activities to minimize declaration requirements for Schedule 2 sites. Further, the instructions for Form 2–3 (for Schedule 2 declarations), instruct plants sites producing below threshold quantities in the reporting year to declare ''0'' because they have a declaration requirement based upon activities in previous years thus reducing burden and confidential business information disclosure. Finally, this rule includes an exemption for UDOCs produced by synthesis that are ingredients, by-products, or impurities in the manufacture of foods designed for consumption by humans or animals.

One respondent requested that for rounding of information included on declarations and reports, no more than two significant digits be required, and that no greater precision be required than can reasonably be provided using existing documentation, equipment, and measurement techniques. This rule includes additional guidance in a new § 711.5 and in the reporting and declaration requirement sections of Parts 712 through 715 of the CWCR.

Additionally Planned Activities

One respondent was concerned that the Schedule 2 and Schedule 3 requirement for a declaration on additionally planned activities due to BXA 21 days before additionally planned activities can begin implies that the facility may not commence its activities until BXA gives permission to do so. The respondent believes that the declaration on additionally planned activities is a ''notice'' to BXA, and the facility should be free to commence additional production after the requisite time has passed without receipt of any type of permission from BXA. The respondent further notes that the CWCR indicate that the timing for the declaration on additionally planned activities runs from when the notice is ''delivered to'' BXA, stating that a facility will not know when the declaration ''is delivered'' to BXA, but rather when it is ''sent to'' BXA. BXA agrees that the additionally planned activities declaration requirement is a ''notice'' to BXA declaring newly planned activities. Facilities are responsible for submitting declarations to BXA within the required time frame prior to the commencement of the new activities. Facilities are not required to wait for permission from BXA to commence such activities. If a facility begins these activities prior to the required notification time frame, the facility may be in violation of the declaration requirement and may be subject to civil penalties. BXA agrees with the respondent's recommendation to make the timing for submission of a declaration on additionally planned activities the ''sent to'' date (e.g., the postmarked date), as reflected in §§ 713.5(b) and 714.4 of the CWCR.

Two respondents asked about the requirements for declaring additionally planned Schedule 2 and Schedule 3 activities provided in §§ 713.5 and 714.4, respectively, of the proposed CWCR. This rule expands the requirements for additionally planned activities consistent with an OPCW decision dated May 16, 1997 (C–I/DEC.38). Declarations on additionally planned activities by plant sites declared under § 713.3(a)(1)(iii) or § 714.2(a)(1)(iii) are required for: (1) An additional plant not declared under §§ 713.3(a)(1)(iii) or 714.2(a)(1)(iii) that plans to produce, process, or consume a Schedule 2 chemical or produce a Schedule 3 chemical above the applicable declaration threshold; (2) an additional Schedule 2 chemical that will be produced, processed, or consumed above the applicable declaration threshold at a plant declared under § 713.3(a)(1)(iii) or an additional Schedule 3 chemical which will be produced above the declaration threshold at a plant declared under § 714.2(a)(1)(iii); (3) an additional planned activity (production, processing, or consumption) above the applicable threshold for a chemical declared under § 713.3(a)(1)(iii); (4) a planned increase in the production, processing, or consumption of a Schedule 2 chemical by a plant declared under § 713.3(a)(1)(iii) or a planned increased in the production of a Schedule 3 chemical by a plant declared under § 714.2(a)(1)(iii) to an amount which exceeds the applicable inspection threshold (see §§ 716.1(b)(2) and 716.1(b)(3) for the respective Schedule 2 and 3 thresholds); (5) a planned increase in the production of a Schedule 3 chemical by declared plants at a plant site to an amount above the upper limit declared under § 714.2(a)(1)(iii); (6) a change in the anticipated starting or ending date of production, processing, or consumption declared under § 713.3(a)(1)(iii) by more than three months; and (7) a planned increase in the production, processing, or consumption of a Schedule 2 chemical by a declared plant by 20 percent or more above that declared under § 713.3(a)(1)(iii).

While BXA recognizes that some of the new requirements in this rule increase the declaration burden on industry, they are required in order to meet U.S. Government obligations under C–I/DEC.38 and are consistent in scope with the original requirements contained in §§ 713.5 and 714.4 of the proposed CWCR. BXA anticipates an additional 20 declarations on additionally planned activities based upon the above new requirements, but requests that concerned parties submit comments regarding this estimate and the overall burden of requirements mandated under C–I/DEC.38. BXA will reevaluate these additionally planned

activities requirements based upon this input.

Definitions

One respondent remarked that the definition of ''declaration form'' states that all declared facilities will have facility-specific information transmitted to the OPCW, but pointed out that information included with UDOC declarations and Schedule 3 export and import information is only aggregated and facility-specific information is not submitted to the OPCW. The respondent suggested revisions to the definition of ''declaration forms'' to clarify this point. Facility-specific information contained in UDOC declarations is submitted to the OPCW by the USNA. However, to clarify what information is submitted to the OPCW, this rule revises the definitions of ''declaration or report form'' and ''reports.''

One respondent requested a revision to the definition of ''consumption,'' noting that most chemical reactions are not 100% complete. Accounting for the majority of the material as consumed and the remainder as either waste or as recycled starting material is reasonable. Therefore, this rule defines ''consumption'' of a chemical as its conversion into another chemical via a chemical reaction. Un-reacted material must be accounted for as either waste or as recycled starting material.

One respondent requested clarification of ''toxic chemical'' as used in § 716.2(b)(1)(ii)(E) of the CWCR. BXA agrees that clarification is warranted. Therefore, this rule adds a new definition of ''toxic chemical'' to § 710.1 of the CWCR. The definition is based on the definition found in the Act.

One respondent commented that the definition of the term ''trading company'' appears to cover the requirements for submitting a report by an undeclared plant site, stating that the terms ''entity'' and ''companies'' in the definition are confusing. The respondent further states that the phrase ''entities involved in the export or import of chemicals'' could be interpreted to mean that an entity engaged in both exports and imports is not a trading company, and only scheduled chemicals are subject to reporting by trading companies. BXA agrees that the definition of ''trading company'' requires clarification. Therefore, this rule revises the definition of ''trading company'' by replacing the word ''entity'' with ''person,'' which is also defined in § 710.1, and by clarifying that trading companies that export or import scheduled chemicals in amounts greater than specified thresholds are subject to reporting requirements, but not routine inspections.

Several respondents requested that a definition of production be added to § 710.1 of the CWCR to help clarify declaration requirements. This rule adds the Convention's definition of ''production'' as the formation of a chemical through a chemical reaction.

One respondent requested that the definition of ''host team'' be modified to include facility representatives to recognize that the employees of the inspected facility must contribute to the host team because of their expertise. Section 303(b)(2) of the Act states that ''[t]he United States National Authority shall coordinate the designation of employees of the Federal Government to accompany members of an inspection team of the Technical Secretariat.'' The term ''Host Team'' in § 710.1 of the CWCR is meant to assign a functional name to these designated federal government employees, who will be drawn from different agencies, by describing their role during inspections (*i.e.*, to host inspectors at U.S. facilities). While BXA fully expects that facility representatives will act as ''de facto'' Host Team members during inspection activities, the Act imposes certain requirements on federal employees that legally cannot be performed by facility representatives (*e.g.*, obtaining administrative warrants, negotiating facility agreements, and representing the United States' interests as a State Party). Therefore, the term ''Host Team'' in the CWCR refers to the U.S. Government team that accompanies inspectors from the OPCW at facilities subject to inspection, and does not include civilian site representatives.

Finally, one respondent requested clarification of the definition of ''storage'' as it applies to Schedule 2 and 3 chemicals and UDOCs. BXA does not agree that a clarification is necessary, because no quantitative reporting of storage for Schedule 2 or 3 chemicals or UDOCs is required by the CWCR.

Electronic Submission of Information

One respondent requested that BXA permit industry to electronically request assistance in determining its obligations under the CWCR, including chemical determinations. The respondent further requests that BXA respond to an incomplete request for assistance if the omitted information is not required for responding to the request. BXA supports electronic submissions of information to the extent possible. Therefore, this rule includes more detailed information in § 711.3 on how to contact BXA electronically. BXA will respond to requests for chemical determinations within 10 working days of receipt. BXA will respond to other inquiries about industry obligations under the CWCR in a timely manner.

Facility Agreements

One respondent, while supporting the U.S. Government's approach on managed access, requested that the concept of managed access be introduced for UDOC inspections to strengthen the ability of Host Teams to protect confidential business information. The Convention contains strict rules for inspection team access to UDOC facilities based on the area of the plant site to be inspected. The CWCR are not intended to provide this level of detail since the actual access provided to inspection teams will vary from facility to facility. Part IX of the Convention's Verification Annex provides that inspected States Parties have the right to manage inspection team access to declared plants on a plant site. However, access to other areas of the plant site will be agreed upon, which is more controlled than managed access. Therefore, this rule does not specify managed access for UDOC facilities because it could result in expanded access to inspection teams beyond the Convention, which BXA does not support. BXA will ensure that inspection team access does not exceed the terms of the Convention.

One respondent requested that BXA make a reasonable effort to complete facility agreement negotiations with the OPCW on the establishment of a new Schedule 1 facility within 200 days, stating that without this language, any new Schedule 1 production by a new facility could be delayed indefinitely. The Act does not give BXA the authority to implement the Convention's restrictions on Schedule 1 production at a new facility where a facility agreement has not been concluded. New Schedule 1 facilities must notify BXA 200 days prior to commencing production of Schedule 1 chemicals above 100 grams aggregate. BXA will work with the USNA to conclude a facility agreement for new Schedule 1 facilities with the OPCW prior to the commencement of production of Schedule 1 chemicals above 100 grams aggregate.

Two respondents requested that the facility be consulted and be authorized to approve any facility agreement prior to conclusion by the U.S. Government and the OPCW. The respondents further requested that the U.S. Government consult with the facility prior to final interpretations of the provisions of the facility agreement. BXA recognizes that facility input is critical to the successful negotiation of facility agreements. The

proposed rule inadvertently omitted language from the Act that provides facilities with the right to participate in the preparation of facility agreements. This rule includes such language in § 716.6(b) of the CWCR, and BXA will consult with facilities to the maximum extent possible during negotiations with the OPCW. The United States cannot withhold conclusion of a facility agreement with the OPCW because of facility concerns. The Convention does not provide for facility approval of the facility agreement. Industry should note that BXA will inform the affected facility of the status of negotiations at the OPCW, permit facility representatives to observe negotiations with the Technical Secretariat to the maximum extent practicable, and prior to conclusion of a facility agreement with the Executive Council, will provide facilities with an opportunity to comment. During final negotiations with the OPCW, BXA will give consideration to the facility's comments. Finally, BXA will consult with facility representatives prior to interpreting the facility agreement, once completed. If a disagreement over the provisions of a facility agreement occurs between the OPCW and BXA during an inspection that cannot be resolved on-site, the issue will be included in the preliminary factual finding report. After consulting with the U.S. interagency group established by the Act and E.O. 13128, the USNA and BXA will meet with the OPCW to resolve the issue. BXA will keep the facility informed of discussions with the OPCW.

BXA received several comments on the Schedule 2 Model Facility Agreement (MFA) found in Supplement No. 3 to part 716 of the CWCR. First, concerns were expressed about a provision found under Section 2—Health and Safety, that states that if the inspected State Party so requests on the basis of confirmed contamination or hazardous waste requirements or regulations, any piece of equipment involved in the inspection activities will be left at the plant site at the end of the inspection. The respondent states that the facility may not be legally authorized to store or dispose of contaminated items. BXA will discuss issues related to disposal of contaminated items and hazardous waste with facilities as necessary, and facility agreements will be drafted accordingly.

Another concern raised by the respondents regarded sampling. Section 7.4, paragraph 2 of the Schedule 2 MFA states in part that ''[s]ampling and analysis, for inspection purposes, may be carried out to check for the absence of undeclared scheduled chemicals. Each sample will be split into a minimum of four parts at the request of the inspection team in accordance with Part C of Attachment 10.'' The respondent states that the facility should retain the right to request a sample split and analyze it. BXA does not believe that the sampling language needs revision. The language does not preclude the inspected facility from requesting split samples. Facilities should further note that attachments to the MFA are intended to be site-specific and completed with facility input.

One respondent correctly notes that Section 7.4, paragraph 12 of the Schedule 2 MFA erroneously states that the inspection must stop at the direction of the plant site representative. BXA agrees that the plant site representative should not be authorized to stop analysis activities in the event that these activities are not in accordance with the facility agreement or agreed analysis procedures, or otherwise pose a threat to safety or environmental regulations or laws. Therefore, this rule revises the language in Section 7.4, paragraph 12 to state that the inspected State Party, in consultation with the plant site representative, may cease such activities.

BXA received several other comments regarding concerns that the Schedule 2 MFA does not allow for enough consultation with the facility representative. Other comments focused on suggestions to add clarifying language in the MFA that is site specific. Industry should note that the MFAs found in Supplements No. 2 and 3 to part 716 are models that include general language that could apply to all inspected facilities. Attachments to the MFAs will make the facility agreement site-specific.

Other comments made by the public regarding the Schedule 1 and 2 MFAs have been incorporated in Supplements No. 2 and 3 to part 716. Where applicable, corresponding changes were made to both MFAs.

BXA also received a request to develop and include in the CWCR a Schedule 3 MFA. BXA is assessing the needs and requirements of a Schedule 3 MFA. The OPCW's Technical Secretariat has developed a draft MFA but there has been no movement by States Parties to complete it. To date, no State Party that has undergone a Schedule 3 inspection has requested a facility agreement. Moreover, the OPCW has suggested that if a State Party requests a facility agreement for a Schedule 3 plant site, the length of an initial inspection will be extended by 2 days. Since the Convention limits the number of Schedule 3 and UDOC inspections to a total of 20 inspections per year, it is unlikely that a re-inspection will occur at a Schedule 3 facility within 5 to 10 years. Nevertheless, the Act gives Schedule 3 facilities the right to request a facility agreement and BXA will take the respondent's suggestion into consideration. BXA would prefer that States Parties reach consensus on a general framework for a model before drafting a national model, but will consider doing so if States Parties are unable or unwilling to complete a model before Schedule 3 inspections commence in the United States.

Finally, one respondent requested that language be added to the CWCR to require OPCW inspection teams to follow the requirements of relevant model facility agreements during an initial inspection. During initial inspections, verification activities are subject to the Convention's ''General Rules of Verification'' (Part II of the Verification Annex) and the applicable annex for the type of facility being inspected (Parts VI, VII, VIII, or IX). Although BXA does not believe it is appropriate to include the respondent's suggested language in the CWCR, BXA suggests that facilities subject to initial inspection develop a preliminary draft facility agreement based on the CWCR's model facility agreement. This preliminary draft will be provided to the inspection team upon arrival at the facility. Although the OPCW is not bound by this preliminary draft, BXA will urge that inspection teams use it as a guide during initial inspections. Regardless, inspection teams are always under the obligation to discharge their functions with the least possible inconvenience and disturbance to the facility, and to avoid hampering or delaying the operation of a facility or affecting its safety.

Initial and Routine Inspections

Section 716.5 of the CWCR provides that the Department of Commerce provide written Host Team notification of an inspection. Such notice will usually be via fax or phone. If notification by fax or phone fails, a written notification of the inspection will immediately be posted at the plant site. A respondent questioned whether there will be an additional notification that includes the contents of the OPCW inspection mandate after it has been provided to the Host Team at the point of entry. This respondent also asked how much time the facility will have to respond to the notification, and whether the facility will be asked to respond to the notification regarding warrants. The

Host Team notice from the Department of Commerce serves to notify the facility of an inspection, advise the facility of the availability of U.S. Government assistance, and to determine if an administrative warrant is required. BXA asks the facility to reply to the request for consent within 4 hours. If, after 4 hours, the request for consent is not granted, BXA will seek an administrative warrant. The notification also advises the facility of the availability of an Advance Team. The company may wish to respond as soon as possible to maximize the time available for preparation of an inspection. The Convention requires transport of the OPCW Inspection Team to the inspected site within 12 hours of presenting the mandate. Due to this time constraint, BXA may not be able to provide the mandate to the facility prior to the arrival of the Inspection Team at the facility. However, the Commerce-led Host Team currently plans to pass the mandate, if possible, to the Advance Team at the site as soon as possible.

One respondent requested BXA to share a copy of its preliminary (renamed ''Host Team'') notice with industry for comment. The respondent wanted to ensure that it contains certain ''critical'' information such as the inspection mandate and establishes a dialogue between the U.S. Government and facility on health and safety information that could impact a facility during verification activities. Once the CWCR are published and the interagency formally clears the Host Team notification, BXA will make the notice available to the public upon request. The Host Team notification is meant to alert the facility of an impending inspection, determine whether the facility consents to the inspection, and ascertain whether the facility requests Advance Team support. The Host Team notification will also contain a copy of the OPCW's notification to the USNA, which includes health and safety information regarding special needs of inspectors and inspection equipment. However, such information will change from inspection to inspection, and BXA cannot anticipate Inspection Team needs in advance. If there are special facility-specific issues (*e.g.*, health and safety) that the Host Team or OPCW needs to be aware of prior to the commencement of an inspection, they should be communicated to the Advance Team during pre-inspection preparation activities. The Advance Team will then inform the Host Team Leader, who will brief the Inspection Team upon arrival at the U.S. point of entry (POE) (Washington Dulles International Airport). The inspection mandate is not part of the Host Team notification because the Host Team Leader will not receive the mandate until the Inspection Team arrives at the POE.

One respondent requested that inspections start in normal business hours, therefore reinforcing the Convention's commitment to not impact the regular operation of a facility. BXA does not agree that all inspections will be conducted during normal business working hours. Verification activities include, inter alia, physical plant inspections, records review, the preparation of preliminary factual findings and draft facility agreements, if applicable. Many of these activities can be done in an administrative work space outside of operations areas, but all must be completed prior to the conclusion of an inspection. Limiting inspection activities to normal working hours will increase the amount of time (*i.e.*, number of days) Inspection Teams remain on-site. Inspectors are obligated to discharge their functions with the least possible inconvenience and disturbance to the facility, and to avoid hampering or delaying the operation of a facility or affecting its safety. BXA will take all of these factors into consideration when determining whether an inspection should commence, continue, or conclude during other hours. The respondent also requested that the facility be consulted for any extension in the duration of an inspection prior to agreement by the Host Team Leader and the Inspection Team. BXA supports this request. Therefore, this rule adds to § 716.5(b)(2) and (b)(3) that the Host Team Leader will consult with the inspected facility on any extension of the inspection prior to making an agreement with the Inspection Team.

BXA has also determined that part 716 of the proposed CWCR was deficient regarding two inspection requirements of the Convention: pre-inspection briefing and debriefing on the preliminary factual findings. The Convention requires that prior to the commencement of an inspection, facility personnel brief the Inspection Team on the facility, the activities carried out there, safety measures, and administrative and logistic arrangements necessary for the inspection. The pre-inspection briefing is limited to three hours. New § 716.4(c) of the CWCR contains the requirement for facilities to provide a pre-inspection briefing and lists topics to be addressed. The Convention also requires that the Inspection Team meet with the inspected State Party and facility upon completion of the inspection to review its preliminary factual findings report and to clarify any ambiguities. The debriefing must be completed no later than 24 hours after the completion of the inspection. New § 716.4(i) contains the requirement for a debriefing. Facilities should note that the time required for a pre-inspection briefing and debriefing on the preliminary factual findings is in addition to the specified period of inspection for Schedule 2, Schedule 3, and UDOC plant sites. This rule also includes new §§ 716.4(b), (d) and (e) to provide a clearer description of the inspection process and to set forth the scope of consent to an inspection. BXA invites the public to comment on the changes to part 716, particularly the new sections.

Three respondents stated that additional information should be included in § 716.3 to clarify, for facilities subject to routine inspection, that withholding consent to an inspection or withdrawing consent following the commencement of an inspection are not violations of the regulations. BXA notes that the Act provides that consent may be withheld for any reason or no reason. BXA also agrees that in most circumstances, withdrawal of consent would not be a violation under § 719.2(a)(1) of the CWCR.

One respondent recommended that, in order to reduce the likelihood of a misunderstanding by the OPCW inspectors, and to avoid possible ''international incidents,'' § 716.3 should also specify the procedures to be followed if consent is withdrawn during an inspection. BXA does not accept this recommendation because procedures may differ from inspection to inspection, depending on the circumstances and the timing of a withdrawal of consent, and on whether the OPCW inspectors decide to wait for BXA to obtain an administrative warrant and then to continue the inspection or to terminate the inspection.

One respondent raised Constitutional concerns about the installation of on-site monitoring equipment at Schedule 1 facilities. Although paragraph 29 of Part VI of the Convention's Verification Annex, pertaining to verification of declared Schedule 1 facilities, gives the OPCW the right to install such instruments, the U.S. Government does not anticipate that the OPCW will request to do so for facilities subject to the CWCR. This rule moves the provision for on-site monitoring of Schedule 1 facilities from § 716.2 to a new § 716.8.

A respondent requested that BXA reduce the post-inspection reporting burden on industry by allowing reports on inspection-related costs to be voluntary, summarized, estimated by BXA or the facility, or reported in ranges, and that the time frame for submitting such reports be extended to 180 days after an inspection. BXA is sympathetic to the respondent's concerns, however, the Act specifically requires that the President report the total costs borne by United States business firms in the course of inspections to the Congress. This requires BXA to compel industry to submit reports on the total costs related to inspection. BXA gives facilities the discretion to determine the methodology for computing total costs. Because the annual report on inspections must be submitted annually to Congress, BXA must be able to provide as current figures as possible without excessively burdening industry. BXA believes that the 90 day time frame is reasonable and meets the requirements of the Act.

Clarification Procedures; Challenge Inspection Requests

Two respondents questioned whether the Department of Commerce has the authority, under the Act, to require facilities subject to the CWCR to provide information in response to a clarification request from another State Party, and suggested deletion of § 717.1(b) of the CWCR. Section 101(e) of the Act and Section 3 of Executive Order No. 13128 give the Department of Commerce adequate authority to require such information. In addition, as one respondent highlighted, the clarification procedures in Article IX of the Convention provide a means of clarifying and resolving ambiguities without the need for challenge inspections. Three respondents stated that the requirement for facilities to provide information to the Department of Commerce pursuant to a clarification request from another State Party or the OPCW should be clarified to establish substantive limits on the scope of the request and a time frame for response. Substantive limits are already provided in § 717.1(b). The information must pertain to ''reporting, declaration, notification, or inspection requirements set forth in parts 712 through 716.'' BXA agrees that a time frame for response should be provided. Therefore, this rule requires in § 717.1(b) that information be provided to the Department of Commerce pursuant to a clarification request within five working days. This time frame will allow the U.S. Government to respond to another State Party or to the OPCW within 10 days, as required by Article IX of the Convention.

One respondent recommended that this part establish procedures for resolving differences, including meetings with the OPCW, to avoid the need for challenge inspections. BXA does not believe it is necessary or appropriate for the CWCR to set forth procedures that the U.S. Government will follow in communicating with other States Parties or the OPCW.

Finally, one respondent suggested that a request for information under the clarification procedure amounts to a criminal investigation, and another respondent suggested that a facility should be able to require BXA to obtain an administrative warrant before providing the requested information. A request for information does not rise to the level of a criminal investigation. An administrative warrant is not appropriate in this context, because no physical inspection of a facility is involved and the information requested falls within the scope of the CWCR. Willful failure or refusal to provide information in response to a BXA request under part 717 of the CWCR would constitute a violation under § 719.2 of the CWCR.

Facilities That Cease Involvement With Declarable Activities

Respondents were concerned about whether a facility will be absolved from further requirements under the CWCR when the facility eliminates its declarable activities. The respondents recommended that BXA provide a mechanism by which the facility can commit to elimination of declared activities, and therefore not be subject to initial declaration and reporting. BXA does not agree that a facility should be able to avoid submission of a declaration based on the facility's intent to terminate the declarable activity. This would be inconsistent with the requirements of the Convention.

Violations and Penalties

BXA received several comments on part 719—Enforcement, many of which were adopted. The most significant changes that were made to part 719 concern its structure and the application of the administrative process. Part 719 of this rule is intended to more accurately reflect the three categories of Chemical Weapons Convention violations: ''violations of the Act subject to administrative and criminal enforcement proceedings'' (§ 719.2); ''violations of IEEPA subject to judicial enforcement proceedings'' (§ 719.3); and ''violations and sanctions under the Act not subject to proceedings under the CWCR'' (§ 719.4). Section 719.2 of the CWCR sets forth violations of the Act. The Department of Commerce and Department of State jointly apply the administrative process that applies to these violations. The administrative procedures are found in 15 CFR §§ 719.5–719.22 and in 22 CFR part 103, subpart C. Section 719.3 sets forth the violations of the International Emergency Economic Powers Act (IEEPA). Part 719 provides no administrative process for these IEEPA violations. They are referred to the Department of Justice for judicial enforcement. The violations contained in § 719.4 have as their basis the Act, but they are not subject to the CWCR and are provided for informational purposes only.

In addition to the concerns expressed about structure and organization, there were also several comments expressing general displeasure with the precise wording of various violations and penalties. While BXA is sympathetic to some of these comments, the violations and penalties in the CWCR merely recite the violations and penalties as they appear in the relevant statutes. Thus, BXA made no substantive changes to the violation and penalty language.

Although no substantive changes were made to the language of the violations and penalties, BXA does believe it is necessary to clarify what the violation of ''willfully impeding an inspection'' might mean. One respondent expressed concern that this violation could be construed so that the exercise of the right to withhold consent (which makes it necessary for the government to obtain an administrative warrant), or that efforts to protect the safety of the inspectors, would constitute willfully delaying or impeding an inspection. Since § 305(a) of the Act provides that the owner or the operator, occupant, or agent in charge of the premises may withhold consent for any reason or no reason, BXA does not believe those concerns are well founded.

Finally with respect to the violations and penalties, some respondents were confused by use of the terms ''knowingly'' and ''willfully.'' The basis for this confusion was the mistaken assumption that the Act was the statutory basis for the import violations, which caused confusion because the criminal penalty provision says ''willfully'' rather than ''knowingly'' as required by the Act. he reason for use of the word ''willfully'' rather than (or in addition to) ''knowingly'' is that the statutory basis for the import violations is the International Emergency

Economic Powers Act. Therefore, the criminal penalty for import violations mirrors the IEEPA penalty provision. Several respondents also asked BXA to clarify the meaning of the word ''knowingly'' as used to describe the criminal penalties for refusal violations. However, the penalty language and standards are statutory (see § 501(b) of the Act), and are therefore more appropriately interpreted by the courts.

Administrative Procedures

One respondent objected to § 719.6(c), which states that defenses that the respondent does not set forth in the Answer to a Notice of Violation and Assessment (NOVA) are waived, except for good cause shown. However, it is especially important that this standard administrative law provision be included in the CWCR because the statutory time limit for administrative proceedings is very short (30 days). Interested parties should keep in mind that the provision is not an absolute waiver of defenses—it does permit a respondent to present additional defenses if the Administrative Law Judge (ALJ) determines there is a good reason for doing so.

Several respondents expressed concern about § 719.20. As proposed, it permitted documents filed with the ALJ to be made available immediately upon filing. In response to these comments, this rule revises § 719.20(c)(2) to state that the record for decision, including the NOVA and other documents that are filed in an administrative proceeding, will be available to the public only after the final administrative resolution of a case. Prior to that final resolution, any party may request that the ALJ restrict access to any portion of the record, and the ALJ may so direct. Thus, the revised Part 719 ensures that parties have the opportunity to petition for restricted access to documents or portions of documents, and to have the ALJ rule on such petitions, before the record for decision becomes public.

In addition, respondents expressed concern, pursuant to § 719.20(b) of the CWCR, that the ALJ may transfer previously restricted material to the unrestricted portion of the record once it becomes declassified or unrestricted due to the passage of time. The respondent suggested implementing a new process whereby the ALJ would provide notice and opportunity for objection before making such a move. BXA has not made such a change as the material is already protected. Since material may not be transferred until it becomes declassified or derestricted, the ALJ would have to make inquiries if there were any doubt about the status of the material.

Other respondents requested that § 719.14, regarding hearings, be clarified. BXA changed this section to provide that hearings are closed to the public, except upon good cause shown, and clarified that evidence of settlement discussions is not admissible in any administrative proceeding, and that witnesses may be cross-examined. However, the ALJ continues to have discretion over what evidence is admissible; the federal rules of evidence do not apply.

One respondent asked why § 719.18 sets forth factors to be considered in assessing penalties for reporting- and inspection-related violations but not for import violations. As the revised CWCR provides no administrative process for import violations, the question is moot. However, the answer was that the statutory basis for the two types of violations is different: the Act is the basis for reporting- and inspection-related violations and the IEEPA is the basis for import violations. Only the Act requires specific factors for consideration.

Various other comments requested clarification regarding for whom the Department of Commerce provides legal representation (§ 719.1(a)(2)), service via facsimile (§ 719.8(b)), issuance of subpoenas (719.11(b)), and payment for copies of the hearing transcript (§ 719.14(c)(1)). All these clarifications have been made. BXA also agreed to use the word ''request'' rather than the word ''demand'' in connection with requests for a hearing (§ 719.6). Other comments did not result in any changes. BXA did not extend the time permitted to request a hearing from 15 days to 30 days for refusal violations as the 15-day time period is statutory, and BXA did not delete the requirement for a notice of appearance.

Denial of Export Privileges

Like part 719, part 720 of the CWCR was reorganized and clarified, though not significantly changed. This reorganization was accomplished in lieu of deleting part 720 and organizing denial cases as a third category of cases in part 719 as one respondent suggested. That suggestion was not adopted because a denial of export privileges can only occur after a conviction of crimes outside the scope of the CWCR. The Act requires that respondents have notice and an opportunity for hearing before a denial of export privileges is imposed, and this part sets forth that process. Several respondents noted discrepancies in part 720 of the CWCR regarding the standards for ALJ review and the standards for Under Secretary review. BXA has changed this part to make it clear that anyone may request a hearing before an ALJ, but that there are specific grounds for appeal from the ALJ decision to the Under Secretary. The grounds for appeal include: omission of a necessary finding of fact, a necessary legal conclusion is contrary to law, a prejudicial error occurred, or the decision was arbitrary, capricious, or an abuse of discretion.

Additional Public Comments

There were several public comments that were not addressed in this Supplementary Information section, but those comments were reviewed and incorporated, as appropriate, in the CWCR itself. Additionally, typographical errors and minor clarifications were corrected in this rule.

III. Public Comments on Declaration and Reporting Forms and Handbooks

This section outlines comments received from four respondents regarding the Department of Commerce's **Federal Register** notice (Volume 64, Number 141) of July 21, 1999, announcing an Office of Management and Budget review and request for comments on BXA's proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) for the Chemical Weapons Convention Declaration Forms (OMB Approval Number 0694–0091). Two respondents requested that BXA establish an official record of the public comments received on the forms by including those comments in the supplementary information section of this rule. BXA agrees with this request and provides those comments herein. All typographical errors and minor clarifications noted by the respondents were corrected, and are not addressed here.

Declaration and Report Handbooks for Schedule 1, 2 and 3 Chemicals and Unscheduled Discrete Organic Chemicals

Section 3 ''Guide to Submission of Forms'' of the Declaration and Report Handbooks for Schedules 1, 2 and 3 and Unscheduled Discrete Organic Chemicals. One respondent stated that the ''Guide to Submission of Forms'' complicates industry's ability to decipher its specific obligations. The respondent requested clarification and that BXA ensure the consistency of the final reporting requirements and establish an immediate routine for fulfilling these requirements. Additionally, two respondents stated

that the Guides indicate Form A is ''required, as appropriate'' whereas they believe Form A is optional and should be referred to as ''attached, as appropriate.''

BXA clarified each of the Handbooks'' ''Guide to Submission of Forms'' by including the routine date for submission of annual declarations on past activities and annual reports on export and import activities. However, because initial declarations and reports as well as declarations and reports on past activities from multiple years must be submitted to BXA within 90 days after publication of this rule, BXA is maintaining the specific declaration and report submission requirements as a note to the Guide. In the first revision to the Handbook, BXA will remove these notes from the Guide and the routine filing requirements will be clearly defined.

BXA also revised each of the Handbooks' ''Guide to Submission of Forms'' to reflect that Form A is an attachment and should be submitted as appropriate. Form A should be used to submit any attachment to a declaration or report including, but not limited to, a plant site diagram, a technical description of a Schedule 1 facility or a structural formula drawing of a chemical.

The following clarifies the specific types of declarations and/or reports that must be submitted to BXA within 90 days of the publication of the Chemical Weapons Convention Regulations (CWCR) as well as the calendar years for which this information must be provided:

Schedule 1

—Initial Declaration: Submit a technical description of your facility if you produced in excess of 100 grams aggregate of Schedule 1 chemical in calendar years 1997, 1998, or 1999 (do not submit any production data)
—Annual Declaration on Past Activities: 1997, 1998, and 1999
—Annual Report on Exports and Imports: 1997, 1998, and 1999

Schedule 2

—Initial Declaration: 1994, 1995, and 1996 (For each chemical, you must submit three Forms 2–3—one for each of the calendar years 1994, 1995, and 1996.)
—Initial Report on Exports and Imports: 1996
—Declaration on Chemical Production at any time since January 1, 1946 for Chemical Weapons (CW) Purposes: one-time declaration
—Annual Declaration on Past Activities (production, processing consumption, export and import): 1997, 1998, and 1999
—Annual Report on Exports and Imports: 1997, 1998, and 1999

Schedule 3

—Initial Declaration: 1996
—Initial Report on Exports and Imports: 1996
—Declaration on Chemical Production at any time since January 1, 1946 for Chemical Weapons (CW) Purposes: one-time declaration
—Annual Declaration on Past Activities (production): 1997, 1998, and 1999
—Annual Report on Exports and Imports: 1997, 1998, and 1999

Unscheduled Discrete Organic Chemicals (UDOCs)

—Initial Declaration: 1996
—Annual Declaration on Past Activities (production): 1997, 1998, and 1999

Supplement 1 to the Declaration and Report Handbooks—Latitude and Longitude of the Facility. Three respondents recommended that the plant site should be able to choose and identify a reasonable or prominent location within the declared plant site for declaring the geographical coordinates. All three respondents noted that the center of the plant site may be an inaccessible location. One respondent recommended that if the plant site chooses the location for the geographical coordinates, then it must also describe or identify the point for which the coordinates were provided, such as a control room, an administration building or the front gate. Two respondents recommended that BXA specifically authorize the use of Global Positioning System (GPS) technology as the preferred method of calculating the center point of the facility. Lastly, one respondent that recommended BXA remove Supplement 1 (How to Determine Latitude and Longitude from Topographical Maps) and put this information on the BXA web site.

BXA recognizes that most companies will use a GPS to determine its latitude and longitude and that the OPCW generally uses this method to confirm declared geographical coordinates. BXA notes, however, that a GPS reading is not the only method available for identifying the geographical coordinates of the plant site and therefore will not designate GPS as the preferable method for providing latitude and longitude. Geographical coordinates provided from a GPS reading are acceptable. In addition, upon request BXA will informally assist companies to identify its geographical coordinates. BXA has made minor clarifications to Supplement 1 in response to the comments.

Supplement 3 to the Declaration and Report Handbooks. One respondent noted that Macedonia was missing from the list of country codes which are used for reporting exports and imports. Another respondent noted that Supplement 3 does not include a code for Taiwan. The respondent noted ongoing trade in CWC chemicals between the United States and Taiwan and suggested that BXA adopt a country code. Supplement 3 to the Declaration and Report Handbooks did include Macedonia as The Former Yugoslavia Republic of Macedonia (code: MKD). Consequently, BXA has not made any changes. BXA renamed Supplement No. 3 from ''Country Codes'' to ''Destination Codes.'' BXA also created a new code for Taiwan (TAI) on Supplement Number 3, following the code for Zimbabwe. This new code should be used to declare or report transfers of Schedule 2 and 3 chemicals to or from Taiwan. Transfers to Taiwan of Schedule 2 and 3 chemicals require an End-Use Certificate and may also require an export license under the Export Administration Regulations (EAR) (15 CFR 730–799) or the International Traffic and in Arms Regulations (ITAR) (22 CFR 100–130). Note that effective April 29, 2000, transfers of Schedule 2 chemicals to or from Taiwan are prohibited under the EAR and the CWCR.

Glossary of Terms. Two respondents recommended that BXA create a glossary of common terms for use in completing declaration and report forms. The respondents noted that without a glossary, industry would constantly have to cross-reference the CWCR which is a time-consuming process. BXA created a Glossary of Terms which will be designated as Supplement 1 to each of the four Handbooks. Accordingly, Supplement 2 instructs industry how to determine the latitude and longitude of your plant site, Supplement 3 is the Product Group Codes, and Supplement 4 is the Destination Codes.

Point of contact for declarations, reports and inspections. Two respondents recommended that BXA change the term ''point of contact'' because it may create confusion when referring to individuals with responsibilities for declaration and report questions or inspection notifications. Both respondents recommended use of the terms ''declaration point of contact'' and ''inspection point of contact.'' One respondent also recommended that BXA give the option of listing up to two

additional inspection contacts because one person may not be available 24 hours per day at the phone numbers provided. BXA changed the appropriate forms to differentiate between the two types of point of contacts: declaration and report point of contact and inspection point of contact. BXA also changed the appropriate forms to allow an optional inspection contact to be provided. Due to space constraints on the forms, BXA was unable to allocate space for a third inspection contact as requested by the respondent.

Product Group Codes. One respondent noted that industry may possibly be confused with the requirements for Product Group Codes because these codes combine classification of main activities by feature and function. The respondent recommended that BXA clarify the basis for selecting between the activities and suggested that industry should select the single best descriptor of any activity, whether a literal or functional descriptor, based on the company's representation of the activity. BXA has changed Form 2–2 (question 2–2.5), Form 3–2 (question 3–2.5) and the UDOC Form (question UDOC.6) to alleviate any possible confusion over what product group codes should be declared to describe the activities at the plant or plant site. Product group codes describe the type of ultimate or final products that are produced, processed or consumed at the plant or plant site. The forms have been changed to require that you provide one or more Standard International Trade Classification (SITC) Code that describes the type of ultimate products that are manufactured at the plant or plant site. If a plant site chooses to provide only one product group code, it will be accepted by BXA.

Plant Site and/or Plant names. One respondent noted that the forms for Schedules 1, 2 and 3 as well as for UDOCs state that BXA will assign a ''unique name'' to a declared plant site and/or plant. The respondent recommended that BXA clarify that a plant site and/or plant will have the same ''unique name'' across the different Schedules of Chemicals as well as for UDOCs, so there is no confusion and multiple ''unique names'' are not assigned. BXA believes the respondent has misinterpreted the instructions for assigning a ''unique name'' for the plant site and/or plant. Each company assigns the ''unique name'' to its plant site and plants, not BXA. Industry should be careful to assign the same ''unique name'' to its plant site and plants regardless of the Schedule of Chemicals under which the declaration or report is being submitted. Upon receipt of a declaration or report, BXA will assign a ''unique code'' to each plant site and all plants associated with the plant site. These codes are referred to as the ''U.S. Code,'' which for plant sites, consists of the letters ''USC'' followed by five digits (e.g., USC00123), and plants will have a three-digit extension to the plant site code (e.g., USC00123–002). Industry should be careful to provide the same location and description of the plant site and plants to ensure that BXA will not mistakenly assign multiple codes. BXA will inform industry in writing of its relevant U.S. Codes so that it will be easier to identify the plant sites and plants during discussions as well as for submission of subsequent declarations or reports and recordkeeping purposes.

Confidential Business Information (CBI). One respondent noted that none of the forms contains a question or a check box for companies to indicate if Confidential Business Information (CBI) is included in the declaration or report. The respondent noted that companies should have the ability to inform BXA of which information it considers to be CBI and recommended that BXA change the forms to allow for the designation of CBI. CBI is governed by the provisions of part 718 of the CWCR. Supplement No. 1 to part 718 identifies those fields on each form which contain CBI as defined by the Act. If a company seeks additional CBI protection for information in fields which are not listed in part 718 of the CWCR, it should provide a detailed explanation describing why release of the information contained in those fields is a trade secret and should not be released to the public. This explanation should be attached to Form A.

Create a form to report undeclared status. One respondent recommended that BXA create a form for industry to report that it has ceased its declarable activities and is in an ''undeclared status'' capacity. It would be an additional burden on industry to submit a form to BXA to report its ''undeclared status.'' If BXA does not receive a declaration or report from a company that was previously declared, BXA will conclude that the company has changed its status.

Add gray shading to forms. One respondent recommended that BXA add gray shading on the top of all relevant forms where the plant site and plant information is to be identified. The respondent noted that the gray shading features help it to identify what information must be completed. BXA has added the gray shading to all relevant forms.

Schedule 2 Forms

Schedule 2 Form 2–2—Activities of the Plant. Two respondents requested that question 2–2.7 on Form 2–2 be changed to add a separate selection for the activity type ''other'' and to also include the question ''Is this plant dedicated to Schedule 2 activities? Yes/No.'' BXA deleted the word ''exclusively'' from question 2–2.7 and added a separate selection for activity type ''other.'' BXA did not include the question recommended by the respondent because it is not necessary.

Schedule 2 Form 2–2—Definition of Nameplate and Design Capacities. Two respondents recommended that the definitions for ''nameplate capacity'' and ''design capacity'' be clarified. One respondent noted that industry's interpretation of these two definitions is synonymous and the other respondent noted that nameplate capacity has many different industrial meanings. One respondent also noted that the production capacity was requested for all Schedule 2 chemicals at the plant that were produced, processed, and/or consumed above the applicable threshold but that the instructions were unclear if the capacity should only be provided for chemicals that were produced. BXA acknowledges that industry may have different definitions for ''nameplate capacity.'' However, for purposes of Schedule 2 declarations, the nameplate capacity definition remains unchanged and the design capacity definition is clarified by stating that it is the corresponding theoretically calculated product output, without test data or other supportive plant specific information. BXA also clarified the instruction to question 2–2.8 to state that you identify all Schedule 2 chemicals produced, processed or consumed above the applicable threshold, but that you only provide the production capacity and calculation method for those chemicals which you produced.

Schedule 2 Annual Declarations on Anticipated Activities and Declarations on Additionally Planned Activities. One respondent noted that it may not be possible to be certain about the starting and ending dates for production, processing or consumption of a Schedule 2 chemical as required in the Annual Declaration on Anticipated Activities and, therefore, requested that BXA clarify the requirement for approximate, not actual, start and end dates for submission of a Declaration on Additionally Planned Activities. The respondent further requested that BXA clarify that there is not a requirement for submitting a second Declaration on

Anticipated Activities. Lastly, the respondent noted the long lead-time for processing Schedule 2 and Schedule 3 Declarations on Anticipated Activities and recommended BXA to shorten the time frame for submission of the declaration from 21 days to 10 days.

For the Annual Declaration on Anticipated Activities, the time periods when declared activities are anticipated to occur should be as precise as possible, but should in any case be accurate to within a three-month period. The declaration requirement in relation to these periods does not necessarily mean that individual planned production, processing, or consumption campaigns need to be declared, rather this three-month period provides a flexible framework for declarations and will reduce the number and frequency of Declarations on Additionally Planned Activities. Since the requirement for declaring the anticipated time periods for production, processing or consumption is already an ''approximate'' projection coupled with the three-month period for completion of an activity, BXA does not believe it is necessary or appropriate to state that additionally planned time periods are ''approximate.'' BXA did not add a clarification to Form 2–3C to state that only one Declaration on Anticipated Activities is required to be submitted. There may be situations in which a company submitted a Declaration on Additionally Planned Activities to declare new or changed anticipated production periods and it has further changes to those production periods which are not covered by the three-month period. BXA believes this will rarely occur, if ever. BXA has changed Form 2–3C to include the types of changes that will require a Declaration on Additionally Planned Activities. As previously noted, BXA has changed the time-frame for submission of the Declaration on Additionally Planned Activities from 21 days to 15 days.

Schedule 3 Forms

General changes to Schedule 3 Forms. One respondent recommended that Form 3–3 be revised to require identification of the year being reported. Two respondents recommended that an instruction be added before question 3–3.1 to clarify the type of declaration or report to which the question refers. Both respondents also recommended that new types of ''purposes of production'' be added to Questions 3–3.1b and 3–3.2b on Form 3–3, including inter-company transfers, as well as transfers to the agricultural, manufacturing, construction, pharmaceutical, and service or other industries. BXA has made the instructional clarifications to Form 3–3. However, we did not change Form 3–3 to require that the reporting years be identified because this information is indicated on the Certification Form and only one Form 3–3 per chemical, per year is included in the declaration package. Conversely, for the Schedule 2 Initial Declaration, three Forms 2–3 must be submitted for each chemical for calendar years 1994, 1995, and 1996. Therefore, there is a clear need for the Schedule 2–3 Form to identify the year of the data being reported. Separate Schedule 3 declarations must be submitted for the Initial Declaration (1996) and the Annual Declarations on Past Activities for calendar years 1997, 1998, and 1999. The Certification Form for each of these declarations will identify the year of the data declared. You cannot combine data from several years into one declaration. This procedure is the same for Initial Reports on Exports and Imports and Annual Reports on Exports and Imports. BXA changed the purpose of production from ''transfer to other company'' to ''transfer to other industry.'' BXA believes this change broadens the scope of the purposes to cover all transfers.

Section 3 to the Schedule 3 Handbook. One respondent recommended that Section 3 of the Schedule 3 Handbook outline the mixtures' thresholds to assist industry in complying with its obligations. BXA has added the mixture thresholds to Section 3 of the Schedule 3 Handbook as well as to the relevant sections of the Schedule 1 and 2 Handbooks. BXA also included the exemptions for UDOCs in the UDOC Handbook.

Delete Structural Formula from Form 3–3. One respondent noted that Form 3–3 unnecessarily includes a check box to indicate that a structural formula is attached to the declaration or report. The respondent noted that the list of Schedule 3 chemicals is well known and identifiable and a structural formula would, therefore, not be required. BXA has changed Form 3–3 to make the requirement optional for submission of a Schedule 3 structural formula.

Exports and Imports of Schedule 2 and Schedule 3 Chemicals. One respondent requested that Forms 2–3B and 3–3 address the applicable threshold mixture for the export and import of Schedule 2 and Schedule 3 mixtures. The respondent also requested that Figure A on Forms 2–3B and 3–3 distinguish between the applicable threshold for declaring and reporting the chemical, including the mixture exemption, versus exporting or importing the chemical. The respondent further recommended that Forms 2–3B and 3–3 address the licensing or End-Use Certificate requirements for exports to non-States Parties.

BXA did not reference the End-Use Certificate or license requirements on the forms for the export of Schedule 2 or Schedule 3 chemicals to non-States Parties because these requirements are not applicable to declarations or reports. Such requirements are contained in § 745.2 of the EAR, which states in part that U.S. exporters must obtain an End-Use Certificate prior to the export of a Schedule 2 or 3 chemical to a non-State Party and to submit the Certificate to BXA. This is in addition to, but separate from, any license requirement under the EAR for such exports. BXA also did not change Figure A on Forms 2–3B and 3–3 because of space constraints. However, BXA created new tables in Section 3 of the Schedule 2 and Schedule 3 Report and Declaration Handbooks that will assist industry in determining the different thresholds that apply for declaration and reporting requirements for Schedule 2 and Schedule 3 chemicals.

Unscheduled Discrete Organic Chemicals Forms

General changes to the declaration form for Unscheduled Discrete Organic Chemicals (UDOCs). Two respondents requested that BXA clarify question UDOC.7 of the UDOC Form or change it to ask for an ''estimate'' or the ''approximate'' number of plants on the plant site producing UDOCs, including all PSF chemicals, instead of asking for the actual number of plants. One respondent requested a clarification to question UDOC.9 to request the ''approximate'' number of PSF plants at the plant site that produced an individual PSF chemical over 30 metric tons. This respondent also requested a clarification to question UDOC.10.1–10.4 to indicate that the ''approximate'' number of PSF plants whose aggregate production of all PSF chemicals falls within each of the PSF-chemical production ranges.

BXA changed UDOC Form questions UDOC.7 and UDOC.10.1–10.4 to require the ''approximate'' number of UDOC plants (including PSF plants) and the ''approximate'' aggregate production of all PSF chemicals, respectively. BXA did *not* change question UDOC.9 to require the ''approximate'' number of PSF plants that produced an ''individual'' PSF chemical over 30 metric tons. Rather BXA changed this question to require the ''exact'' number of PSF plants at the plant site that produced an individual PSF chemical over 30 metric tons because Part IX , paragraph 6, of the Convention's

Verification Annex states ''* * * specify the number of PSF-plants within the plant site and include information on the approximate aggregate amount of production for PSF-chemicals produced by each PSF-plant in the previous calendar year expressed in ranges * * *'' BXA believes that for PSF plants you must identify the exact number of plants on your plant site, but you can provide the approximate amount of PSF-chemicals produced by these plants.

Section 3—Exemptions—Unscheduled Discrete Organic Chemicals Handbook. Two respondents noted that the Unscheduled Discrete Organic Chemicals (UDOCs) Handbook did not appropriately list the exemptions from declaration requirements and requested that BXA include all of the exemptions that are listed in the CWCR. To assist industry in determining its obligations for UDOC declarations, BXA is listing all of the UDOC exemptions in Section 3 of the UDOC Handbook that are listed in part 715 the CWCR. BXA reminds industry that where there are any discrepancies between the requirements of the Handbooks and the CWCR, the CWCR prevails.

Miscellaneous issues

Assistance on questions and chemical determinations. Two respondents that requested BXA accept electronic requests for assistance or chemical determinations via e-mail in addition to telephone and fax requests. Both respondents noted that an electronic mechanism for processing requests will enhance BXA's flexibility and responsiveness to assist industry. One respondent requested BXA to provide a chemical determination even if all of the required information was not submitted. Lastly, one respondent requested BXA to establish a provision or a clarification to § 711.4 of the CWCR in which any assistance given to a company by BXA that turns out to be incorrect will not result in an enforcement action against the company and should be considered release from any penalty. BXA agrees with the respondents' request for an electronic means through which to seek assistance and to submit chemical determinations, and has revised § 711.4 appropriately. BXA also revised § 711.4 to identify the type of information that should be submitted for a chemical determination and established a provision for allowing facilities to explain why there are ambiguities or deficiencies that preclude them from supplying this information. BXA will make every effort to make a determination based upon the submitted information, and only if this is not possible will BXA return the request and identify what additional information must be provided in order to complete the chemical determination. For enforcement purposes, only a written response from BXA is binding. Written advice applies only to the person or persons to whom it is addressed.

Identification of the Owner and Operator of the facility. The Department of State requested BXA to provide information on the owner and operator, occupant or agent in charge of a facility or plant site so that it can inform the owner and operator, occupant or agent in charge in writing of an impending inspection as required by section 304 of the Act. Section 304 of the Act requires that the USNA notify, in writing, the owner and the operator, occupant, or agent in charge of the facility. In order to fulfill this legal requirement, BXA has changed the appropriate forms and forms instructions to obtain the telephone and facsimile numbers for both the owner and the operator, occupant, or agent in charge of a facility.

Chemicals Produced for Chemical Weapons Purposes. One respondent recommended that Question 2–4.2 on Form 2–4 and Question 3–4.2 on Form 3–4 should be revised to require the identification of the final chemical weapon (CW) product, if known, or the Scheduled Chemical name, if known. The respondent cited difficulties industry may have in identifying the final CW product because of the confidential and proprietary nature of commercial production records, availability of records, and terms of mergers, acquisition or internal restructuring. Forms 2–4 and 3–4 (questions and instructions) already instruct industry to provide the final product or chemical, if this information is known. Therefore, no changes were made to these forms.

IV. Part-by-Part Analysis

The Chemical Weapons Convention Regulations (CWCR) will include 13 parts, as follows:

Part 710—General Information and Overview of the CWCR. This part includes general information about the Convention, definitions of terms used in the CWCR, an overview of Scheduled chemicals and examples of affected industries. States Parties to the Convention are listed in Supplement No. 1 to part 710 of the CWCR. This part also briefly describes the declaration, reporting, and inspection provisions of the Convention.

Part 711—General Information Regarding Declaration, Reporting, and Notification Requirements. This part provides an overview of declaration and other reporting requirements, who is responsible for declarations and reports, and where to get assistance, forms and handbooks. The Convention requires an initial declaration and report and subsequent annual declarations and reports for activities involving specified amounts of certain chemicals. If, after reviewing parts 712 through 715, you determine that you have declaration and/or reporting requirements, you may obtain the appropriate forms by contacting the Bureau of Export Administration (BXA). Note that in instances where a declaration or report is required, the operator of a facility required to declare or report under the CWCR is responsible for the submission of all required forms in accordance with all applicable provisions of the CWCR. Also note that the Act defines and provides for the protection of confidential business information obtained pursuant to the CWCR.

Part 712—Activities involving Schedule 1 Chemicals. This part prohibits imports of Schedule 1 chemicals from non-States Parties and imports from States Parties for purposes other than research, medical, pharmaceutical, or protective purposes. (Part 712 also cross-references similar export restrictions on Schedule 1 chemicals set forth in the Export Administration Regulations.) This part also describes declaration and other reporting requirements for activities involving Schedule 1 chemicals, including production, use (consumption), exports, imports, domestic transfers and storage of any quantity of Schedule 1 chemicals. This part provides that facilities that produce more than 100 grams aggregate of Schedule 1 chemicals in a calendar year are considered Schedule 1 ''declared'' facilities. Facility-specific information on ''declared facilities'' will be forwarded to the Organization for the Prohibition of Chemical Weapons (OPCW) and all Schedule 1 ''declared'' facilities will be subject to routine on-site inspection by the OPCW. Finally, this part requires advance notification of all exports and imports of Schedule 1 chemicals to or from other States Parties, and planned changes related to the initial declaration. Note that BXA published an interim rule in the **Federal Register** on May 18, 1999 (64 FR 27138), amending the Export Administration Regulations (EAR) to implement the export control provisions of the CWC that are subject to Department of Commerce jurisdiction. The EAR also require prior notification of all exports

of Schedule 1 chemicals and annual reports of exports of such chemicals. Schedule 1 chemicals are included in Supplement No. 1 to this part.

Part 713—Activities involving Schedule 2 Chemicals. This part prohibits imports of any Schedule 2 chemical on or after April 29, 2000, from any destination that is not a party to the Convention, except for mixtures containing 10 percent or less of a Schedule 2 chemical. (Part 713 cross-references similar export restrictions on Schedule 2 chemicals in the EAR.) This part also describes declaration and other reporting requirements for activities involving Schedule 2 chemicals, including production of any amount of a Schedule 2 chemical at any time since January 1, 1946, for chemical weapons purposes; production, processing, or consumption of a Schedule 2 chemical in excess of specified quantities; and exports and imports of a Schedule 2 chemical in excess of specified quantities. Further, this part requires declarations on anticipated production, processing, or consumption in the next calendar year of a Schedule 2 chemical in excess of specified quantities as well as certain additionally planned production, processing or consumption activities. Declaration and reporting requirements apply also to Schedule 2 chemicals contained in mixtures. Note, however, that the quantity of a Schedule 2 chemical contained in a mixture must be counted for declaration and report purposes only if the concentration of the Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent.

If the Schedule 2 chemical in a mixture equals or exceeds the stated percentage concentration, you must count only the amount (weight) of the Schedule 2 chemical in the mixture, not the total weight of the mixture. Schedule 2 chemicals are included in Supplement No. 1 to this part.

Part 714—Activities involving Schedule 3 Chemicals. This part describes declaration and other reporting requirements for activities involving Schedule 3 chemicals, including production of any amount of a Schedule 3 chemical at any time since January 1, 1946, for chemical weapons purposes; production of a Schedule 3 chemical in excess of specified quantities; and exports and imports of a Schedule 3 chemical in excess of specified quantities. Further, this part requires declaration of anticipated production in the next calendar year of a Schedule 3 chemical in excess of specified quantities as well as certain additionally planned production activities. Declaration and reporting requirements apply also to Schedule 3 chemicals contained in mixtures. Note, however, that the quantity of a Schedule 3 chemical contained in a mixture must be counted for declaration and reporting purposes only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent. If the mixture contains 80 percent or more of the Schedule 3 chemical, you must count only the amount (weight) of the Schedule 3 chemical contained in the mixture, not the total weight of the mixture. Schedule 3 chemicals are included in Supplement No. 1 to this part.

Part 715—Activities involving Unscheduled Discrete Organic Chemicals (UDOCs). This part describes declaration requirements for the production of UDOCs in excess of specified quantities. However, note that declarations are not required for certain chemicals and chemical mixtures, including those produced through a biological or bio-mediated process; polymers and oligomers; certain synthetic mixtures of organic chemicals; unscheduled discrete organic chemicals produced coincidentally as byproducts of a manufacturing or production process that are not isolated or captured for use or sale during the process and are routed to, or escape from, the waste stream of a stack, incinerator, or wastewater treatment system or any other waste stream; or products from the refining of crude oil, including sulfur-containing crude oil.

Part 716—Inspections. This part implements the inspection provisions of the Convention, consistent with the Act. It describes notification procedures, the responsibilities of the Department of Commerce as host and escort for inspections, types of inspections, and scope and conduct of inspections. The United States National Authority (USNA) will provide written notification to the owner and operator, occupant or agent in charge of the premises to be inspected. BXA will provide Host Team notice to the inspection point of contact identified in declaration forms submitted by the facility. This part also describes the duration and frequency of inspections, and the role of a facility agreement. A facility agreement is a site-specific agreement between the U.S. Government and the Organization for the Prohibition of Chemical Weapons. The purpose for a facility agreement is to define the inspection scope and procedures for a given facility under the Convention and to facilitate future inspections of the facility by enhancing efficiency and predictability and reducing preparation costs for the facility. The U.S. Government and the OPCW will begin negotiating such facility agreements during the initial inspections of facilities that require facility agreements pursuant to the Convention and Act, and for additional declared facilities that request a facility agreement pursuant to the Act. Supplement Nos. 2 and 3 include model facility agreements for Schedule 1 and Schedule 2 facilities, respectively.

Part 717—Clarification and challenge inspection procedures. This part describes clarification procedures under the Convention and the scope and purpose of on-site challenge inspections. On-site challenge inspections may be conducted at any facility or location in the United States for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the provisions of the CWC. The USNA will provide written notification of a challenge inspection to the owner and operator, occupant or agent in charge of the premises. The Department of Commerce will provide Host Team notification to the inspection point of contact of a declared facility, or to the owner or occupant of an facility that has not been declared under the declaration requirements of the Convention.

Part 718—Confidential business information (CBI). This part sets forth the identification and treatment of CBI as defined in the Act.

Part 719—Enforcement. This part sets forth the civil and criminal penalties and enforcement procedures that apply to violations of the reporting and inspections requirements and provisions relating to the importation of Schedule 1 and 2 chemicals.

Part 720—Denial of export privileges. This part sets forth a penalty, denial of export privileges, that applies to persons convicted under 18 U.S.C. 229.

Part 721—Inspection of records and recordkeeping. This part includes the recordkeeping requirements of the CWCR, including retention and reproduction requirements.

Part 722—Interpretations. This part is reserved for future use. It will provide explanations and examples for declaration requirements and other interpretations to guide industry and other U.S. persons in determining obligations under the CWCR.

Comments on this interim rule must be submitted to BXA by January 31, 2000. Send comments to: the Regulatory Policy Division, Bureau of Export Administration, Room 2705, 14th Street and Pennsylvania Ave., N.W., Washington, D.C. 20230.

Rulemaking Requirements

1. This interim rule has been determined to be significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule revises an existing collection of information requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), which the Office of Management and Budget has approved and reinstated under OMB Collection No. 0694–0091 (December 1999). The public reporting burdens for the new collections of information are estimated to average 10.6 hours for Schedule 1 Chemicals, 11.9 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3 for Unscheduled Discrete Organic Chemicals, and .17 hours for Schedule 1 notifications. It is estimated to take approximately 1.18 hours to complete each of the nine Schedule 1 forms, 1.19 hours for each of the ten Schedule 2 forms, .36 hours for each of the seven Schedule 3 forms, and 1.33 hours for each of the four Unscheduled Discrete Organic Chemicals forms. The burden hours associated with completing a particular type of declaration or report package (e.g., Schedule 1 initial declaration, Schedule 2 annual declaration on past activities) will change depending on the number of forms required to comply with the specific declaration or report requirement. Table 1 to Parts 712, 713, 714, and 715 of the CWCR identifies the specific forms which must be included in each type declaration or report package. The Declaration and Report Handbooks include a ''Guide to Submission of Forms'' which also identifies the specific forms that must be included in a declaration or report package. To calculate the number of hours it takes to complete a specific type of declaration or report, multiply the number of forms required for a specific declaration or report type by the number of hours estimated to complete each form.

BXA will use the information contained in declarations and reports submitted by U.S. persons to compile the U.S. National Industrial Declaration in order to meet our obligations under the Chemicals Weapons Convention. BXA will submit the U.S. National Industrial Declaration to the United States National Authority who will forward the Declaration to the Organization on the Prohibition of Chemical Weapons as required by the Convention.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. BXA completed a Cost Benefit Analysis (CBA) pursuant to Executive Order 12866 and an Initial Regulatory Flexibility Analysis (IRFA) pursuant to 5 U.S.C. 603 for the proposed rule, and requested comments from the public. BXA received no comments from the public on either the CBA or the IRFA. Therefore, BXA is using the analysis of the IRFA and the CBA, with certain edits to make it consistent with this interim rule, for the Final Regulatory Flexibility Analysis (FRFA) required by 5 U.S.C. 604. A summary of the FRFA and CBA follows. The CBA and the FRFA are available on BXA's website at www.cwc.gov. Copies of the CBA and the complete FRFA may be obtained from the Bureau of Export Administration Freedom of Information Officer, Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 6883, Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230 or by calling (202) 482–0500.

The FRFA identifies the Small Business Administration's (SBA) small business size standards, in terms of number of employees, for ''Chemicals and Allied Products'' by four-digit Standard Industrial Classification (SIC) codes. These SBA standards indicate that a ''small business'' in the chemical industry can cover a range of sizes, from up to 500 employees to up to 1,000 employees. The FRFA states that BXA does not have information on which SIC code categories will include companies that are subject to the declaration, reporting, notification or inspection requirements of this rule, and therefore, BXA is unable to estimate with certainty the number of small businesses that will be affected by this rule. BXA anticipates some 2,000 firms will be affected by the CWCR, and many of them may have no more than 500 employees, thus falling under the SBA generic definition of ''small business.''

The FRFA and the CBA report BXA's estimate that compliance with the requirements of this rule will total approximately $377,654 to gather and maintain relevant data and to fill out declarations, reports and notifications, and approximately $2,166,880 for inspections. The average cost of an inspection, based on the assumption that 40 facilities will undergo inspections each year, is $54,150. The FRFA and CBA describe the expected benefits to the United States of implementing the requirements of the Convention, including increased national and economic security.

The FRFA explains that BXA's discretion in formulating the declaration, reporting and notification requirements of this rule is limited by the Convention. The OPCW has issued forms for States Parties to use for declarations. In drafting the CWCR requirements and the forms for U.S. persons to use, BXA has consistently interpreted the Convention's requirements as narrowly as possible to ensure that only information that the United States National Authority must declare to the OPCW is to be submitted to BXA. Other States Parties, such as Canada, have imposed much broader reporting requirements on their industries, with the government taking on the responsibility of determining which of the information collected must be declared to the OPCW. In addition, certain declaration requirements of the Convention are subject to interpretation by States Parties. Until the Conference of States Parties establishes clear rules for these requirements, States Parties may use their ''national discretion'' to implement them. ''National discretion'' generally means a reasonable interpretation of the requirement. For requirements currently subject to ''national discretion,'' BXA has adopted in this rule the minimum requirements consistent with a reasonable reading of the Convention, keeping in mind its purposes and objectives.

List of Subjects

15 CFR Part 710

Chemicals, Exports, Foreign Trade, Imports, Treaties.

15 CFR Part 711

Chemicals, Confidential business information, Reporting and recordkeeping requirements.

15 CFR Part 712

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

15 CFR Part 713

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

15 CFR Part 714

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

15 CFR Part 715

Chemicals, Exports, Foreign Trade, Imports, Reporting and recordkeeping requirements.

15 CFR Part 716

Chemicals, Confidential business information, Reporting and recordkeeping requirements, Search warrants, Treaties.

15 CFR Part 717

Chemicals, Confidential business information, Reporting and recordkeeping requirements, Search warrants, Treaties.

15 CFR Part 718

Confidential business information, Reporting and recordkeeping requirements.

15 CFR Part 719

Administrative proceedings, Exports, Imports, Penalties, Violations.

15 CFR Part 720

Penalties, violations.

15 CFR Part 721

Reporting and recordkeeping requirements.

1. In 15 CFR, Chapter VII, Subchapter B is designated as Chemical Weapons Convention Regulations.

2. In 15 CFR, Subchapter B, Parts 710 through 722 are added to read as follows:

PART 710—GENERAL INFORMATION AND OVERVIEW OF THE CHEMICAL WEAPONS CONVENTION REGULATIONS (CWCR)

Sec.

710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWCR).
710.2 Scope of the CWCR.
710.3 Purposes of the Convention and CWCR.
710.4 Overview of scheduled chemicals and examples of affected industries.
710.5 Authority.
710.6 Relationship between the Chemical Weapons Convention Regulations and the Export Administration Regulations.

Supplement No. 1 to Part 710—States Parties to the Convention on the Prohibition of the Development, production, Stockpiling and Use of Chemical Weapons and on Their Destruction

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 710.1 Definitions of terms used in the Chemical Weapons Convention Regulations (CWCR).

The following are definitions of terms used in the CWCR (parts 710 through 722 of this subchapter, unless otherwise noted):

Act (The): Means the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701 *et seq.*).

Bureau of Export Administration (BXA). Means the Bureau of Export Administration of the United States Department of Commerce, including the Office of Export Administration and the Office of Export Enforcement.

By-product. Means any chemical substance or mixture produced without a separate commercial intent during the manufacture, processing, use or disposal of another chemical substance or mixture.

Chemical Weapon. Means the following, together or separately:

(1) A toxic chemical and its precursors, except where intended for purposes not prohibited under the Chemical Weapons Convention (CWC), provided that the type and quantity are consistent with such purposes;

(2) A munition or device, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in paragraph (1) of this definition, which would be released as a result of the employment of such munition or device; or

(3) Any equipment specifically designed for use directly in connection with the employment of munitions or devices specified in paragraph (2) of this definition.

Chemical Weapons Convention (CWC or Convention). Means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, and its annexes opened for signature on January 13, 1993.

Chemical Weapons Convention Regulations (CWCR). Means the regulations contained in 15 CFR parts 710 through 722.

Consumption. Consumption of a chemical means its conversion into another chemical via a chemical reaction. Unreacted material must be accounted for as either waste or as recycled starting material.

Declaration or report form. Means a multi-purpose form due to BXA regarding activities involving Schedule 1, Schedule 2, Schedule 3, or unscheduled discrete organic chemicals. Declaration forms will be used by facilities that have data declaration obligations under the CWCR and are ''declared'' facilities whose facility-specific information will be transmitted to the OPCW. Report forms will be used by entities that are ''undeclared'' facilities or trading companies that have limited reporting requirements for only export and import activities under the CWCR and whose facility-specific information will not be transmitted to the OPCW. Information from declared facilities, undeclared facilities and trading companies will also be used to compile U.S. national aggregate figures on the production, processing, consumption, export and import of specific chemicals. See also related definitions of declared facility, undeclared facility and report.

Declared facility or plant site. Means a facility or plant site required to complete data declarations of activities involving Schedule 1, Schedule 2, Schedule 3, or unscheduled discrete organic chemicals above specified threshold quantities. Only certain declared facilities and plant sites are subject to routine inspections under the CWCR. Plant sites that produced either Schedule 2 or Schedule 3 chemicals for CW purposes at any time since January 1, 1946, are also ''declared'' plant sites. However, such plant sites are not subject to routine inspection if they are not subject to declaration requirements because of past production, processing or consumption of Scheduled or unscheduled discrete organic chemicals above specified threshold quantities.

Discrete organic chemical. Means any chemical belonging to the class of chemical compounds consisting of all compounds of carbon, except for its oxides, sulfides, and metal carbonates, identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, if assigned.

Domestic transfer. Means, with regard to declaration requirements for Schedule 1 and chemicals under the CWCR, any movement of any amount of Schedule 1 chemical outside the geographical boundary of a facility in the United States to another destination in the United States, for any purpose. Domestic transfer includes movement between two divisions of one company or a sale from one company to another. Note that any movement to or from a facility outside the United States is considered an export or import for reporting purposes, not a domestic transfer.

EAR. Means the Export Administration Regulations (15 CFR parts 730 through 799).

Explosive. Means a chemical (or a mixture of chemicals) that is included in Class 1 of the United Nations Organization hazard classification system.

Facility. Means any plant site, plant or unit.

Facility agreement. Means a written agreement or arrangement between a State Party and the Organization relating

to a specific facility subject to on-site verification pursuant to Articles IV, V, and VI of the Convention.

Host Team. Means the U.S. Government team that accompanies the inspection team from the Organization for the Prohibition of Chemical Weapons during a CWC inspection for which the regulations in this subchapter apply.

Host Team Leader. Means the representative from the Department of Commerce who heads the U.S. Government team that accompanies the Inspection Team during a CWC inspection for which the regulations in this subchapter apply.

Hydrocarbon. Means any organic compound that contains only carbon and hydrogen.

Impurity. Means a chemical substance unintentionally present with another chemical substance or mixture.

Inspection Team. Means the group of inspectors and inspection assistants assigned by the Director-General of the Technical Secretariat to conduct a particular inspection.

ITAR. Means the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

Organization for the Prohibition of Chemical Weapons (OPCW). Means the international organization, located in The Hague, the Netherlands, that administers the CWC.

Person. Means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

Plant. Means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as:

(1) Small administrative area;

(2) Storage/handling areas for feedstock and products;

(3) Effluent/waste handling/treatment area;

(4) Control/analytical laboratory;

(5) First aid service/related medical section; and

(6) Records associated with the movement into, around, and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate.

Plant site. Means the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, and includes common infrastructure, such as:

(1) Administration and other offices;

(2) Repair and maintenance shops;

(3) Medical center;

(4) Utilities;

(5) Central analytical laboratory;

(6) Research and development laboratories;

(7) Central effluent and waste treatment area; and

(8) Warehouse storage.

Precursor. Means any chemical reactant which takes part, at any stage in the production, by whatever method, of a toxic chemical. The term includes any key component of a binary or multicomponent chemical system.

Processing. Means a physical process such as formulation, extraction and purification in which a chemical is not converted into another chemical.

Production. Means the formation of a chemical through chemical reaction.

Purposes not prohibited by the CWC. Means the following:

(1) Any peaceful purpose related to an industrial, agricultural, research, medical or pharmaceutical activity or other activity;

(2) Any purpose directly related to protection against toxic chemicals and to protection against chemical weapons;

(3) Any military purpose of the United States that is not connected with the use of a chemical weapon and that is not dependent on the use of the toxic or poisonous properties of the chemical weapon to cause death or other harm; or

(4) Any law enforcement purpose, including any domestic riot control purpose and including imposition of capital punishment.

Report. Means information due to BXA on exports and imports of Schedule 1, Schedule 2 or Schedule 3 chemicals above applicable thresholds. Such information is included in the national aggregate declaration transmitted to the OPCW. Facility-specific information is *not* included in the national aggregate declaration. Note: This definition does not apply to parts 719 and 720 (see § 719.1) of this subchapter.

Schedules of Chemicals. Means specific lists of toxic chemicals, groups of chemicals, and precursors contained in the CWC. See Supplements No. 1 to parts 712 through 714 of this subchapter.

State Party. Means a country for which the CWC is in force. See Supplement No. 1 to this part.

Storage. For purposes of Schedule 1 chemical reporting, means any quantity that is not accounted for under the categories of production, export, import, consumption or domestic transfer.

Synthesis. Means production of a chemical from its reactants.

Technical Secretariat. Means the organ of the OPCW charged with carrying out administrative and technical support functions for the OPCW, including carrying out the verification measures delineated in the CWC.

Toxic Chemical. Means any chemical which, through its chemical action on life processes, can cause death, temporary incapacitation, or permanent harm to humans or animals. The term includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions, or elsewhere. Toxic chemicals that have been identified for the application of verification measures are in schedules contained in Supplements No. 1 to parts 712 through 714 of this subchapter.

Trading company. Means any person involved in the export and/or import of scheduled chemicals in amounts greater than specified thresholds, but not in the production, processing or consumption of such chemicals in amounts greater than threshold amounts requiring declaration. If such persons exclusively export or import scheduled chemicals in amounts greater than specified thresholds, they are subject to reporting requirements but are not subject to routine inspections.

Transfer. See domestic transfer.

Undeclared facility or plant site. Means a facility or plant site that is not subject to declaration requirements because of past or anticipated production, processing or consumption involving scheduled or unscheduled discrete organic chemicals above specified threshold quantities. However, such facilities and plant sites may have a reporting requirement for exports or imports of such chemicals.

Unit. Means the combination of those items of equipment, including vessels and vessel set up, necessary for the production, processing or consumption of a chemical.

United States. Means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States, and includes all places under the jurisdiction or control of the United States, including any of the places within the provisions of paragraph (41) of section 40102 of Title 49 of the United States Code, any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (1) and (37), respectively, of section 40102 of Title 49 of the United States Code, and any vessel of the

United States, as such term is defined in section 3(b) of the Maritime Drug Enforcement Act, as amended (section 1903(b) of Title 46 App. of the United States Code).

United States National Authority (USNA). Means the Department of State serving as the national focal point for the effective liaison with the Organization for the Prohibition of Chemical Weapons and other States Parties to the Convention and implementing the provisions of the Chemical Weapons Convention Implementation Act of 1998 in coordination with an interagency group designated by the President consisting of the Secretary of Commerce, Secretary of Defense, Secretary of Energy, the Attorney General, and the heads of other agencies considered necessary or advisable by the President, or their designees. The Secretary of State is the Director of the USNA.

Unscheduled chemical. Means a chemical that is not contained in Schedule 1, Schedule 2, or Schedule 3 (see Supplements No. 1 to parts 712 through 714 of this subchapter).

Unscheduled Discrete Organic Chemical (UDOC). Means any ''discrete organic chemical'' that is not contained in the Schedules of Chemicals (see Supplements No. 1 to parts 712 through 714 of this subchapter) and subject to the declaration requirements of part 715 of this subchapter. Unscheduled discrete organic chemicals subject to declaration under this subchapter are those produced by synthesis that are isolated for use or sale as a specific end-product.

You. The term ''you'' or ''your'' means any person (see also definition of ''person''). With regard to the declaration and reporting requirements of the CWCR, ''you'' refers to persons that have an obligation to report certain activities under the provisions of the CWCR.

§ 710.2 Scope of the CWCR.

The Chemical Weapons Convention Regulations (parts 710 through 722 of this subchapter), or CWCR, implement certain obligations of the United States under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, known as the CWC or Convention.

(a) *Persons and facilities subject to the CWCR.* (1) The CWCR declaration, reporting, and inspection requirements apply to all persons and facilities located in the United States, except U.S. Government facilities as follows:

(i) Department of Defense facilities;

(ii) Department of Energy facilities; and

(iii) Facilities of other U.S. Government agencies that notify the USNA of their decision to be excluded from the CWCR.

(2) For purposes of this subchapter, ''United States Government facilities'' are those facilities owned and operated by a U.S. Government agency (including those operated by contractors to the agency), and those facilities leased to and operated by a U.S. Government agency (including those operated by contractors to the agency). ''United States Government facilities'' does not include facilities owned by a U.S. Government agency and leased to a private company or other entity such that the private company or entity may independently decide for what purposes to use the facilities.

(b) *Activities subject to the CWCR.* The CWCR compel data declarations and reports from facilities subject to the CWCR (parts 710 through 722 of this subchapter) on activities, including production, processing, consumption, exports and imports, involving chemicals further described in parts 712 through 715 of this subchapter. These regulations do not apply to activities involving inorganic chemicals other than those listed in the Schedules of Chemicals or to other specifically exempted unscheduled discrete organic chemicals. In addition, these regulations set forth procedures for routine inspections of ''declared'' facilities by teams of international inspectors in part 716 of this subchapter, and set forth clarification procedures and procedures for challenge inspections (see part 717) that could be requested at any facility or location in the United States subject to the CWCR. Finally, the CWCR restrict certain imports of Schedule 1 and 2 chemicals into the United States from non-States Parties and prohibit imports of Schedule 1 chemicals except for research, medical, pharmaceutical, or protective purposes.

§ 710.3 Purposes of the Convention and CWCR.

(a) *Purposes of the Convention.* (1) The Convention imposes upon the United States, as a State Party, certain declaration, inspection, and other obligations. In addition, the United States and other States Parties to the Convention undertake never under any circumstances to:

(i) Develop, produce, otherwise acquire, stockpile, or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;

(ii) Use chemical weapons;

(iii) Engage in any military preparations to use chemical weapons; or

(iv) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited by the Convention.

(2) One objective of the Convention is to assure States Parties that lawful activities of chemical producers and users are not converted to unlawful activities related to chemical weapons. To achieve this objective and to give States Parties a mechanism to verify compliance, the Convention requires the United States and all other States Parties to submit declarations concerning chemical production, consumption, processing and other activities, and to permit international inspections within their borders.

(b) *Purposes of the Chemical Weapons Convention Regulations.* To fulfill the United States' obligations under the Convention, the CWCR (parts 710 through 722 of this subchapter) prohibit certain activities, and compel the submission of information from all facilities in the United States, except for Department of Defense and Department of Energy facilities and facilities of other U.S. Government agencies that notify the USNA of their decision to be excluded from the CWCR on activities, including exports and imports of scheduled chemicals and certain information regarding unscheduled discrete organic chemicals as described in parts 712 through 715 of this subchapter. U.S. Government facilities are those owned by or leased to the U.S Government, including facilities that are contractor-operated. The CWCR also require access for on-site inspections and monitoring by the OPCW, as described in parts 716 and 717 of this subchapter.

§ 710.4 Overview of scheduled chemicals and examples of affected industries.

The following provides examples of the types of industries that may be affected by the CWCR (parts 710 through 722 of this subchapter). These examples are not exhaustive, and you should refer to parts 712 through 715 of this subchapter to determine your obligations.

(a) Schedule 1 chemicals are listed in Supplement No. 1 to part 712 of this subchapter. Schedule 1 chemicals have little or no use in industrial and agricultural industries, but may have limited use for research, pharmaceutical, medical, public health, or protective purposes.

(b) Schedule 2 chemicals are listed in Supplement No. 1 to part 713 of this subchapter. Although Schedule 2 chemicals may be useful in the

production of chemical weapons, they also have legitimate uses in areas such as:

(1) Flame retardant additives and research;

(2) Dye and photographic industries (e.g., printing ink, ball point pen fluids, copy mediums, paints, etc.);

(3) Medical and pharmaceutical preparation (e.g., anticholinergics, arsenicals, tranquilizer preparations);

(4) Metal plating preparations;

(5) Epoxy resins; and

(6) Insecticides, herbicides, fungicides, defoliants, and rodenticides.

(c) Schedule 3 chemicals are listed in Supplement No. 1 to part 714 of this subchapter. Although Schedule 3 chemicals may be useful in the production of chemical weapons, they also have legitimate uses in areas such as:

(1) The production of:

(i) Resins;

(ii) Plastics;

(iii) Pharmaceuticals;

(iv) Pesticides;

(v) Batteries;

(vi) Cyanic acid;

(vii) Toiletries, including perfumes and scents;

(viii) Organic phosphate esters (e.g., hydraulic fluids, flame retardants, surfactants, and sequestering agents); and

(2) Leather tannery and finishing supplies.

(d) Unscheduled discrete organic chemicals are used in a wide variety of commercial industries, and include acetone, benzoyl peroxide and propylene glycol.

§ 710.5 Authority.

The CWCR (parts 710 through 722 of this subchapter) implement certain provisions of the Chemical Weapons Convention under the authority of the Chemical Weapons Convention Implementation Act of 1998 (Act), the National Emergencies Act, the International Emergency Economic Powers Act (IEEPA), as amended, and the Export Administration Act of 1979, as amended, by extending verification and trade restriction requirements under Article VI and related parts of the Verification Annex of the Convention to U.S. persons. In Executive Order 13128 of June 25, 1999, the President delegated authority to the Department of Commerce to promulgate regulations to implement the Act, and consistent with the Act, to carry out appropriate functions not otherwise assigned in the Act but necessary to implement certain reporting, monitoring and inspection requirements of the Convention and the Act.

§ 710.6 Relationship between the Chemical Weapons Convention Regulations and the Export Administration Regulations.

Certain obligations of the U.S. government under the CWC pertain to exports. These obligations are implemented in the Export Administration Regulations (EAR) (15 CFR parts 730 through 799) and the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130). See in particular § 742.18 and part 745 of the EAR, and Export Control Classification Numbers 1C350, 1C351 and 1C355 of the Commerce Control List (Supplement No. 1 to part 774 of the EAR).

Supplement No. 1 to Part 710—States Parties to The Convention on The Prohibition of The Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction

List of States Parties as of December 30, 1999

Albania
Algeria
Argentina
Armenia
Australia
Austria
Bahrain
Bangladesh
Belarus
Belgium
Benin
Bolivia
Bosnia-Herzegovina
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Chile
China*
Cook Islands
Costa Rica
Cote d'Ivoire (Ivory Coast)
Croatia
Cuba
Cyprus
Czech Republic
Denmark
Ecuador
El Salvador
Equatorial Guinea
Ethiopia
Estonia
Fiji
Finland
France
Gambia
Georgia
Germany
Ghana
Greece
Guinea
Guyana
Holy See
Hungary
Iceland
India
Indonesia
Iran
Ireland
Italy
Japan
Jordan
Kenya
Korea (Republic of)
Kuwait
Laos (P.D.R.)
Latvia
Lesotho
Liechtenstein
Lithuania
Luxembourg
Macedonia
Malawi
Maldives
Mali
Malta
Mauritius
Mauritania
Mexico
Moldova (Republic of)
Monaco
Mongolia
Morocco
Namibia
Nepal
Netherlands
New Zealand
Nicaragua
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Saint Lucia
Saudi Arabia
Senegal
Seychelles
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden

Switzerland
Tajikistan
Tanzania, United Republic of
Togo
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
Ukraine
United Kingdom
United States
Uruguay
Uzbekistan
Venezuela
Vietnam
Zimbabwe

*For CWC States Parties purposes, China includes Hong Kong and Macau.

PART 711—GENERAL INFORMATION REGARDING DECLARATION, REPORTING AND NOTIFICATION REQUIREMENTS

Sec.

711.1 Overview of declaration, reporting, and notification requirements.
711.2 Who submits declarations, reports, and notifications.
711.3 Assistance in determining your obligations.
711.4 Declaration and reporting of activities occurring prior to December 30, 1999.
711.5 Numerical precision of submitted data.
711.6 Where to obtain forms.

Authority: 22 U.S.C. 6701 et seq.; E.O. 13128, 64 FR 36703.

§ 711.1 Overview of declaration, reporting, and notification requirements.

Parts 712 through 715 of the CWCR (parts 710 through 722 of this subchapter) describe the declaration, notification and reporting requirements for Schedules 1, 2 and 3 chemicals and for unscheduled discrete organic chemicals (UDOCs). For each type of chemical, the Convention requires an initial declaration and subsequent annual declarations. If, after reviewing parts 712 through 715 of this subchapter, you determine that you have declaration, notification or reporting requirements, you may obtain the appropriate forms by contacting the Bureau of Export Administration (see § 711.6).

§ 711.2 Who submits declarations, reports, and notifications.

The owner, operator, or senior management official of a facility subject to declaration, report, or notification requirements under the CWCR (parts 710 through 722 of this subchapter) is responsible for the submission of all required documents in accordance with all applicable provisions of the CWCR.

§ 711.3 Assistance in determining your obligations.

(a) *Determining if your chemical is subject to declaration, reporting or notification requirements.*

(1) If you need assistance in determining if your chemical is classified as a Schedule 1, Schedule 2, or Schedule 3 chemical, or is an unscheduled discrete organic chemical, submit your written request for a chemical determination to BXA. Such requests may be faxed to (703) 235–1481, e-mailed to cdr@cwc.gov, or mailed to Information Technology Team, Bureau of Export Administration, U.S. Department of Commerce, 1555 Wilson Boulevard, Suite 710, Arlington, Virginia 22209–2405. Your request should include the information noted in paragraph (a)(2) of this section to ensure an accurate determination. Also include any additional information that you feel is relevant to the chemical or process involved (see part 718 of this subchapter for provisions regarding treatment of confidential business information). If you are unable to provide all of the information required in paragraph (a)(2) of this section, you should include an explanation identifying the reasons or deficiencies that preclude you from supplying the information. If BXA cannot make a determination based upon the information submitted, BXA will return the request to you and identify the additional information that is necessary to complete a chemical determination.

(2) Include the following information in each chemical determination request:

(i) Date of request;

(ii) Company name and complete street address;

(iii) Point of contact;

(iv) Phone and fax number of contact;

(v) E-mail address of contact, if you want an acknowledgment of receipt sent via e-mail;

(vi) Chemical Name;

(vii) Structural formula of the chemical, if the chemical is not specifically identified by name and chemical abstract service registry number in Supplements No. 1 to parts 712 through 714 of the CWCR; and

(viii) Chemical Abstract Service registry number, if assigned.

(b) *Other inquiries.* If you need assistance in interpreting the provisions of this subchapter or need assistance with other CWC-related issues, and you require a response from BXA in writing, submit a detailed request to BXA that explains your question, issue, or request. Send the request to the address or fax included in paragraph (a) of this section, or e-mail the request to cwcqa@cwc.gov.

(c) *BXA response to your request.* BXA will respond in writing to your chemical determination request submitted under paragraph (a) of this section within 10 working days of receipt of the request. BXA will respond to other inquiries about industry obligations under the CWCR in a timely manner.

(d) *Other BXA contact information.*

(1) *Declaration and report requirements.* For questions on declaration or report requirements, or help in completing forms, you may also contact BXA's Information Technology Team (ITT) by phone at (703) 235–1335.

(2) *Inquiries regarding inspections and facility agreements.* For questions regarding inspections and facility agreements, contact BXA's Inspection Management Team (IMT) by phone at (202) 482–6114 or fax (202) 482–4744.

§ 711.4 Declaration and reporting of activities occurring prior to December 30, 1999.

(a) Facilities subject to the CWCR are required to prepare and submit declarations and reports, to the extent that the necessary information and records are available, on activities occurring prior to December 30, 1999. Willful failure or refusal to submit such declarations and reports constitutes a violation under part 719 of this subchapter. Declarations and reports are not required if records and information necessary to prepare them are not available for one or more of the following reasons:

(1) The necessary information was not collected, or the necessary records were not kept, because no regulatory requirement to do so was in effect prior to December 30, 1999 and at the time of the activity;

(2) The information, though collected at the time of the activity, was discarded prior to December 30, 1999 in accordance with normal business practices; or

(3) The current custodian of the records or information is no longer affiliated with a facility subject to the CWCR due to changes in ownership or control of that facility which took place prior to December 30, 1999.

(b) If partial information is available, facilities are required to provide whatever information is available, on the appropriate forms, with a notation on Form A indicating that complete information is not available.

(c) This § 711.4 applies only to initial declarations and reports, and to annual declarations and reports for calendar years 1997, 1998, and 1999.

§ 711.5 Numerical precision of submitted data.

Numerical information submitted in declarations and reports is to be provided per applicable rounding rules in each part (i.e., parts 712 through 715 of this subchapter) with a precision equal to that which can be reasonably provided using existing documentation, equipment, and measurement techniques.

§ 711.6 Where to obtain forms.

Forms to complete declarations and reports required by the CWCR may be obtained by contacting: Information Technology Team, Bureau of Export Administration, U.S. Department of Commerce, 1555 Wilson Blvd., Suite 710, Arlington, VA 22209–2405, Telephone: (703) 235-1335. Forms may also be downloaded from the Internet at www.cwc.gov.

PART 712—ACTIVITIES INVOLVING SCHEDULE 1 CHEMICALS

Sec.

712.1 Round to zero rule that applies to activities involving Schedule 1 chemicals.
712.2 Prohibitions involving imports of Schedule 1 chemicals.
712.3 Initial and annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals for purposes not prohibited by the CWC.
712.4 New Schedule 1 production facility.
712.5 Advance notification and annual report of all exports and imports of Schedule 1 chemicals to, or from, other States' Parties.
712.6 Frequency and timing of declarations, reports and notifications.
712.7 Amended declaration or report.

Supplement No. 1 to Part 712—Schedule 1 Chemicals

Authority: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938 (59 FR 59099; 3 CFR, 1994 Comp., p. 950), as amended by E.O. 13094 (63 FR 40803; 3 CFR, 1998 Comp., p. 200); E.O. 13128, 64 FR 36703.

§ 712.1 Round to zero rule that applies to activities involving Schedule 1 chemicals.

(a) See § 711.6 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 1 chemicals.

(b) Facilities that produce, export or import mixtures containing less than 0.5% aggregate quantities of Schedule 1 chemicals as unavoidable by-products or impurities may round to zero and are not subject to the provisions of this part 712. Schedule 1 content may be calculated by volume or weight, whichever yields the lesser percent. Note that such mixtures may be subject to regulatory requirements of other federal agencies.

§ 712.2 Prohibitions involving imports of Schedule 1 chemicals.

(a) You may not import any Schedule 1 chemical unless:

(1) The import is from a State Party;

(2) The import is for research, medical, pharmaceutical, or protective purposes;

(3) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(4) You have notified BXA 45 calendar days prior to the import pursuant to § 712.5.

(b)(1) The provisions of paragraph (a) of this section do not apply to the retention, ownership, possession, transfer, or receipt of a Schedule 1 chemical by a department, agency, or other entity of the United States, or by a person described in paragraph (b)(2) of this section, pending destruction of the Schedule 1 chemical;

(2) A person referred to in paragraph (b)(1) of this section is:

(i) Any person, including a member of the Armed Forces of the United States, who is authorized by law or by an appropriate officer of the United States to retain, own, possess transfer, or receive the Schedule 1 chemical; or

(ii) In an emergency situation, any otherwise non-culpable person if the person is attempting to seize or destroy the Schedule 1 chemical.

Note to § 712.2: For specific provisions relating to the prior notification of exports of all Schedule 1 chemicals, see § 742.18 of the Export Administration Regulations (EAR) (15 CFR parts 730 through 799). For specific provisions relating to license requirements for exports of Schedule 1 chemicals, see §§ 742.2 and 742.18 of the EAR for Schedule 1 chemicals subject to the jurisdiction of the Department of Commerce and see the International Traffic in Arms Regulations (22 CFR parts 120 through 130) for Schedule 1 chemicals subject to the jurisdiction of the Department of State.

§ 712.3 Initial and annual declaration requirements for facilities engaged in the production of Schedule 1 chemicals for purposes not prohibited by the CWC.

(a) *Declaration requirements.* (1) *Initial declaration.* You must complete the forms specified in paragraph (b)(1) of this section, providing a current technical description of your facility or its relevant parts, if you produced Schedule 1 chemicals at your facility in excess of 100 grams aggregate in any one of the calendar years 1997, 1998, or 1999. Note: Do not include production data in your initial declaration. Such information should be included in your annual declaration on past activities. See paragraph (a)(2) of this section.

(2) *Annual declaration on past activities.* You must complete the forms specified in paragraph (b)(2) of this section if you produced at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year, beginning with calendar year 1997. As a declared Schedule 1 facility, in addition to declaring the production of each Schedule 1 chemical that comprises your aggregate production of Schedule 1 chemicals, you must also declare the total amount of each Schedule 1 chemical used (consumed) and stored at your facility, and domestically transferred from your facility during the previous calendar year, whether or not you produced that Schedule 1 chemical at your facility.

(3) *Annual declaration on anticipated activities.* You must complete the forms specified in paragraph (b)(3) of this section if you anticipate that you will produce at your facility more than 100 grams aggregate of Schedule 1 chemicals in the next calendar year. If you are not already a declared facility, you must complete an initial declaration (see paragraph (a)(1) of this section) 200 calendar days before commencing operations or increasing production which will result in production of more than 100 grams aggregate of Schedule 1 chemicals (see § 712.4).

(b) *Declaration forms to be used.* (1) *Initial declaration.* (i) You must complete the Certification Form, Form 1–1 and Form A if you produced at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in calendar year 1997, 1998, or 1999. You must provide a detailed current technical description of your facility or its relevant parts including a narrative statement, a detailed diagram of the declared areas in the facility, and an inventory of equipment in the declared area.

(ii) If you plan to change the technical description of your facility from your initial declaration completed and submitted pursuant to paragraph (a)(1) of this section and § 712.6, you must notify BXA 200 calendar days prior to the change. Such notifications must be made through an amended declaration by completing a Certification Form, Form 1–1 and Form A, including the new description of the facility. See § 712.7 for additional instructions on amending Schedule 1 declarations.

(2) *Annual declaration on past activities.* If you are subject to the declaration requirement of paragraph (a)(2) of this section, you must complete the Certification Form and Forms 1–1, 1–2, 1–2A, 1–2B, and Form A if your facility was involved in the production of Schedule 1 chemicals in the previous

calendar year, beginning with calendar year 1997. Form B is optional.

(3) *Annual declaration on anticipated activities.* If you anticipate that you will produce at your facility in excess of 100 grams aggregate of Schedule 1 chemicals in the next calendar year you must complete the Certification Form and Forms 1–1, 1–4, and Form A. Form B is optional.

(c) *Quantities to be declared.* If you produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year, you must declare the entire quantity of such production, rounded to the nearest gram. You must also declare the quantity of any Schedule 1, Schedule 2 or Schedule 3 precursor chemical used to produce the declared Schedule 1 chemical, rounded to the nearest gram. You must further declare the quantity of each Schedule 1 chemical consumed or stored by, or domestically transferred from, your facility, whether or not the Schedule 1 chemical was produced by your facility, rounded to the nearest gram. In calculating the amount of Schedule 1 chemical you produced, consumed or stored, count only the amount of the Schedule 1 chemical(s) in a mixture, not the total weight of the mixture (i.e., do not count the weight of the solution, solvent, or container).

Note to § 712.3(c): Schedule 1 reaction intermediates which exist or might exist during the course of synthesis to produce non-scheduled chemicals and which cannot be isolated using available technology should not be declared if the reaction is allowed to go to completion, completely consuming the real or hypothetical intermediates.

(d) *''Declared'' Schedule 1 facilities and routine inspections.* Only facilities that produced in excess of 100 grams aggregate of Schedule 1 chemicals in calendar year 1997 or 1998, or during the previous calendar year, or that anticipate producing in excess of 100 grams aggregate of Schedule 1 chemicals during the next calendar year are considered ''declared'' Schedule 1 facilities for the years declared. A ''declared'' Schedule 1 facility is subject to initial and routine inspection by the OPCW (see part 716 of this subchapter).

(e) *Approval of declared Schedule 1 production facilities.* Facilities that submit declarations pursuant to this section are considered approved Schedule 1 production facilities for purposes of the CWC, unless otherwise notified by BXA within 30 days of receipt by BXA of an annual declaration on past activities or annual declaration on anticipated activities (see paragraphs (a)(2) and (a)(3) of this section). If your facility does not produce more than 100 grams aggregate of Schedule 1 chemicals, no approval by BXA is required.

§ 712.4 New Schedule 1 production facility.

(a) *Establishment of a new Schedule 1 production facility.* (1) If your facility was not declared under § 712.3 in a previous calendar year, and you intend to begin production of Schedule 1 chemicals at your facility in quantities greater than 100 grams aggregate per year for research, medical, or pharmaceutical purposes, you must provide an initial declaration (a current detailed technical description of your facility) to BXA at least 200 calendar days in advance of commencing such production. Such facilities are considered ''new Schedule 1 production facilities'' and are subject to an initial inspection within 200 calendar days of submitting an initial declaration.

(2) New Schedule 1 production facilities that submit an initial declaration pursuant to paragraph (a)(1) of this section are considered approved Schedule 1 production facilities for purposes of the CWC, unless otherwise notified by BXA within 30 days of receipt by BXA of that initial declaration.

(b) *Types of declaration forms required.* If your new Schedule 1 production facility will produce in excess of 100 grams aggregate of Schedule 1 chemicals, you must complete the Certification Form, Form 1–1 and Form A. You must also provide a detailed technical description of the new facility or its relevant parts, including a detailed diagram of the declared areas in the facility, and an inventory of equipment in the declared areas.

(c) Two hundred days after a new Schedule 1 production facility submits its initial declaration, it is subject to the annual declaration requirements of § 712.3(a)(2) and (a)(3).

§ 712.5 Advance notification and annual report of all exports [1] and imports of Schedule 1 chemicals to, or from, other States Parties.

Pursuant to the Convention, the United States is required to notify the OPCW not less than 30 days in advance of every export or import of a Schedule 1 chemical, in any quantity, to or from another State Party. In addition, the United States is required to provide a report of all exports and imports of Schedule 1 chemicals to or from other States Parties during each calendar year. If you plan to export or import any quantity of a Schedule 1 chemical from or to your declared facility, undeclared facility or trading company, you must notify BXA in advance of the export or import and complete an annual report of exports and imports that actually occurred during the previous calendar year. The United States will transmit to the OPCW the advance notifications and a detailed annual declaration of each actual export or import of a Schedule 1 chemical from/to the United States. Note that the notification and annual report requirements of this section do not relieve you of any requirement to obtain a license from the Department of Commerce for the export of Schedule 1 chemicals subject to the Export Administration Regulations (15 CFR parts 730 through 799) or from the Department of State for the export of Schedule 1 chemicals subject to the International Traffic in Arms Regulations (22 CFR parts 120 through 130). Only facilities that produce in excess of 100 grams aggregate of Schedule 1 chemicals annually are ''declared'' facilities and are subject to routine inspections pursuant to part 716 of this subchapter.

(a) *Advance notification of exports and imports.* (1) You must notify BXA at least 45 calendar days prior to exporting or importing any quantity of a Schedule 1 chemical listed in Supplement No. 1 to this part to or from another State Party. Note that notifications for exports may be sent to BXA prior to or after submission of a license application to BXA for Schedule 1 chemicals subject to the EAR and controlled under ECCNs 1C350 or 1C351 or to the Department of State for Schedule 1 chemicals controlled under the ITAR. Such notices must be submitted separately from license applications.

(i) Notifications should be on company letterhead or must clearly identify the reporting entity by name of company, complete address, name of contact person and telephone and fax numbers, along with the following information:

(A) Chemical name;

(B) Structural formula of the chemical;

(C) Chemical Abstract Service (CAS) Registry Number;

(D) Quantity involved in grams;

(E) Planned date of export or import;

(F) Purpose (end-use) of export or import (i.e., research, medical, pharmaceutical, or protective purpose);

(G) Name(s) of exporter and importer;

(H) Complete street address(es) of exporter and importer;

[1] Effective May 18, 1999, these advance notification and annual report requirements for exports are set forth in parts 742 and 745 of the Export Administration Regulations (EAR) (15 CFR parts 742 and 745).

(I) U.S. export license or control number, if known; and

(J) Company identification number, once assigned by BXA.

(ii) Send the notification by fax to (703) 235–1481 or to the following address for mail and courier deliveries:

Information Technology Team, Bureau of Export Administration, Department of Commerce, 1555 Wilson Boulevard, Suite 710, Arlington, VA 22209–2405, Attn: ''Advance Notification of Schedule 1 Chemical [Export] [Import].''

(iii) Upon receipt of the notification, BXA will inform the exporter of the earliest date the shipment may occur under the notification procedure. To export the Schedule 1 chemical subject to an export license requirement either under the EAR or the ITAR, the exporter must have applied for and been granted a license (see §§ 742.2 and 742.18 of the EAR, or the ITAR at 22 CFR parts 120 through 130).

(b) *Annual report requirements for exports and imports of Schedule 1 chemicals.* Any person subject to the CWCR that exported or imported any quantity of Schedule 1 chemical to or from another State Party during the previous calendar year, beginning with calendar year 1997, has a reporting requirement under this section.

(1) *Annual report on exports and imports.* Declared and undeclared facilities, trading companies, and any other person subject to the CWCR that exported or imported any quantity of a Schedule 1 chemical to or from another State Party in a previous calendar year, beginning with calendar year 1997, must submit an annual report on exports and imports.

Note to paragraph (b)(1): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 1 chemicals contained in *reports*. The U.S. Government will add all export and import information contained in *reports* to establish the U.S. national aggregate declaration on exports and imports.

(2) *Report forms to submit.* (i) *Declared Schedule 1 facilities.* (A) If your facility declared production of a Schedule 1 chemical and you also exported or imported any amount of that *same* Schedule 1 chemical, you may report the export or import by:

(*1*) Submitting, along with your declaration, Form 1–3 for that same Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional; or

(*2*) Submitting, separately from your declaration, a Certification, Form 1–1, and a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(B) If your facility declared production of a Schedule 1 chemical and exported or imported any amount of a different Schedule 1 chemical, you may report the export or import by:

(*1*) Submitting, along with your declaration, a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional; or

(*2*) Submitting, separately from your declaration, a Certification Form, Form 1–1, and a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared facility, trading company, or any other person subject to the CWCR, and you exported or imported any amount of a Schedule 1 chemical, you must submit a Certification Form, Form 1–1, and a Form 1–3 for each Schedule 1 chemical to be reported. Attach Form A, as appropriate; Form B is optional.

(c) Paragraph (a) of this section does not apply to the activities and persons set forth in § 712.2(b).

§ 712.6 Frequency and timing of declarations, reports and notifications.

Declarations, reports and notifications required under this part must be postmarked by the appropriate date identified in Table 1 of this section. Required declarations, reports and notifications include:

(a) Initial declaration (technical description);

(b) Annual declaration on past activities (production during the previous calendar year, beginning with 1997);

(c) Annual report on exports and imports from trading companies, facilities and other persons (during the previous calendar year, beginning with 1997);

(d) Annual declaration on anticipated activities (production in the next calendar year, beginning in calendar year 2000 for production anticipated for calendar year 2001);

(e) Advance notification of any export to or import from another State Party; and

(f) Initial declaration of a new Schedule 1 production facility.

TABLE 1 TO § 712.6.—DEADLINES FOR SUBMISSION OF SCHEDULE 1 DECLARATIONS

Declarations and notifications	Applicable forms	Due dates
Initial Declaration—Declared facility (technical description).	Certification, 1–1, A, B (optional)	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared facility (past production).	Certification, 1–1, 1–2, 1–2A, 1–2B, 1–3 (if also exported or imported), A (as appropriate), B (optional).	For 1997, 1998, and 1999 March 30, 2000. Thereafter, February 28.
Annual report on exports and imports (previous calendar year, starting with 1997) (facility, trading company, other persons).	Certification, 1–1, 1–3, A (as appropriate), B (optional).	For 1997, 1998, and 1999 March 30, 2000. Thereafter, February 28.
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 1–1, 1–4, A (as appropriate), B (optional).	August 3 of each year prior to the calendar year in which anticipated activities will take place, beginning in calendar year 2000.
Advance Notification of any export to or import from another State Party.	Notify on letterhead. See § 712.5 of this subchapter.	45 calendar days prior to the export or import.
Initial Declaration of a new Schedule 1 facility ..	Certification, 1–1, A (as appropriate), B (optional).	200 calendar days before commencing such production.

§ 712.7 Amended declaration or report.

(a) You must submit an amended declaration or report for changes to previously submitted information on chemicals, activities and end-use purposes or the addition of new chemicals, activities and end-use purposes.

(b) For declared Schedule 1 facilities, changes that may affect verification activities, such as changes of owner or operator, company name, address, or

inspection point of contact, require an amended declaration. Non-substantive typographical errors and changes to the declaration point of contact do not require submission of an amended declaration or report and may be corrected in subsequent declarations or reports.

(c) For undeclared Schedule 1 facilities, trading companies and other persons, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, point of contact, or non-substantive typographical errors, do not require submission of an amended report and may be corrected in subsequent reports.

(d) If you are required to submit an amended declaration or report pursuant to paragraph (a) or (b) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past activities, annual declaration on anticipated activities). Only complete that portion of each form that corrects the previously submitted information.

SUPPLEMENT NO. 1 TO PART 712—SCHEDULE 1 CHEMICALS

	(CAS registry number)
A. Toxic chemicals:	
(1) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) alkyl (Me, Et, n-Pr or i-Pr)-phosphonofluoridates	
e.g. Sarin: O-Isopropyl methylphosphonofluoridate	(107–44–8)
Soman: O-Pinacolyl methylphosphonofluoridate	(96–64–0)
(2) O-Alkyl ($\leq C_{10}$, incl. cycloalkyl) N,N-dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidocyanidates e.g. Tabun: O-Ethyl N,N-dimethyl phosphoramidocyanidate	(77–81–6)
(3) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) S–2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, n-Pr or i-Pr) phosphonothiolates and corresponding alkylated or protonated salts e.g. VX: O-Ethyl S–2-diisopropylaminoethyl methyl phosphonothiolate	(50782–69–9)
(4) Sulfur mustards:	
2-Chloroethylchloromethylsulfide	(2625–76–5)
Mustard gas: Bis(2-chloroethyl)sulfide	(505–60–2)
Bis(2-chloroethylthio)methane	(63869–13–6)
Sesquimustard: 1,2–Bis(2-chloroethylthio)ethane	(3563–36–8)
1,3-Bis(2-chloroethylthio)-n-propane	(63905–10–2)
1,4-Bis(2-chloroethylthio)-n-butane	(142868–93–7)
1,5-Bis(2-chloroethylthio)-n-pentane	(142868–94–8)
Bis(2-chloroethylthiomethyl)ether	(63918–90–1)
O-Mustard: Bis(2-chloroethylthioethyl)ether	(63918–89–8)
(5) Lewisites:	
Lewisite 1: 2-Chlorovinyldichloroarsine	(541–25–3)
Lewisite 2: Bis(2-chlorovinyl)chloroarsine	(40334–69–8)
Lewisite 3: Tris(2-chlorovinyl)arsine	(40334–70–1)
(6) Nitrogen mustards:	
HN1: Bis(2-chloroethyl)ethylamine	(538–07–8)
HN2: Bis(2-chloroethyl)methylamine	(51–75–2)
HN3: Tris(2-chloroethyl)amine	(555–77–1)
(7) Saxitoxin	(35523–89–8)
(8) Ricin	(9009–86–3)
B. Precursors:	
(9) Alkyl (Me, Et, n-Pr or i-Pr) phosphonyldifluorides e.g. DF: Methylphosphonyldifluoride	(676–99–3)
(10) O-Alkyl (H or $\leq C_{10}$, incl. cycloalkyl) O–2-dialkyl (Me, Et, n-Pr or i-Pr)-aminoethyl alkyl (Me, Et, N-Pr or i-Pr) phosphonites and corresponding alkylated or protonated salts e.g. QL: O-Ethyl O–2-diisopropylaminoethyl methylphosphonite	(57856–11–8)
(11) Chlorosarin: O-Isopropyl methylphosphonochloridate	(1445–76–7)
(12) Chlorosoman: O-Pinacolyl methylphosphonochloridate	(7040–57–5)

Notes to Supplement No. 1:

Note 1: Note that the following Schedule 1 chemicals are controlled for export purposes under the Export Administration Regulations (see part 774 of the EAR, the Commerce Control List): 0–Ethyl-2-diisopropylaminoethyl methylphosphonite (QL) (C.A.S. #57856–11–8), Ethylphosphonyl difluoride (C.A.S. #753–98–0), Methylphosphonyl difluoride (C.A.S. #676–99–3), Saxitoxin (35523–89–8), Ricin (9009–86–3).

Note 2: All Schedule 1 chemicals not listed in Note 1 to this Supplement are controlled for export purposes by the Office of Defense Trade Control of the Department of State under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

PART 713—ACTIVITIES INVOLVING SCHEDULE 2 CHEMICALS

Sec.

713.1 Prohibition on imports of Schedule 2 chemicals from non-States Parties.
713.2 Declaration on past production of Schedule 2 chemicals for chemical weapons purposes.
713.3 Initial and annual declaration requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.
713.4 Initial and annual declaration and reporting requirements for exports and imports of Schedule 2 chemicals.
713.5 Advance declaration requirements for additionally planned production, processing or consumption of Schedule 2 chemicals.
713.6 Frequency and timing of declarations and reports.
713.7 Amended declaration or report.
Supplement No. 1 to Part 713—Schedule 2 Chemicals

Authority: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 et seq; E.O. 12938 (59 FR 59099; 3 CFR, 1994 Comp., p. 950), as amended by E.O. 13094 (63 FR 40803; 3 CFR, 1998 Comp., p. 200); E.O. 13128, 64 FR 36703.

§ 713.1 Prohibition on imports of Schedule 2 chemicals from non-States Parties.

(a) See § 711.6 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 2 chemicals. You may not import any Schedule 2 chemical (see Supplement No. 1 to this part) on or after April 29, 2000, from

any destination other than a State Party to the Convention. See Supplement No. 1 to part 710 of this subchapter for a list of States that are party to the Convention.

Note to paragraph (a). See § 742.18 of the Export Administration Regulations (15 CFR part 742) for prohibitions that apply to exports of Schedule 2 chemicals on or after April 29, 2000 to non-States Parties and for End-Use Certificate requirements for exports of Schedule 2 chemicals prior to April 29, 2000 to such destinations.

(b) Paragraph (a) of this section does not apply to:

(1) The transfer or receipt of a Schedule 2 chemical from a non-State Party by a department, agency, or other entity of the United States, or by any person, including a member of the Armed Forces of the United States, who is authorized by law, or by an appropriate officer of the United States to transfer or receive the Schedule 2 chemical; or

(2) Mixtures containing Schedule 2 chemicals, if the concentration of each Schedule 2 chemical in the mixture is 10% or less by weight. Note, however, that such mixtures may be subject to regulatory requirements of other federal agencies.

§ 713.2 Declaration on past production of Schedule 2 chemicals for chemical weapons purposes.

You must complete the Certification Form and Forms 2–1, 2–2, 2–4, Form A, if you produced at your plant site any quantity of a Schedule 2 chemical at any time since January 1, 1946, for chemical weapons purposes. Form B is optional. You must declare the total quantity of such a chemical produced, rounded to the nearest kilogram. Note that you are not subject to routine inspection unless you are a declared facility pursuant to § 713.3.

§ 713.3 Initial and annual declaration requirements for plant sites that produce, process or consume Schedule 2 chemicals in excess of specified thresholds.

(a) *Declaration of production, processing or consumption of Schedule 2 chemicals for purposes not prohibited by the CWC.*

(1) *Quantities of production, processing or consumption that trigger declaration requirements.* You must complete the forms specified in paragraph (b) of this section if you have been or will be involved in the following activities:

(i) *Initial declaration.* You produced, processed or consumed at one or more plants on your plant site during any of the calendar years 1994, 1995, or 1996, a Schedule 2 chemical in excess of the following declaration threshold quantities:

(A) 1 kilogram of chemical BZ: 3–Quinuclidinyl benzilate (see Schedule 2, paragraph A.3 included in Supplement No. 1 to this part);

(B) 100 kilograms of chemical PFIB: 1,1,3,3,3–Pentafluoro-2(trifluoromethyl)-1-propene or 100 kilograms of chemical Amiton: 0,0–Diethyl S-[2-(diethylamino) ethyl] phosphorothiolate and corresponding alkylated or protonated salts (see Schedule 2, paragraphs A.1 and A.2 included in Supplement No. 1 to this part); or

(C) 1 metric ton of any chemical listed in Schedule 2, Part B (see Supplement No. 1 to this part).

Note to paragraph (a)(1)(i). To determine whether you have an initial declaration requirement for Schedule 2 activities, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity at one or more plants on your plant site in calendar years 1994, 1995, or 1996. For example, if you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ in calendar year 1995, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the applicable threshold quantity in calendar years 1994 or 1996, you have an initial declaration requirement under this paragraph. You must submit three Forms 2–3—one for each of the calendar years 1994, 1995, and 1996—and complete question 2–3.1 on each of the forms to declare production data on BZ for calendar years 1994, 1995 and 1996. For calendar year 1995, you would declare the quantity of BZ actually produced. For calendar years 1994 and 1996, you would declare ''0'' production quantity. Since the plant site did not engage in any other declarable activity (i.e., consumption, processing), you would leave blank questions 2–3.2 and 2–3.3 on Form 2–3 for calendar years 1994, 1995, and 1996. Note that declaring a ''0'' quantity for production in 1994 and 1996, as opposed to leaving the question blank, permits BXA to distinguish the activity that triggered the initial declaration requirement for each year from activities that were not declarable during that period.

(ii) *Annual declaration on past activities.* You produced, processed or consumed at one or more plants on your plant site during any of the previous three calendar years, a Schedule 2 chemical in excess of the applicable declaration threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section.

Note to paragraph (a)(1)(ii). To determine whether you have an annual declaration on past activities requirement for Schedule 2 chemicals, you must determine whether you produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity at one or more plants on your plant site in any one of the three previous calendar years. For example, for the 1997 declaration period, if you determine that one plant on your plant site produced greater than 1 kilogram of the chemical BZ in calendar year 1995, and no plants on your plant site produced, processed or consumed any Schedule 2 chemical above the applicable threshold quantity in calendar years 1996 or 1997, you still have a declaration requirement under this paragraph for the previous calendar year (1997). However, you must only declare on Form 2–3 (question 2–3.1), production data for calendar year 1997. You would declare ''0'' production quantity because you did not produce BZ above the applicable threshold quantity in calendar year 1997. Since the plant site did not engage in any other declarable activity (i.e., consumption, processing) in the 1995–1997 declaration period, you would leave blank questions 2–3.2 and 2–3.3 on Form 2–3. Note that declaring a ''0'' production quantity for 1997, as opposed to leaving the question blank, permits BXA to distinguish the activity that triggered the declaration requirement from activities that were not declarable during that period.

(iii) *Annual declaration on anticipated activities.* You anticipate that you will produce, process or consume at one or more plants on your plant site during the next calendar year, starting with activities anticipated for calendar year 2001, a Schedule 2 chemical in excess of the applicable declaration threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section.

(2) *Mixtures containing a Schedule 2 chemical.* (i)The quantity of a Schedule 2 chemical contained in a mixture must be counted when determining the total quantity of a Schedule 2 chemical produced, processed, or consumed at your plant only if the concentration of the Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent.

(ii) *Counting the amount of the Schedule 2 chemical in a mixture.* If your mixture contains 30% or more concentration of a Schedule 2 chemical, you must count only the amount (weight) of the Schedule 2 chemical in the mixture, not the total weight of the mixture.

(iii) *Determining declaration requirements for production, processing and consumption.* You must include the amount (weight) of a Schedule 2 chemical in a mixture when determining the total production, total processing, or total consumption of that Schedule 2 chemical at a plant on your plant site. If the total amount of the produced, processed or consumed Schedule 2 chemical exceeds the applicable declaration threshold set forth in paragraphs (a)(1)(i)(A) through

(C) of this section, you have a declaration requirement. For example, if during calendar year 1997, a plant on your plant site produced a mixture containing 300 kilograms of thiodiglycol in a concentration of 32% and also produced 800 kilograms of thiodiglycol, that plant produced 1100 kilograms and exceeded the declaration threshold of 1 metric ton for that Schedule 2 chemical. You must declare past production of thiodiglycol at that plant site for calendar year 1997. If, on the other hand, a plant on your plant site processed a mixture containing 300 kilograms of thiodiglycol in a concentration of 25% and also processed 800 kilograms of thiodiglycol in other than mixture form, the total amount of thiodiglycol processed at that plant for CWCR purposes would be 800 kilograms and would not trigger a declaration requirement. This is because the concentration of thiodiglycol in the mixture is less than 30% and therefore did not have to be ''counted'' and added to the other 800 kilograms of processed thiodiglycol at that plant.

(b) *Types of declaration forms to be used.* (1) *Initial declaration.* You must complete the Certification Form and Forms 2–1, 2–2, 2–3, 2–3A, and Form A if you produced, processed or consumed at one or more plants on your plant site a Schedule 2 chemical in excess of the applicable declaration threshold quantity specified in paragraphs (a)(1)(i)(A) through (C) of this section during any of the three calendar years 1994, 1995, or 1996. Form B is optional. If you are subject to initial declaration requirements, you must include data for each of the calendar years 1994, 1995, and 1996.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Forms 2–1, 2–2, 2–3, 2–3A, and Form A if one or more plants on your plant site produced, processed or consumed more than the applicable threshold quantity of a Schedule 2 chemical described in paragraphs (a)(1)(i)(A) through (C) of this section in any of the three previous calendar years. Form B is optional. If you are subject to annual declaration requirements, you must include data for the previous calendar year only.

(3) *Annual declaration on anticipated activities.* You must complete the Certification Form and Forms 2–1, 2–2, 2–3, 2–3A, 2–3C, and Form A if you plan to produce, process, or consume at any plant on your plant site a Schedule 2 chemical above the applicable threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section during the following calendar year, beginning with activities planned for calendar year 2001. Form B is optional.

(c) *Quantities to be declared.* (1) *Production, processing and consumption of a Schedule 2 chemical above the declaration threshold.—(i) Initial declaration.* If you are required to complete forms pursuant to paragraph (a)(1)(i) of this section, you must declare the aggregate quantity resulting from each type of activity (production, processing or consumption) from each plant on your plant site that exceeds the applicable threshold quantity for that Schedule 2 chemical for each of the calendar years 1994, 1995, and 1996. Do not aggregate amounts of production, processing or consumption from plants on the plant site that did not individually produce, process or consume a Schedule 2 chemical in amounts greater than the applicable threshold levels. For those years in which you produced, processed or consumed the declared chemical below the declaration threshold, you declare ''0'' only for the declared activities.

(ii) *Annual declaration on past activities.* If you are required to complete forms pursuant to paragraph (a)(1)(ii) of this section, you must declare the aggregate quantity resulting from each type of activity (production, processing or consumption) from each plant on your plant site that exceeds the applicable threshold quantity for that Schedule 2 chemical. Do not aggregate amounts of production, processing or consumption from plants on the plant site that did not individually produce, process or consume a Schedule 2 chemical in amounts greater than the applicable threshold levels. If in the previous calendar year you produced, processed or consumed below the declaration threshold, but your declaration requirement is triggered because of activities occurring in an earlier year, you declare ''0'' only for the declared activities.

(2) *Rounding.* For the chemical BZ, report quantities to the nearest hundredth of a kilogram (10 grams). For PFIB and the Amiton family, report quantities to the nearest 1 kilogram. For all other Schedule 2 chemicals, report quantities to the nearest 10 kilograms.

(d) *''Declared'' Schedule 2 plant sites.* A plant site that comprises at least one plant that produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section during any of the previous three calendar years or is anticipated to produce, process or consume a Schedule 2 chemical above the applicable threshold quantity in the next calendar year is a ''declared'' plant site. A plant site that submitted an initial declaration for activities that occurred in 1994, 1995, or 1996 is a ''declared'' Schedule 2 plant site for those years.

(e) *Declared Schedule 2 plant sites subject to routine inspections.* A ''declared'' Schedule 2 plant site is subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons if it produced, processed or consumed in any of the three previous calendar years, or is anticipated to produce, process or consume in the next calendar year, in excess of ten times the applicable declaration threshold quantity set forth in paragraphs (a)(1)(i)(A) through (C) of this section (see part 716 of this subchapter). A plant site that submitted an initial declaration for calendar years 1994, 1995, and 1996, and exceeded the applicable inspection threshold is also subject to an initial inspection.

§ 713.4 Initial and annual declaration and reporting requirements for exports and imports of Schedule 2 chemicals

(a) *Declarations and reports of exports and imports of Schedule 2 chemicals.*

(1) *Declarations.* A Schedule 2 plant site that is declared because it produced, processed or consumed a Schedule 2 chemical above the applicable threshold quantity, and also exported from or imported to the plant site that same Schedule 2 chemical above the applicable threshold quantity, must submit export and import information as part of its declaration.

Note to paragraph (a)(1): A declared Schedule 2 plant site may need to declare exports or imports of Schedule 2 chemicals that it produced, processed or consumed above the applicable threshold quantity and also report exports or imports of different Schedule 2 chemicals that it did not produce, process or consume above the applicable threshold quantities.

(2) *Reports.* A declared plant site that does not meet the description of paragraph (a)(1) of this section, and an undeclared plant site or a trading company or any other person subject to the CWCR must submit a report if it exported or imported a Schedule 2 chemical above the applicable threshold quantity.

Note to paragraph (a)(2): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 2 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to export and import information contained in declarations to establish the U.S. national aggregate declaration on exports and imports.

Note to paragraphs (a)(1) and (2): Declared and undeclared plant sites must count, for

declaration or report purposes, all exports from and imports to the *entire* plant site, not only from or to individual plants on the plant site.

(b) *Quantities of exports or imports that trigger a declaration or report requirement.* (1) You have a declaration or report requirement and must complete the forms specified in paragraph (d) of this section if you exported or imported a Schedule 2 chemical in excess of the following threshold quantities:

(i) 1 kilogram of chemical BZ: 3–Quinuclidinyl benzilate (See Schedule 2, paragraph A.3 included in Supplement No. 1 to this part);

(ii) 100 kilograms of chemical PFIB: 1,1,3,3,3–Pentafluoro-2(trifluoromethyl)-1-propene or 100 kilograms of Amiton : O,O Diethyl S-[2(diethylamino)ethyl] phosphorothiolate *and* corresponding alkylated or protonated salts (see Schedule 2, paragraphs A.1 and A.2 included in Supplement No.1 to this part);

(iii) 1 metric ton of any chemical listed in Schedule 2, Part B (see Supplement No.1 to this part).

(2) *Mixtures containing a Schedule 2 chemical.* The quantity of a Schedule 2 chemical contained in a mixture must be counted for the declaration or reporting of an export or import only if the concentration of the Schedule 2 chemical in the mixture is 30% or more by volume or by weight, whichever yields the lesser percent.

Note 1 to paragraph (b)(2). See § 713.3(a)(2)(ii) for information on counting amounts of Schedule 2 chemicals contained in mixtures and determining declaration and report requirements.

Note 2 to paragraph (b)(2). The ''30% and above'' mixtures rule applies only for declaration and report purposes. This rule does not apply for purposes of determining whether the export of your mixture to a non-State Party requires an End-Use Certificate or for determining whether you need an export license from the Department of Commerce (see §§ 742.2, 742.18 and 745.2 of the Export Administration Regulations) or from the Department of State (see the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

(c) *Declaration and report requirements.* (1) *Initial declaration.* A plant site described in paragrpah (a)(1) of this section that has an initial declaration requirement for production, processing, or consumption of a Schedule 2 chemical must also declare the export or import of that same Schedule 2 chemical if the amount exported or imported in 1994, 1995 or 1996 exceeded the applicable threshold quantity set forth in paragraph (b)(1)(i) through (iii) of this section. For the initial declaration, the plant site must only declare the export or import information for any of the calendar years (1994, 1995 and/or 1996) in which the export or import exceeded the applicable threshold quantity.

(2) *Initial report on exports and imports.* Declared plant sites described in paragraph (a)(2) of this section, undeclared plant sites, trading companies or any other person subject to the CWCR that exported or imported a Schedule 2 chemical in 1996 in excess of the applicable threshold quantity set forth in paragraph (b) of this section, must submit an initial report on exports or imports for calendar year 1996.

(3) *Annual declaration on past activities.* A plant site described in paragraph (a)(1) that has an annual declaration requirement for production, processing, or consumption of a Schedule 2 chemical for the previous calendar year, beginning in 1997, must also declare the export and/or import of that same Schedule 2 chemical if the amount exceeded the applicable threshold quantity set forth in paragraph (b). The plant site must declare the export or import information for that same Schedule 2 chemical as part of its annual declaration of past activities.

(4) *Annual report on exports and imports.* Declared plant sites described in paragraph (a)(2), and undeclared plant sites, trading companies or any other person subject to the CWCR that exported or imported a Schedule 2 chemical in a previous calendar year, beginning in 1997, in excess of the applicable threshold quantity set forth in paragraphs (b)(1) (i) through (iii) must submit an annual report on exports or imports.

(d) *Types of declaration and report forms to be used.* (1) *Initial declaration.* If you are a declared Schedule 2 plant site as described in paragraph (a)(1), you must complete Form 2–3B in addition to the forms required by § 713.3(b)(1). You must complete the forms for each declared Schedule 2 chemical and for each of the calendar years 1994, 1995, and 1996, in which the export or import exceeded the applicable threshold quantity.

(2) *Initial report on exports and imports.* (i) If you are a declared plant site as described in paragraph (a)(2), you may fulfill your reporting requirements by:

(A) Submitting, along with your initial declaration, a Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(B) Submitting, separately from your initial declaration, a Certification Form, Form 2–1, and Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared plant site or trading company, you must complete the Certification Form, Form 2–1, and Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(3) *Annual declaration on past activities.* If you are a declared Schedule 2 plant site as described in paragraph (a)(1), you must complete Form 2–3B, in addition to the forms required by § 713.3(b)(2), for each declared Schedule 2 chemical exported or imported above the applicable threshold quantity in the previous calendar year.

(4) *Annual report on exports and imports.* (i) If you are a declared plant site as described in paragraph (a)(2), you may fulfill your annual reporting requirements by:

(A) Submitting, along with your annual declaration on past activities, a Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(B) Submitting, separately from your annual declaration on past activities, a Certification Form, Form 2–1, and Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(ii) If you are an undeclared plant site, trading company or any other person subject to the CWCR, you must complete the Certification Form, Form 2–1, and Form 2–3B for each Schedule 2 chemical you exported or imported above the applicable threshold quantity. Attach Form A, as appropriate; Form B is optional.

(e) *Quantities to be declared.* (1) *Calculations.* If you exported from or imported to your plant site, trading company, or other location more than the applicable threshold quantity of a Schedule 2 chemical, you must declare or report all exports and imports by destination, and indicate the total amount exported to or imported from each destination. Only indicate the total annual quantity exported to or imported from a specific destination if the total annual quantity to or from that destination is more than 1% of the applicable threshold (i.e., more than 10 grams of BZ, 1 kilogram of PFIB and

Amiton and corresponding alkylated or protonated salts, or 10 kilograms of all other Schedule 2 chemicals). However, in determining whether your total exports and imports worldwide for the year in question trigger a declaration or report requirement, you must include all exports and imports, including exports and imports falling within the 1% exemption in your calculation.

(2) *Rounding.* For purposes of declaring or reporting exports and imports of a Schedule 2 chemical, you must total all exports and imports per calendar year per recipient or source destination and then round as follows: for the chemical BZ, the total quantity for each destination should be reported to the nearest hundredth of a kilogram (10 grams); for PFIB and Amiton and corresponding alkylated or protonated salts, the quantity for each destination should be reported to the nearest 1 kilogram; and for all other Schedule 2 chemicals, the total quantity for each destination should be reported to the nearest 10 kilograms.

§ 713.5. Advance declaration requirements for additionally planned production, processing, or consumption of Schedule 2 chemicals.

(a) *Declaration requirements for additionally planned activities.* (1) You must declare additionally planned production, processing, or consumption of Schedule 2 chemicals after the annual declaration on anticipated activities for the next calendar year has been delivered to BXA if:

(i) You plan that a previously undeclared plant on your plant site under § 713.3(a)(1)(iii) will produce, process, or consume a Schedule 2 chemical above the applicable declaration threshold;

(ii) You plan to produce, process, or consume at a plant declared under § 713.3(a)(1)(iii) an additional Schedule 2 chemical above the applicable declaration threshold;

(iii) You plan an additional activity (production, processing, or consumption) at your declared plant above the applicable declaration threshold for a chemical declared under § 713.3(a)(1)(iii);

(iv) You plan to increase the production, processing, or consumption of a Schedule 2 chemical by a plant declared under § 713.3(a)(1)(iii) from the amount exceeding the applicable declaration threshold to an amount exceeding the applicable inspection threshold (see § 716.1(b)(2));

(v) You plan to change the starting or ending date of anticipated production, processing, or consumption declared under § 713.3(a)(1)(iii) by more than three months; or

(vi) You plan to increase your production, processing, or consumption of a Schedule 2 chemical by a declared plant site by 20 percent or more above that declared under § 713.3(a)(1)(iii).

(2) If you must submit a declaration on additionally planned activities because you plan to engage in any of the activities listed in paragraphs (a)(1) (i) through (vi) of this section, you should also declare changes to your declaration relating to the following activities. You do not have to submit an additionally planned declaration if you are only changing the following non-quantitative activities:

(i) Changes to the plant's production capacity;

(ii) Changes or additions to the product group codes for the plant site or the plant(s);

(iii) Changes to the plant's activity status (i.e., dedicated, multipurpose, or other status);

(iv) Changes to the plant's multipurpose activities;

(v) Changes to the plant site's status relating to domestic transfer of the chemical;

(vi) Changes to the plant site's purposes for which the chemical will be produced, processed or consumed; or

(vii) Changes to plant site's status relating to exports of the chemical or the addition of new countries for export (not to exceed 10 countries).

(b) *Declaration forms to be used.* If you are required to declare additionally planned activities pursuant to paragraph (a) of this part, you must complete the Certification Form and Forms 2–1, 2–2, 2–3, and 2–3C as appropriate. Such forms are due to BXA at least 15 days prior to beginning the additional activity.

§ 713.6 Frequency and timing of declarations and reports.

Declarations and reports required under this part must be postmarked by the appropriate date identified in Table 1 of this section. Required declarations and reports include:

(a) Declaration on past production of Schedule 2 chemicals for chemical weapons (CW) purposes since January 1, 1946;

(b) Initial declaration (production, processing, consumption, export, or import of Schedule 2 chemicals during calendar years 1994, 1995, and 1996);

(c) Initial report on exports and imports from trading companies, plant sites and other persons (during calendar year 1996);

(d) Annual declaration on past activities (production, processing, consumption, export or import of Schedule 2 chemicals during the previous calendar year, beginning with 1997);

(e) Annual report on exports and imports from trading companies, plant sites and other persons (during the previous calendar year, beginning with 1997); and

(f) Annual declaration on anticipated activities (production, processing or consumption during the next calendar year, beginning in calendar year 2000 for activities anticipated for calendar year 2001).

TABLE 1 TO § 713.6.—DEADLINES FOR SUBMISSION OF SCHEDULE 2 DECLARATIONS

Declarations	Applicable forms	Due dates
Initial Declaration (for calendar years 1994, 1995, and 1996)—Declared plant site (production, processing, consumption, exports and imports).	Certification, 2–1, 2–2, 2–3, 2–3A, 2–3B (if also exported or imported), A (as appropriate), B (optional).	March 30, 2000.
Initial Report on Exports and Imports (for calendar year 1996)—Plant site, trading company, other persons.	Certification, 2–1, 2–3B, A (as appropriate), B (optional).	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared plant site (production, processing, consumption, exports and imports).	Certification , 2–1, 2–2, 2–3 2–3A, 2–3B (if also exported or imported), A (as appropriate), B (optional).	For 1997, 1998, and 1999. Thereafter, February 28, March 30, 2000.
Annual Report on Exports and Imports (previous calendar year, starting with 1997)—Plant site, trading company, other persons.	Certification, 2–1, 2–3B, A (as appropriate), B (optional).	For 1997, 1998, and 1999. Thereafter, February 28, March 30, 2000.

TABLE 1 TO § 713.6.—DEADLINES FOR SUBMISSION OF SCHEDULE 2 DECLARATIONS—Continued

Declarations	Applicable forms	Due dates
Annual Declaration on Anticipated Activities (next calendar year).	Certification, 2–1, 2–2, 2–3, 2–3A, 2–3C, A (as appropriate), B (optional).	September 3 of each year prior to the calendar year in which anticipated activities will take place, beginning in calendar year 2000.
Declaration on Additionally Planned Activities—(production, processing and consumption).	Certification, 2–1, 2–3C, A (as appropriate), B (optional).	15 calendar days before the additionally planned activity begins.
Declaration on Past Production of Schedule 2 Chemicals for CW Purposes.	Certification, 2–1, 2–2, 2–4 A (as appropriate), B (optional).	March 30, 2000.

§ 713.7 Amended declaration or report.

(a) You must submit an amended declaration or report for changes to previously submitted information on chemicals, activities and end-use purposes or the addition of new chemicals, activities and end-use purposes.

(b) For declared plant sites subject to inspection, changes that may affect verification activities, such as changes of owner or operator, company name, address, or inspection point of contact require an amended declaration.

(c) For declared plant sites not subject to inspection, undeclared plant sites, trading companies, and other persons, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, declaration point of contact, or non-substantive typographical errors, do not require submission of an amended declaration or report and may be corrected in subsequent declarations or reports.

(d) If you are required to submit an amended declaration or report pursuant to paragraph (a) or (b) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past activities). Only complete that portion of each form that corrects the previously submitted information.

SUPPLEMENT NO. 1 TO PART 713.—SCHEDULE 2 CHEMICALS

A. Toxic chemicals:	
(1) Amiton: O,O-Diethyl S-[2-(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts	(78–53–5)
(2) PFIB: 1,1,3,3,3-Pentafluoro-2-(trifluoromethyl)-1-propene	(382–21–8)
(3) BZ: 3-Quinuclidinyl benzilate	(6581–06–2)
B. Precursors:	
(4) Chemicals, except for those listed in Schedule 1, containing a phosphorus atom to which is bonded one methyl, ethyl or propyl (normal or iso) group but not further carbon atoms, e.g. Methylphosphonyl dichloride	(676–97–1)
Dimethyl methylphosphonate	(756–79–6)
Exemption: Fonofos: O-Ethyl S-phenyl ethylphosphono-thiolothionate	(944–22–9)
(5) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) phosphoramidic dihalides	
(6) Dialkyl (Me, Et, n-Pr or i-Pr) N,N-dialkyl (Me, Et, n-Pr or i-Pr)-phosphoramidates	
(7) Arsenic trichloride	(7784–34–1)
(8) 2,2-Diphenyl-2-hydroxyacetic acid	(76–93–7)
(9) Quinuclidine-3-ol	(1619–34–7)
(10) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethyl-2-chlorides and corresponding protonated salts	
(11) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-ols and corresponding protonated salts	
Exemptions: N,N-Dimethylaminoethanol and corresponding protonated salts	(108–01–0)
N,N-Diethylaminoethanol and corresponding protonated salts	(100–37–8)
(12) N,N-Dialkyl (Me, Et, n-Pr or i-Pr) aminoethane-2-thiols and corresponding protonated salts	
(13) Thiodiglycol: Bis(2-hydroxyethyl) sulfide	(111–48–8)
(14) Pinacolyl alcohol: 3,3-Dimethylbutane-2-ol	(464–07–3)

PART 714—ACTIVITIES INVOLVING SCHEDULE 3 CHEMICALS

Sec.

714.1 Declaration on past production of Schedule 3 chemicals for chemical weapons purposes.
714.2 Initial and annual declaration requirements for plant sites that produce a Schedule 3 chemical in excess of 30 metric tons.
714.3 Initial and annual reporting requirements for exports and imports of Schedule 3 chemicals.
714.4 Advance declaration requirements for additionally planned production of a Schedule 3 chemical.
714.5 Frequency and timing of declarations.
714.6 Amended declaration or report.
Supplement No. 1 to Part 714—Schedule 3 Chemicals

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 714.1 Declaration on past production of Schedule 3 chemicals for chemical weapons purposes.

(a) See § 711.6 of this subchapter for information on obtaining the forms you will need to declare and report activities involving Schedule 3 chemicals.

(b) You must complete the Certification Form, Forms 3–1, 3–2, 3–4, Form A if you produced at one or more plants on your plant site any quantity of a Schedule 3 chemical at any time since January 1, 1946, for chemical weapons purposes. Form B is optional. You must declare the total quantity of such chemical produced, rounded to the nearest tenth of a metric ton (or 100 kilograms). You are not subject to routine inspection unless you are a declared facility pursuant to § 714.2.

§ 714.2 Initial and annual declaration requirements for plant sites that produce a Schedule 3 chemical in excess of 30 metric tons.

(a) *Declaration of production of Schedule 3 chemicals for purposes not prohibited by the CWC. (1) Production quantities that trigger the declaration requirement.* You must complete the appropriate forms specified in paragraph (b) of this section if you have

produced or anticipate producing a Schedule 3 chemical as follows:

(i) *Initial declaration.* You produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during calendar year 1996.

(ii) *Annual declaration on past activities.* You produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year, beginning with 1997.

(iii) *Annual declaration on anticipated activities.* You anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(2) *Mixtures containing a Schedule 3 chemical.* (i) The quantity of a Schedule 3 chemical contained in a mixture must be counted for declaration purposes only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent.

(ii) *Counting the amount of the Schedule 3 chemical in a mixture.* If your mixture contains 80% or more concentration of a Schedule 3 chemical, you must count only the amount (weight) of the Schedule 3 chemical in the mixture, not the total weight of the mixture.

(b) *Types of declaration forms to be used.* (1) *Initial declaration.* You must complete the Certification Form and Forms 3–1, 3–2, 3–3, and Form A if you produced at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical during calendar year 1996. Form B is optional.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Forms 3–1, 3–2, 3–3, and Form A if one or more plants on your plant site produced in excess of 30 metric tons of any single Schedule 3 chemical during the previous calendar year, beginning with production during calendar year 1997. Form B is optional.

(3) *Annual declaration on anticipated activities.* You must complete the Certification Form, and Forms 3–1 and 3–3 if you anticipate that you will produce at one or more plants on your plant site in excess of 30 metric tons of any single Schedule 3 chemical in the next calendar year.

(c) *Quantities to be declared.* (1) Production of a Schedule 3 chemical in excess of 30 metric tons. If your plant site is subject to the declaration requirements of paragraph (a) of this section, you must declare the range within which the production at your plant site falls (30 to 200 metric tons, 200 to 1,000 metric tons, etc.) as specified on Form 3–3. When specifying the range of production for your plant site, you must aggregate the production quantities of all plants on the plant site that produced the Schedule 3 chemical in amounts greater than 30 metric tons. You must complete a separate Form 3–3 for each Schedule 3 chemical for which production at your plant site exceeds 30 metric tons.

(2) *Rounding.* To determine the production range into which your plant site falls, add all the production of the declared Schedule 3 chemical during the calendar year from all plants on your plant site that produced the Schedule 3 chemical in amounts exceeding 30 metric tons, and round to the nearest ten metric tons.

(d) *''Declared'' Schedule 3 plant sites.* A plant site that comprises at least one plant that produced in excess of 30 metric tons of a Schedule 3 chemical during the previous calendar year, or that you anticipate will produce more than 30 metric tons of a Schedule 3 chemical in the next calendar year, is a ''declared'' Schedule 3 plant site. A plant site that submitted an initial declaration for 1996 and/or annual declaration on past activities for 1997 or 1998 is a ''declared'' Schedule 3 plant site for the years declared.

(e) *Routine inspections of declared Schedule 3 plant sites.* A ''declared'' Schedule 3 plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (see part 716 of this subchapter) if the declared plants on your plant site produced during the previous calendar year or you anticipate they will produce during the next calendar year in excess of 200 metric tons aggregate of any Schedule 3 chemical. A plant site that submitted an initial declaration for 1996 and/or an annual declaration on past activities for 1997 or 1998, and exceeded the inspection threshold, is also subject to a routine inspection.

§ 714.3 Initial and annual report requirements for exports and imports of Schedule 3 chemicals.

(a) Any person subject to the CWCR that exported from or imported to the United States a Schedule 3 chemical in excess of 30 metric tons in any calendar year, beginning with calendar year 1996, has a reporting requirement under this section.

(1) *Initial report on exports and imports.* Declared plant sites, undeclared plant sites, trading companies, and any other person subject to the CWCR that exported from or imported to the United States in excess of 30 metric tons of a Schedule 3 chemical in calendar year 1996 must submit an initial report on exports and imports.

(2) *Annual report on exports and imports.* Declared plant sites, undeclared plant sites, trading companies, and any other person subject to the CWCR that exported from or imported to the United States in excess of 30 metric tons of a Schedule 3 chemical in a previous calendar year, beginning with calendar year 1997, must submit an annual report on exports and imports.

Note 1 to paragraphs (a)(1) and (a)(2). Declared and undeclared plant sites must count, for report purposes, all exports from and imports to the entire plant site, not only from or to individual plants on the plant site.

Note 2 to paragraphs (a)(1) and (a)(2): The U.S. Government will not submit to the OPCW company-specific information relating to the export or import of Schedule 3 chemicals contained in reports. The U.S. Government will add all export and import information contained in reports to establish the U.S. national aggregate declaration on exports and imports.

(3) *Mixtures containing a Schedule 3 chemical.* The quantity of a Schedule 3 chemical contained in a mixture must be counted for reporting an export or import only if the concentration of the Schedule 3 chemical in the mixture is 80% or more by volume or by weight, whichever yields the lesser percent. For reporting purposes, only count the weight of the Schedule 3 chemical in the mixture, not the entire weight of the mixture.

Note to paragraph (a)(3). The ''80% and above'' mixtures rule applies only for report purposes. This rule does not apply for purposes of determining whether the export of your mixture to a non-State Party requires an End-Use Certificate or for determining whether you need an export license from the Department of Commerce (see §§ 742.2, 742.18 and 745.2 of the Export Administration Regulations) or from the Department of State (see the International Traffic in Arms Regulations (22 C.F.R. 120 through 130)).

(b) *Types of forms to be used.* (1) *Declared Schedule 3 plant sites.* (i) If your plant site is declared for production of a Schedule 3 chemical (and has completed questions 3–3.1 and 3–3.2 on Form 3–3) and you also exported or imported that same Schedule 3 chemical in excess of 30 metric tons, you may report the export or import by:

(A) Completing question 3–3.3 on Form 3–3 on your declaration for that same Schedule 3 chemical to be reported; or

(B) Submitting, separately from your declaration, a Certification Form, Form 3–1, and a Form 3–3 for each Schedule

3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional.

(ii) If your plant site declared production of a Schedule 3 chemical and exported or imported a different Schedule 3 chemical in excess of 30 metric tons, you may report the export or import by:

(A) Submitting, along with your declaration, a Form 3–3 for each Schedule 3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional; or

(B) Submitting, separately from your declaration, a Certification Form, Form 3–1 and a Form 3.3 for each Schedule 3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional.

(2) If you are an undeclared plant site or trading company, or any other person subject to the CWCR, you must submit a Certification Form, Form 3–1, and a Form 3–3 for each Schedule 3 chemical to be reported, completing only question 3–3.3. Attach Form A, as appropriate; Form B is optional.

(c) *Quantities to be reported.* (1) *Calculations.* If you exported from or imported to your plant site or trading company more than 30 metric tons of a Schedule 3 chemical in the previous calendar year, you must report all exports and imports of that chemical by destination, and indicate the total amount exported to or imported from each destination. Only indicate the total annual quantity exported to or imported from a specific destination if the total annual quantity to or from that destination is more than 1% of the applicable threshold (i.e., more than 0.3 metric tons). However, in determining whether your total exports and imports worldwide for the year in question trigger a report requirement, you must include all exports and imports, including exports and imports falling within the 1% exemption in your calculation.

(2) *Rounding.* For purposes of reporting exports and imports of a Schedule 3 chemical, you must total all exports and imports per calendar year per recipient or source destination and then round to the nearest 0.1 metric tons.

Note to § 714.3: Under the Convention, the United States is obligated to provide the OPCW a national aggregate annual declaration of the quantities of each Schedule 3 chemical exported and imported. The U.S. Government will *not* submit your company-specific information relating to the export or import of a Schedule 3 chemical reported under this § 714.3. The U.S. Government will add all export and import information submitted by various facilities under this section to produce a national aggregate annual declaration of destination-by-destination trade for each Schedule 3 chemical.

§ 714.4 Advance declaration requirements for additionally planned production of Schedule 3 chemicals.

(a) *Declaration requirements.* (1) You must declare additionally planned production of Schedule 3 chemicals after the annual declaration on anticipated activities for the next calendar year has been delivered to BXA if:

(i) You plan that a previously undeclared plant on your plant site under § 714.2(a)(1)(iii) will produce a Schedule 3 chemical above the declaration threshold;

(ii) You plan to produce at a plant declared under § 714.2(a)(1)(iii) an additional Schedule 3 chemical above the declaration threshold;

(iii) You plan to increase the production of a Schedule 3 chemical by declared plants on your plant site from the amount exceeding the applicable declaration threshold to an amount exceeding the applicable inspection threshold (see § 716.1(b)(3)); or

(iv) You plan to increase the aggregate production of a Schedule 3 chemical at a declared plant site to an amount above the upper limit of the range previously declared under § 714.2(a)(1)(iii).

(2) If you must submit a declaration on additionally planned activities because you plan to engage in any of the activities listed in paragraphs (a)(1)(i) through (iv) of this section, you should also declare any changes to the anticipated purposes of production or product group codes. You do not have to submit a declaration on additionally planned activities if you are only changing your purposes of production or product group codes.

(b) *Declaration forms to be used.* If you are required to declare additionally planned activities pursuant to paragraph (a) of this section, you must complete the Certification Form and Forms 3–1, 3–2, and 3–3 as appropriate. Such forms are due to BXA at least 15 days in advance of the beginning of the additional or new activity.

§ 714.5 Frequency and timing of declarations.

Declarations and reports required under this part must be postmarked by the appropriate date identified in Table 1 of this section. Required declarations and reports include:

(a) Declaration on past production of any amount of Schedule 3 chemicals for chemical weapons (CW) purposes since January 1, 1946;

(b) Initial declaration (production of Schedule 3 chemicals during calendar year 1996);

(c) Initial report on exports and imports from trading companies, plant sites and other persons (during calendar year 1996);

(d) Annual declaration on past activities (production of Schedule 3 chemicals during the previous calendar year, beginning with 1997);

(e) Annual report on exports and imports from trading companies, plant sites and other persons (during the previous calendar year, beginning with 1997); and

(f) Annual declaration on anticipated activities (production during the next calendar year, beginning in calendar year 2000 for activities anticipated for calendar year 2001).

TABLE 1 TO § 714.5—DEADLINES FOR SUBMISSION OF SCHEDULE 3 DECLARATIONS

Declarations	Applicable forms	Due dates
Initial Declaration (for calendar year 1996)—Declared plant site (production).	Certification, 3–1, 3–2, 3–3 (if also exported or imported), A (as appropriate), B (optional).	March 30, 2000.
Initial Report on Exports and Imports (for calendar year 1996)—Plant site, trading company, other persons.	Certification, 3–1, 3–3.3 and 3–3.4, A (as appropriate), B (optional).	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared plant site (production).	Certification, 3–1, 3–2, 3–3 (if also exported or imported), A (as appropriate), B (optional).	For 1997, 1998, and 1999, March 30, 2000. Thereafter, February 28.

TABLE 1 TO § 714.5—DEADLINES FOR SUBMISSION OF SCHEDULE 3 DECLARATIONS—Continued

Declarations	Applicable forms	Due dates
Annual Report on Exports and Imports (previous calendar year, starting with 1997)—Plant site, trading company, other persons.	Certification, 3–1, 3–3.3 and 3–3.4, A (as appropriate), B (optional).	For 1997, 1998, and 1999, March 30, 2000. Thereafter, February 28.
Annual Declaration on Anticipated Activities (Production) (next calendar year).	Certification, 3–1, 3–3.1 and 3–3.2, A (as appropriate), B (optional).	September 3 of each year prior to the calendar year in which anticipated activities will take place, beginning in calendar year 2000.
Declaration on Additionally Planned Activities	Certification, 3–1, 3–3.1 and 3–3.2, A (as appropriate), B (optional).	15 calendar days before the additionally planned activity begins.
Declaration on Past Production of Schedule 3 Chemicals for CW Purposes.	Certification, 3–1, 3–2, 3–4, A (as appropriate), B (optional).	March 30, 2000.

§ 714.6 Amended declaration or report.

(a) You must submit an amended declaration or report for changes to previously submitted information on chemicals, activities and end-use purposes or the addition of new chemicals, activities and end-use purposes.

(b) For declared plant sites subject to inspection, changes that may affect verification activities, such as changes of owner or operator, company name, address, or inspection point of contact, require an amended declaration.

(c) For declared plant sites not subject to inspection, undeclared plant sites, trading companies, and other persons, changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, declaration point of contact, or non-substantive typographical errors, do not require submission of an amended declaration or report and may be corrected in subsequent declarations or reports.

(d) If you are required to submit an amended declaration or report pursuant to paragraph (a) or (b) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past activities). Only complete that portion of each form that corrects the previously submitted information.

SUPPLEMENT NO. 1 TO PART 714—SCHEDULE 3 CHEMICALS

A. Toxic chemicals:	
(1) Phosgene: Carbonyl dichloride	(75–44–5)
(2) Cyanogen chloride	(506–77–4)
(3) Hydrogen cyanide	(74–90–8)
(4) Chloropicrin: Trichloronitromethane	(76–06–2)
B. Precursors:	
(5) Phosphorus oxychloride	(10025–87–3)
(6) Phosphorus trichloride	(7719–12–2)
(7) Phosphorus pentachloride	(10026–13–8)
(8) Trimethyl phosphite	(121–45–9)
(9) Triethyl phosphite	(122–52–1)
(10) Dimethyl phosphite	(868–85–9)
(11) Diethyl phosphite	(762–04–9)
(12) Sulfur monochloride	(10025–67–9)
(13) Sulfur dichloride	(10545–99–0)
(14) Thionyl chloride	(7719–09–7)
(15) Ethyldiethanolamine	(139–87–7)
(16) Methyldiethanolamine	(105–59–9)
(17) Triethanolamine	(102–71–6)

Note to Supplement No. 1: Refer to Supplement No. 1 to part 774 of the Export Administration Regulations (the Commerce Control List), ECCN 1C355, Related Controls for chemicals controlled under the International Traffic in Arms Regulations (22 CFR parts 120 through 130).

PART 715—ACTIVITIES INVOLVING UNSCHEDULED DISCRETE ORGANIC CHEMICALS (UDOCs)

Sec.

715.1 Initial and annual declaration requirements for production by synthesis of unscheduled discrete organic chemicals (UDOCs).
715.2 Frequency and timing of declarations.
715.3 Amended declaration.
Supplement No. 1 to Part 715—Definition of an Unscheduled Discrete Organic Chemical
Supplement No. 2 to Part 715—Examples of Unscheduled Discrete Organic Chemicals (UDOCs) and UDOC Production

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 715.1 Initial and annual declaration requirements for production by synthesis of unscheduled discrete organic chemicals (UDOCs).

(a) See § 711.6 of this subchapter for information on obtaining the forms you will need to declare production of unscheduled discrete organic chemicals. *Declaration of production by synthesis of UDOCs for purposes not prohibited by the CWC.* (1) *Production quantities that trigger the declaration requirement.* You must complete the forms specified in paragraph (b) of this section if your plant site produced by synthesis:

(i) In excess of 200 metric tons aggregate of all UDOCs (including *all* UDOCs containing the elements phosphorus, sulfur or fluorine, referred to as ''PSF-chemicals'') in calendar year

1996 (for the initial declaration) or the previous calendar year beginning with 1997 (for an annual declaration); or

(ii) In excess of 30 metric tons of an individual PSF-chemical at one or more plants in calendar year 1996 (for the initial declaration) or in the previous calendar year beginning with 1997 (for an annual declaration).

(2) *UDOCs subject to declaration requirements under this part.* (i) UDOCs subject to declaration requirements under this part are those produced by synthesis that have been isolated for:

(A) Use; or

(B) Sale as a specific end product.

(ii) *Exemptions.* (A) Polymers and oligomers consisting of two or more repeating units which are formed by the chemical reaction of monomeric or polymeric substances;

(B) Chemicals and chemical mixtures produced through a biological or biomediated process;

(C) Products from the refining of crude oil, including sulfur-containing crude oil;

(D) Metal carbides (i.e., chemicals consisting only of metal and carbon); and

(E) UDOCs produced by synthesis that are ingredients or by-products in foods designed for consumption by humans and/or animals.

Note to Paragraph (a)(2): See Supplement No. 2 to this part for examples of UDOCs subject to the declaration requirements of this part, and for examples of activities that are not considered production by synthesis.

(3) *Exemptions for UDOC plant sites.* UDOC plant sites that exclusively produced hydrocarbons or explosives are exempt from UDOC declaration requirements. For the purposes of this part, the following definitions apply for hydrocarbons and explosives:

(i) Hydrocarbon means any organic compound that contains only carbon and hydrogen; and

(ii) Explosive means a chemical (or a mixture of chemicals) that is included in Class 1 of the United Nations Organization hazard classification system.

(b) *Types of declaration forms to be used.* (1) *Initial declaration.* You must complete the Certification Form and Form UDOC (consisting of two pages). Attach Form A as appropriate; Form B is optional.

(2) *Annual declaration on past activities.* You must complete the Certification Form and Form UDOC (consisting of two pages). Attach Form A as appropriate; Form B is optional.

(c) *''Declared'' UDOC plant sites.* A plant site that produced by synthesis in excess of 200 metric tons aggregate of all UDOCs (including all PSF-chemicals), or that comprises at least one plant that produced by synthesis in excess of 30 metric tons of an individual PSF-chemical during the previous year, is a ''declared'' UDOC plant site. A plant site that submitted an initial declaration for 1996 and/or annual declaration on past activities for 1997 or 1998 is a ''declared'' UDOC plant site for the years declared.

(d) *Routine inspections of declared UDOC plant sites.* A ''declared'' UDOC plant site is subject to routine inspection by the Organization for the Prohibition of Chemical Weapons (see part 716 of this subchapter) if it produced by synthesis during the previous calendar year more than 200 metric tons aggregate of UDOCs. A plant site that submitted an initial declaration for 1996 and/or annual declaration on past activities for 1997 or 1998, and exceeded the inspection threshold, is also subject to a routine inspection.

§ 715.2 Frequency and timing of declarations.

Declarations required under this part must be postmarked by the appropriate dates identified in Table 1 of this section. Required declarations include:

(a) Initial declaration (production during calendar year 1996).

(b) Annual declaration on past activities (production during the previous calendar year, beginning with 1997).

TABLE 1 TO § 715.2—DEADLINES FOR SUBMISSION OF DECLARATIONS FOR UNSCHEDULED DISCRETE ORGANIC CHEMICAL (UDOC) FACILITIES

Declarations	Applicable forms	Due dates
Initial Declaration (calendar year 1996)—Declared plant site	Certification, UDOC, A (as appropriate), B (optional).	March 30, 2000.
Annual Declaration on Past Activities (previous calendar year, starting with 1997)—Declared plant site.	Certification, UDOC, A (as appropriate), B (optional).	For 1997, 1998, and 1999 March 30, 2000. Thereafter, February 28.

§ 715.3 Amended declaration.

(a) Amended declarations are required to correct certain inaccuracies in a previously submitted declaration. These amended declarations are necessary to change a production range above the amount originally declared, or the production of a PSF-chemical above 30 metric tons by a plant not previously counted as a PSF-plant.

(b) Changes that do not directly affect the purpose of the Convention, such as changes to a company name, address, point of contact, or non-substantive typographical errors, do not require submission of an amended declaration and may be corrected in subsequent declarations.

(c) If you are required to submit an amended declaration pursuant to paragraph (a) of this section, you must complete and submit a new Certification Form and the specific form(s) being amended (e.g., annual declaration on past activities). Only complete that portion of each form that amends the previously submitted information.

Supplement No. 1 to Part 715—Definition of an Unscheduled Discrete Organic Chemical

Unscheduled discrete organic chemical means any chemical: (1) belonging to the class of chemical compounds consisting of all compounds of carbon except for its oxides, sulfides and metal carbonates identifiable by chemical name, by structural formula, if known, and by Chemical Abstract Service registry number, if assigned; and (2) that is not contained in the Schedules of Chemicals (see Supplements No. 1 to parts 712 through 714 of this subchapter). Unscheduled discrete organic chemicals subject to declaration under this part are those produced by synthesis that are isolated for use or sale as a specific end-product.

Note: Carbon oxides consist of chemical compounds that contain only the elements carbon and oxygen and have the chemical formula C_xO_y, where x and y denote integers. The two most common carbon oxides are carbon monoxide (CO) and carbon dioxide (CO_2). Carbon sulfides consist of chemical compounds that contain only the elements carbon and sulfur, and have the chemical formula C_aS_b, where a and b denote integers. The most common carbon sulfide is carbon disulfide (CS_2). Metal carbonates consist of chemical compounds that contain a metal

(i.e., the Group I Alkalis, Groups II Alkaline Earths, the Transition Metals, or the elements aluminum, gallium, indium, thallium, tin, lead, bismuth or polonium), and the elements carbon and oxygen. Metal carbonates have the chemical formula $M_d(CO_3)_e$, where d and e denote integers and M represents a metal. Common metal carbonates are sodium carbonate (Na_2CO_3) and calcium carbonate ($CaCO_3$). In addition, metal carbides or other compounds consisting of only a metal, as described above, and carbon (e.g., calcium carbide (CaC_2)), are exempt from declaration requirements (see § 715.1(a)(2)(ii)(D) of this part).

Supplement No. 2 to Part 715—Examples of Unscheduled Discrete Organic Chemicals (UDOCs) and UDOC Production

(1) Examples of UDOCs not subject to declaration include:

(i) UDOCs produced coincidentally as by-products that are not isolated for use or sale as a specific end product, and are routed to, or escape from, the waste stream of a stack, incinerator, or waste treatment system or any other waste stream;

(ii) UDOCs, contained in mixtures, which are produced coincidentally and not isolated for use or sale as a specific end-product;

(iii) UDOCs produced by recycling (i.e., involving one of the processes listed in paragraph (3) of this supplement) of previously declared UDOCs;

(iv) UDOCs produced by the mixing (i.e., the process of combining or blending into one mass) of previously declared UDOCs; and

(v) Intermediate UDOCs used in a single or multi-step process to produce another declared UDOC.

(2) Examples of UDOCs that you must declare under part 715 include, but are not limited to, the following, unless they are not isolated for use or sale as a specific end product:

(i) Acetophenone (CAS # 98–86–2);

(ii) 6–Chloro-2-methyl aniline (CAS # 87–63–8);

(iii) 2–Amino-3-hydroxybenzoic acid (CAS # 548–93–6); and

(iv) Acetone (CAS # 67–64–1).

(3) Examples of activities that are not considered production by synthesis under part 715 and, thus, the end products resulting from such activities would not be declared under part 715, are as follows:

(i) Fermentation;

(ii) Extraction;

(iii) Purification;

(iv) Distillation; and

(v) Filtration.

PART 716—INITIAL AND ROUTINE INSPECTIONS OF DECLARED FACILITIES

Sec.

716.1 General information on the conduct of initial and routine inspections.
716.2 Purposes and types of inspections of declared facilities.
716.3 Consent to inspections; warrants for inspections.
716.4 Scope and conduct of inspections.
716.5 Notification, duration and frequency of inspections.
716.6 Facility agreements.
716.7 Samples.
716.8 On-site monitoring of Schedule 1 facilities.
716.9 Report of inspection-related costs.

Supplement No. 1 to Part 716—Notification, Duration, and Frequency of Inspections

Supplement No. 2 to Part 716—Schedule 1 Model Facility Agreement

Supplement No. 3 to Part 716—Schedule 2 Model Facility Agreement

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 716.1 General information on the conduct of initial and routine inspections.

This part provides general information about the conduct of initial and routine inspections of declared facilities subject to inspection under CWC Verification Annex Part VI (E), Part VII(B), Part VIII(B) and Part IX(B). See part 717 of this subchapter for provisions concerning challenge inspections.

(a) *Overview.* Each State Party to the CWC, including the United States, has agreed to allow certain inspections of declared facilities by inspectors employed by the Organization for the Prohibition of Chemical Weapons (OPCW) to ensure that activities are consistent with obligations under the Convention. The Department of Commerce is responsible for leading, hosting and escorting inspections of all facilities subject to the provisions of this subchapter (see § 710.2 of this subchapter).

(b) *Declared facilities subject to initial and routine inspections.* (1) *Schedule 1 facilities.* (i) Your declared facility is subject to inspection if it produced in excess of 100 grams aggregate of Schedule 1 chemicals in the previous calendar year or anticipates producing in excess of 100 grams aggregate of Schedule 1 chemicals during the next calendar year.

(ii) If you are a new Schedule 1 production facility pursuant to § 712.4 of this subchapter, your facility is subject to an initial inspection within 200 days of submitting an initial declaration.

(iii) If your declared facility submitted an annual declaration on past activities for calendar year 1997 or 1998, you are subject to an initial inspection.

Note to paragraph (b)(1): All Schedule 1 facilities submitting a declaration are subject to inspection.

(2) *Schedule 2 plant sites.* (i) Your declared plant site is subject to inspection if at least one plant on your plant site produced, processed or consumed, in any of the three previous calendar years, or you anticipate that at least one plant on your plant site will produce, process or consume in the next calendar year, any Schedule 2 chemical in excess of the following:

(A) 10 kg of chemical BZ: 3–Quinuclidinyl benzilate (see Schedule 2, Part A, paragraph 3 in Supplement No. 1 to part 713 of this subchapter);

(B) 1 metric ton of chemical PFIB: 1,1,3,3,3–Pentafluoro-2(trifluoromethyl)-1-propene or any chemical belonging to the Amiton family (see Schedule 2, Part A, paragraphs 1 and 2 in Supplement No. 1 to part 713 of this subchapter); or

(C) 10 metric tons of any chemical listed in Schedule 2, Part B (see Supplement No. 1 to part 713 of this subchapter).

(ii) If your declared plant site submitted an initial declaration for calendar years 1994, 1995 and 1996, and at least one plant on your plant site produced a Schedule 2 chemical during any one of those three years in excess of the applicable inspection threshold quantity set forth in paragraphs (b)(2)(i)(A) through (C) of this section, you are subject to an initial inspection.

Note to paragraph (b)(2): The applicable inspection threshold quantity for Schedule 2 plant sites is ten times higher than the applicable declaration threshold quantity. Only declared plant sites, comprising at least one declared plant that exceeds the applicable inspection threshold quantity, are subject to inspection.

(3) *Schedule 3 plant sites.* (i) Your declared plant site is subject to inspection if the declared plants on your plant site produced during the previous calendar year, or you anticipate will produce in the next calendar year, in excess of 200 metric tons aggregate of any Schedule 3 chemical (see Supplement No. 1 to part 714 of this subchapter).

(ii) If your declared plant site submitted an initial declaration for calendar year 1996 and/or annual declaration on past activities for calendar year 1997 or 1998, and exceeded the inspection threshold set forth in paragraph (b)(3)(i) of this

section, you are subject to a routine inspection.

Note to paragraph (b)(3): The methodology for determining a declarable and inspectable plant site is different. A Schedule 3 plant site that submits a declaration is subject to inspection only if the aggregate production of a Schedule 3 chemical at all declared plants on the plant site exceeds 200 metric tons.

(4) *Unscheduled discrete organic chemical plant sites.* (i) Your declared plant site is subject to inspection if it produced by synthesis more than 200 metric tons aggregate of unscheduled discrete organic chemicals during the previous calendar year.

(ii) If your declared plant site submitted an initial declaration for calendar year 1996 and/or annual declaration on past activities for calendar year 1997 or 1998, and exceeded the inspection threshold set forth in paragraph (b)(4)(i) of this section, you are subject to a routine inspection.

Note 1 to paragraph (b)(4): You must include amounts of unscheduled discrete organic chemicals containing phosphorus, sulfur or fluorine in the calculation of your plant site's aggregate production of unscheduled discrete organic chemicals.

Note 2 to paragraph (b)(4): All UDOC plant sites that submit a declaration based on § 715.1(a)(i) of this subchapter are subject to a routine inspection.

(c) *Responsibilities of the Department of Commerce.* As the host and escort for the international Inspection Team for all inspections of facilities subject to the provisions of this subchapter under this part, the Department of Commerce will: lead on-site inspections; provide Host Team notification to the facility of an impending inspection; take appropriate action to obtain an administrative warrant in the event the facility does not consent to the inspection; dispatch an advance team to the vicinity of the site to provide administrative and logistical support for the impending inspection and, upon request, to assist the facility with inspection preparation; escort the Inspection Team on-site throughout the inspection process; assist the Inspection Team with verification activities; negotiate the development of a site-specific facility agreement, if appropriate, during an initial inspection of a facility (see § 716.6); and ensure that an inspection adheres to the Convention, the Act and any warrant issued thereunder, and a site-specific facility agreement, if concluded.

§ 716.2 Purposes and types of inspections of declared facilities.

(a) *Schedule 1 facilities.* (1) *Purposes of inspections.* The aim of inspections of Schedule 1 facilities is to verify that:

(i) The facility is not used to produce any Schedule 1 chemical, except for the declared Schedule 1 chemicals;

(ii) The quantities of Schedule 1 chemicals produced, processed or consumed are correctly declared and consistent with needs for the declared purpose; and

(iii) The Schedule 1 chemical is not diverted or used for purposes other than those declared.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared Schedule 1 facilities, in addition to the verification activities listed in paragraph (a)(1) of this section, the Host Team and the Inspection Team will draft site-specific facility agreements (see § 716.6) for the conduct of routine inspections.

(ii) *Routine inspections.* During routine inspections of declared Schedule 1 facilities, the verification activities listed in paragraph (a)(1) of this section will be carried out pursuant to site-specific facility agreements (§ 716.6) developed during the initial inspections and concluded between the U.S. Government and the OPCW pursuant to the Convention.

(b) *Schedule 2 plant sites.* (1) *Purposes of inspections.* (i) The general aim of inspections of declared Schedule 2 plant sites is to verify that activities are in accordance with obligations under the Convention and consistent with the information provided in declarations. Particular aims of inspections of declared Schedule 2 plant sites are to verify:

(A) The absence of any Schedule 1 chemical, especially its production, except if in accordance with the provisions of the Convention;

(B) Consistency with declarations of levels of production, processing or consumption of Schedule 2 chemicals; and

(C) That Schedule 2 chemicals are not diverted to activities prohibited under the Convention.

(ii) During initial inspections, inspectors shall collect information to determine the frequency and intensity of subsequent inspections by assessing the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site and the nature of the activities carried out there. The inspectors will take the following criteria into account, inter alia:

(A) The toxicity of the scheduled chemicals and of the end-products produced with them, if any;

(B) The quantity of the scheduled chemicals typically stored at the inspected site;

(C) The quantity of feedstock chemicals for the scheduled chemicals typically stored at the inspected site;

(D) The production capacity of the Schedule 2 plants; and

(E) The capability and convertibility for initiating production, storage and filling of toxic chemicals at the inspected site.

(2) *Types of inspections.* (i) *Initial inspections.* During initial inspections of declared Schedule 2 plant sites, in addition to the verification activities listed in paragraph (b)(1) of this section, the Host Team and the Inspection Team will generally draft site-specific facility agreements for the conduct of routine inspections (see § 716.6).

(ii) *Routine inspections.* During routine inspections of declared Schedule 2 plant sites, the verification activities listed in paragraph (b)(1) of this section will be carried out pursuant to any appropriate site-specific facility agreements developed during the initial inspections (see § 716.6), and concluded between the U.S. Government and the OPCW pursuant to the Convention and the Act.

(c) *Schedule 3 plant sites.* (1) *Purposes of inspections.* The general aim of inspections of declared Schedule 3 plant sites is to verify that activities are consistent with the information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Routine inspections.* During routine inspections of declared Schedule 3 plant sites, in addition to the verification activities listed in paragraph (c)(1) of this section, the Host Team and the Inspection Team may draft site-specific facility agreements for the conduct of subsequent routine inspections (see § 716.6). Although the Convention does not require facility agreements for declared Schedule 3 plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

(d) *Unscheduled Discrete Organic Chemicals plant sites.* Declared unscheduled discrete organic chemical (UDOC) plant sites will be subject to inspection beginning April 29, 2000.

(1) *Purposes of inspections.* The general aim of inspections of declared UDOC plant sites is to verify that activities are consistent with the

information provided in declarations. The particular aim of inspections is to verify the absence of any Schedule 1 chemical, especially its production, except in accordance with the Convention.

(2) *Routine inspections.* During routine inspections of declared UDOC plant sites, in addition to the verification activities listed in paragraph (d)(1) of this section, the Host Team and the Inspection Team may develop draft site-specific facility agreements for the conduct of subsequent routine inspections (see § 716.6). Although the Convention does not require facility agreements for declared UDOC plant sites, the owner, operator, occupant or agent in charge of a plant site may request one. The Host Team will not seek a facility agreement if the owner, operator, occupant or agent in charge of the plant site does not request one. Subsequent routine inspections will be carried out pursuant to site-specific facility agreements, if applicable.

§ 716.3 Consent to inspections; warrants for inspections.

(a) The owner, operator, occupant or agent in charge of a facility may consent to an initial or routine inspection. The individual giving consent on behalf of the facility represents that he or she has the authority to make this decision for the facility.

(b) In instances where consent is not provided by the owner, operator, occupant or agent in charge for an initial or routine inspection, the Department of Commerce intends to seek administrative warrants as provided by the Act.

§ 716.4 Scope and conduct of inspections.

(a) *General.* Each inspection shall be limited to the purposes described in § 716.2 and shall be conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention.

(b) Scope. (1) Description of inspections. During inspections, inspectors will receive a pre-inspection briefing from facility representatives; visually inspect the facilities or plants producing scheduled chemicals or UDOCs, which may include storage areas, feed lines, reaction vessels and ancillary equipment, control equipment, associated laboratories, first aid or medical sections, and waste and effluent handling areas, as necessary to accomplish their inspection; examine relevant records; and may take samples as provided by the Convention, the Act and consistent with the requirements set forth by the Director of the United States National Authority (USNA) at 22 CFR part 103, and the facility agreement, if applicable.

(2) *Scope of consent.* When an owner, operator, occupant, or agent in charge of a facility consents to an initial or routine inspection, he or she is consenting to provide access to the Inspection Team and Host Team to any area of the facility, any item located on the facility, interviews with facility personnel, and any records necessary for the Inspection Team to complete its mission. When consent is granted for an inspection, the owner, operator, occupant, or agent in charge agrees to provide the same degree of access provided for under section 305 of the Act. The determination of whether the Inspection Team's request to inspect any area, building, item or record is reasonable is the responsibility of the Host Team Leader.

(c) *Pre-inspection briefing.* Upon arrival at the inspection site and before commencement of the inspection, facility representatives will provide to the Inspection Team and Host Team a pre-inspection briefing on the facility, the activities carried out there, safety measures, and administrative and logistical arrangements necessary for the inspection, which may be aided with the use of maps and other documentation as deemed appropriate by the facility. The time spent for the briefing will be limited to the minimum necessary and may not exceed three hours.

(1) The pre-inspection briefing will address:

(i) Plant site safety and alarms;

(ii) Activities, business and manufacturing operations;

(iii) Physical layout;

(iv) Delimitation of declared facility;

(v) Scheduled chemicals/chemistries (declared and undeclared);

(vi) Process flow;

(vii) Units specific to declared operations; and

(viii) Administrative and logistic information.

(2) The pre-inspection briefing may also address, inter alia:

(i) Introduction of key facility personnel;

(ii) Management, organization and history;

(iii) Confidential business information concerns;

(iv) Types and location of records/documents;

(v) Data declaration updates/revisions;

(vi) Draft facility agreement, if applicable; and

(vii) Proposed inspection plan.

(d) *Visual plant inspection.* The Inspection Team may visually inspect the declared plant or facility and other areas of the plant site or facility as agreed by the Host Team Leader after consulting with the facility representative.

(e) *Records review.* The facility must have available for the Inspection Team to review, on the inspection site, access to all supporting materials and documentation used by the facility to prepare declarations and to comply with the CWCR (see §§ 721.1 and 721.2 of this subchapter). Such access may be to paper copies or via electronic remote access by computer during the inspection period or as otherwise agreed upon by the Inspection Team and Host Team Leader.

(f) *Effect of facility agreements.* Routine inspections at facilities for which the United States has concluded a facility agreement with the OPCW will be conducted in accordance with the facility agreement. The existence of a facility agreement does not in any way limit the right of the owner, operator, occupant, or agent in charge of the facility to withhold consent to an inspection request.

(g) *Hours of inspections.* Consistent with the provisions of the Convention, the Host Team will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(h) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety. Such health and safety regulations and requirements will be set forth in, but will not necessarily be limited to, the facility agreement, if applicable.

(i) *Preliminary factual findings.* Upon completion of an inspection, the Inspection Team will meet with the Host Team and facility personnel to review the written preliminary findings of the Inspection Team and to clarify ambiguities. The Host Team will discuss the preliminary findings with the facility, and the Host Team Leader will take into consideration the facility's input when providing official comment on the preliminary findings to the Inspection Team. This meeting will be completed not later than 24 hours after the completion of the inspection.

§ 716.5 Notification, duration and frequency of inspections.

(a) *Notification.* (1)(i) *Content of notice.* Inspections of facilities may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises to be inspected. The Department of Commerce will also provide a separate Host Team notification to the inspection point of contact identified in declarations submitted by the facility. If the United States is unable to provide actual written notice to the owner, operator, or agent in charge, the Department of Commerce, or if the Department of Commerce is unable, the Federal Bureau of Investigation, may post notice prominently at the facility to be inspected. The notice shall include all appropriate information provided by the OPCW to the USNA concerning:

(A) The type of inspection;

(B) The basis for the selection of the facility or location for the type of inspection sought;

(C) The time and date that the inspection will begin and the period covered by the inspection; and

(D) The names and titles of the inspectors.

(ii) In addition to appropriate information provided by the OPCW in its notification to the USNA, the Department of Commerce's Host Team notification will request that the facility indicate whether it will consent to an inspection, and will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities. If a facility does not agree to provide consent to an inspection within four hours of receipt of the Host Team notification, BXA intends to seek an administrative warrant.

(iii) The following table sets forth the notification procedures for inspection:

TABLE TO § 716.5(a)(1)

Activity	Agency action	Facility action
(A) OPCW notification of inspection	(*1*) U.S. National Authority transmits actual written notice and inspection authorization to the owner and operator, occupant, or agent in charge via facsimile within 6 hours.	(*i*)Acknowledge receipt of fax.
	(*2*) Upon notification from the U.S. National Authority, BXA immediately transmits Host Team notification via facsimile to the inspection point of contact to ascertain whether the facility (1) grants consent and (2) requests assistance in preparing for the inspection. In absence of consent within four hours of transmission, BXA intends to seek an administrative warrant.	(*i*) Indicates whether it grants consent. (*ii*) May request advance team support. No requirement for reimbursement of U.S. Government's services.
(B) Preparation for inspection	(*1*) BXA advance team arrives in the vicinity of the facility to be inspected 1–2 days after OPCW notification for logistical and administrative preparations.	(*i*) If advance team support is provided, facility works with the advance team on inspection-related issues.

(2) *Timing of notice.* (i) *Schedule 1 facilities.* For declared Schedule 1 facilities, the Technical Secretariat will notify the USNA of an initial inspection not less than 72 hours prior to arrival of the inspection team in the United States, and will notify the USNA of a routine inspection not less than 24 hours prior to arrival of the Inspection Team in the United States. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide Host Team notice to the inspection point of contact of the facility as soon as possible after the OPCW notifies the USNA of the inspection.

(ii) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, the Technical Secretariat will notify the USNA of an initial or routine inspection not less than 48 hours prior to arrival of the Inspection Team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide Host Team notice to the inspection point of contact at the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(iii) *Schedule 3 and unscheduled discrete organic chemical plant sites.* For declared Schedule 3 and unscheduled discrete organic chemical plant sites, the Technical Secretariat will notify the USNA of an initial or routine inspection not less than 120 hours prior to arrival of the Inspection Team at the plant site to be inspected. The USNA will provide written notice to the owner and to the operator, occupant or agent in charge of the premises within six hours of receiving notification from the OPCW Technical Secretariat or as soon as possible thereafter. The Department of Commerce will provide Host Team notice to the inspection point of contact of the plant site as soon as possible after the OPCW notifies the USNA of the inspection.

(b) *Period of inspections.* (1) *Schedule 1 facilities.* For a declared Schedule 1 facility, the Convention does not specify a maximum duration for an initial inspection. The estimated period of routine inspections will be as stated in the facility agreement, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected facility on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4 (c) and (i) for a description of these activities.

(2) *Schedule 2 plant sites.* For declared Schedule 2 plant sites, the maximum duration of initial and routine inspections shall be 96 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4 (c) and (i) for a description of these activities.

(3) *Schedule 3 and discrete organic chemical plant sites.* For declared

Schedule 3 or unscheduled discrete organic chemical plant sites, the maximum duration of initial and routine inspections shall be 24 hours, unless extended by agreement between the Inspection Team and the Host Team Leader. The Host Team Leader will consult with the inspected plant site on any request for extension of an inspection prior to making an agreement with the Inspection Team. Activities involving the pre-inspection briefing and preliminary findings are in addition to inspection activities. See § 716.4 (c) and (i) for a description of these activities.

(c) *Frequency of inspections.* The frequency of inspections is as follows:

(1) *Schedule 1 facilities.* As provided by the Convention, the frequency of inspections at declared Schedule 1 facilities is determined by the OPCW based on the risk to the object and purpose of the Convention posed by the quantities of chemicals produced, the characteristics of the facility and the nature of the activities carried out at the facility. The frequency of inspections will be stated in the facility agreement.

(2) *Schedule 2 plant sites.* As provided by the Convention and the Act, the maximum number of inspections at declared Schedule 2 plant sites is 2 per calendar year per plant site. The OPCW will determine the frequency of routine inspections for each declared Schedule 2 plant site based on the inspectors' assessment of the risk to the object and purpose of the Convention posed by the relevant chemicals, the characteristics of the plant site, and the nature of the activities carried out there. The frequency of inspections will be stated in the facility agreement, if applicable.

(3) *Schedule 3 plant sites.* As provided by the Convention, no declared Schedule 3 plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and unscheduled discrete organic chemical plant sites in the United States may not exceed 20 per calendar year.

(4) *Unscheduled Discrete Organic Chemical plant sites.* As provided by the Convention, no declared UDOC plant site may receive more than two inspections per calendar year and the combined number of inspections of Schedule 3 and unscheduled discrete organic chemical plant sites in the United States may not exceed 20 per calendar year.

§ 716.6 Facility agreements.

(a) *Description and requirements.* A facility agreement is a site-specific agreement between the U.S. Government and the OPCW. Its purpose is to define procedures for inspections of a specific declared facility that is subject to inspection because of the type or amount of chemicals it produces, processes or consumes.

(1) *Schedule 1 facilities.* The Convention requires that facility agreements be concluded between the United States and the OPCW for all declared Schedule 1 facilities.

(2) *Schedule 2 plant sites.* The USNA will ensure that such facility agreements are concluded with the OPCW unless the owner, operator, occupant or agent in charge of the plant site and the OPCW Technical Secretariat agree that such a facility agreement is not necessary.

(3) *Schedule 3 and unscheduled discrete organic chemical plant sites.* If the owner, operator, occupant or agent in charge of a declared Schedule 3 or unscheduled discrete organic chemical plant site requests a facility agreement, the USNA will ensure that a facility agreement for such a plant site is concluded with the OPCW.

(b) *Notification; negotiation of draft and final facility agreements; and conclusion of facility agreements.* Prior to the development of a facility agreement, the Department of Commerce shall notify the owner, operator, occupant, or agent in charge of the facility, and if the owner, operator, occupant or agent in charge so requests, the notified person may participate in preparations with Department of Commerce representatives for the negotiation of such an agreement. During the initial inspection of a declared facility, the Inspection Team and the Host Team will negotiate a draft facility agreement. To the maximum extent practicable consistent with the Convention, the owner and the operator, occupant or agent in charge of the facility may observe facility agreement negotiations between the U.S. Government and OPCW. As a general rule, BXA will consult with the affected facility on the contents of the agreements and take facility comments into consideration during negotiations. The Department of Commerce will participate in the negotiation of, and approve, all final facility agreements with the OPCW. Facilities will be notified of and have the right to observe final facility agreement negotiations between the United States and OPCW to the maximum extent practicable, consistent with the Convention. Prior to the conclusion of a final facility agreement, the affected facility will have an opportunity to comment on the facility agreement. BXA will give consideration to such comments prior to approving final facility agreements with the OPCW. The United States National Authority shall ensure that facility agreements for Schedule 1, Schedule 2, Schedule 3 and unscheduled discrete organic chemical facilities are concluded, as appropriate, with the OPCW in coordination with the Department of Commerce.

(c) *Format and content.* Schedule 1 and Schedule 2 model facility agreements are included in Supplement No. 2 and Supplement No. 3 to this part. These model facility agreements implement the general provisions of the Convention pertaining to inspections, including health and safety procedures, confidentiality of information, media and public relations, information about the facility, inspection equipment, pre-inspection activities, conduct of the inspection (including access to and inspection of areas, buildings and structures, access to and inspection of records and documentation, arrangements for interviews of facility personnel, photographs, sampling, and measurements), and logistical arrangements for the inspectors, such as communications and lodging. Attachments to the facility agreements will provide site-specific information such as working hours, special safety and health procedures, as well as site-specific agreements as to documents and records to be provided, specific areas of a facility to be inspected, site diagrams, sampling, photography, interview procedures, use of inspection equipment, procedures for protection of confidential business information, and administrative arrangements.

(d) *Further information.* For further information about facility agreements, please write or call: Inspection Management Team, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, N.W., Room 6087B, Washington, D.C. 20230–0001, Telephone: (202) 482–6114.

§ 716.7 Samples.

The owner, operator, occupant or agent in charge of a facility must provide a sample as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103.

§ 716.8 On-site monitoring of Schedule 1 facilities.

Declared Schedule 1 facilities are subject to verification by monitoring with on-site instruments as provided by the Convention. For facilities subject to the CWCR, however, such monitoring is not anticipated. The U.S. Government

will ensure that any monitoring that may be requested by the OPCW is carried out pursuant to the Convention and U.S. law.

§ 716.9 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to this subchapter during a given calendar year must report to BXA within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BXA on company letterhead at the address given in § 716.6(d), with the following notation: ''Attn: Report of inspection-related costs.''

Supplement No. 1 to Part 716

NOTIFICATION, DURATION AND FREQUENCY OF INSPECTIONS

	Schedule 1	Schedule 2	Schedule 3	Unscheduled discrete organic chemicals
Notice of initial or routine inspection to USNA.	24 hours prior to arrival at the point of entry.	48 hours prior to arrival at the plant site.	120 hours prior to arrival at the plant site.	120 hours prior to arrival at the plant site.
Duration of inspection	As specified in facility agreement.	96 hours	24 hours	24 hours.
Maximum number of inspections.	Determined by OPCW based on characteristics of facility and the nature of the activities carried out at the facility.	2 per calendar year per plant site.	2 per calendar year per plant site.	2 per calendar year per plant site.
Notification of challenge inspection to USNA*.	12 hours prior to arrival of inspection team at the point of entry.			
Duration of Challenge inspection*.	84 hours.			

*See part 717 of this subchapter.

Supplement No. 2 to Part 716—Schedule 1 Model Facility Agreement

Draft Model Agreement specifying the general form and content for facility agreements to be concluded pursuant to Verification Annex, Part VI, paragraph 31 (other facilities).

Facility Agreement between the Organization for the Prohibition of Chemical Weapons and the Government of the United States of America Regarding On-site Inspections at the _____ Facility Located at the _____.

The Organization for the Prohibition of Chemical Weapons, hereinafter referred to as ''Organization'', and the Government of the United States of America, hereinafter referred to as ''inspected State Party'', both constituting the Parties to this Agreement, have agreed on the following arrangements in relation to the conduct of inspections pursuant to paragraph 3 of Article VI of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, hereinafter referred to as ''Convention'', at _____ (insert name of the facility, its precise location, including the address), declared under paragraphs 7 and 8 of Article VI, hereinafter referred to as ''facility''.

Section 1. General Provisions

1. The purpose of this Agreement is to facilitate the implementation of the provisions of the Convention in relation to inspections conducted at the facility pursuant to paragraph 3 of Article VI of the Convention and in accordance with the obligations of the inspected State Party and the Organization under the Convention.

2. Nothing in this Agreement shall be applied or interpreted in a way that is contradictory to the provisions of the Convention, including paragraph 1 of Article VII.[1] In case of inconsistency between this Agreement and the Convention, the Convention shall prevail.

3. The Parties have agreed to apply for planning purposes the general factors contained in Attachment 1.

4. The frequency and intensity of inspections at the facility are given in Part B of Attachment 1 and reflect the risk assessment of the Organization conducted pursuant to paragraphs 23 or 30 of Part VI of the Verification Annex, whichever applies.

5. The inspection team shall consist of no more than ____ persons.

6. The language for communication between the inspection team and the inspected State Party during inspections shall be English.

7. In case of any development due to circumstances brought about by unforeseen events or acts of nature, which could affect inspection activities at the facility, the inspected State Party shall notify the Organization and the inspection team as soon as practically possible.

8. In case of need for the urgent departure, emergency evacuation or urgent travel of inspector(s) from the territory of the inspected State Party, the inspection team leader shall inform the inspected State Party of such a need. The inspected State Party shall arrange without undue delay such departure, evacuation or travel. In all cases, the inspected State Party shall determine the means of transportation and routes to be taken. The costs of such departure, evacuation or travel of inspectors shall be borne by the Organization.

9. Inspectors shall wear identification badges at all times when on the premises of the facility.

Section 2. Health and Safety

1. Health and safety matters during inspections are governed by the Convention, the Organization's Health and Safety Policy and Regulations, and applicable national, local and facility safety and environmental regulations. The specific arrangements for implementing the relevant provisions of the Convention and the Organization's Health and Safety Policy in relation to inspections at the facility are contained in Attachment 2.

2. Pursuant to paragraph 1 of this section, all applicable health and safety regulations relevant to the conduct of the inspection at the facility are listed in Attachment 2 and shall be made available for use by the inspection team at the facility.

3. In case of the need to modify any health- and safety-related arrangements at the facility contained in Attachment 2 to this Agreement bearing on the conduct of inspections, the inspected State Party shall notify the Organization. Any such modification shall apply provisionally until the inspected State Party and the Organization have reached agreement on this issue. In case no agreement has been reached by the time of the completion of the inspection, the relevant information may be included in the preliminary factual findings. Any agreed modification shall be recorded in Attachment 2 to this Agreement in accordance with paragraph 2 of Section 13 of this Agreement.

[1] Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention.

4. In the course of the pre-inspection briefing the inspection team shall be briefed by the representatives of the facility on all health and safety matters which, in the view of those representatives, are relevant to the conduct of the inspection at the facility, including:

(a) The health and safety measures at the Schedule 1 facilities to be inspected and the likely risks that may be encountered during the inspection;

(b) Any additional health and safety measures or regulations that need to be observed at the facility;

(c) Procedures to be followed in case of an accident or in case of other emergencies, including a briefing on emergency signals, routes and exits, and the location of emergency meeting points and medical facilities; and

(d) Specific inspection activities which must be limited within particular areas at the facility, and in particular within those Schedule 1 facilities to be inspected under the inspection mandate, for reasons of health and safety.

Upon request, the inspection team shall certify receipt of any such information if it is provided in written form.

5. During the course of an inspection, the inspection team shall refrain from any action which by its nature could endanger the safety of the team, the facility, or its personnel or could cause harm to the environment. Should the inspected State Party refuse certain inspection activities, it may explain the circumstances and safety considerations involved, and shall provide alternative means for accomplishing the inspection activities.

6. In the case of emergency situations or accidents involving inspection team members while at the facility, the inspection team shall comply with the facility's emergency procedures and the inspected State Party shall to the extent possible provide medical and other assistance in a timely and effective manner with due regard to the rules of medical ethics if medical assistance is requested. Information on medical services and facilities to be used for this purpose is contained in Part D of Attachment 2. If the Organization undertakes other measures for medical support in regard to inspection team members involved in emergency situations or accidents, the inspected State Party will render assistance to such measures to the extent possible. The Organization will be responsible for the consequences of such measures.

7. The inspected State party shall, to the extent possible, assist the Organization in carrying out any inquiry into an accident or incident involving a member of the inspection team.

8. If, for health and safety reasons given by the inspected State Party, health and safety equipment of the inspected State Party is required to be used by the inspection team, the cost so incurred shall be borne by the inspected State Party.

9. The inspection team may use its own approved health and safety equipment. If the inspected State Party determines it to be necessary, the inspected State Party shall conduct a fit test on masks brought with the inspection team. If the inspected State Party so requests on the basis of confirmed contamination or hazardous waste requirements or regulations, any such piece of equipment involved in the inspection activities will be left at the facility at the end of the inspection. The inspection team reserves the right to destroy equipment left at the facility or witness its destruction by agreed procedures. The inspected State Party will reimburse the Organization for the loss of the inspection team's equipment.

10. In accordance with the Organization's Health and Safety Policy, the inspected State Party may provide available data based on detection and monitoring, to the agreed extent necessary to satisfy concerns that may exist regarding the health and safety of the inspection team.

Section 3. Confidentiality

1. Matters related to confidentiality are governed by the Convention, including its Confidentiality Annex and paragraph 1 of Article VII, and the Organization's Policy on Confidentiality. The specific arrangements for implementing the provisions of the Convention and the Organization's Policy on Confidentiality in relation to the protection of confidential information at the facility are contained in Attachment 3.

2. Upon request, the inspected State Party will procure a container to be placed under joint seal to maintain documents that the inspection team, inspected State Party, or the facility representative decides to keep as reference for future inspections. The inspected State Party shall be reimbursed by the Organization for the purchase of such container.

3. All documents, including photographs, provided to the inspection team will be controlled as follows:

(a) *Information to be taken off-site.* Information relevant to the finalization of the preliminary factual findings that the inspected State Party permits the inspection team to take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly state that the inspection team may take it off-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team.

(b) *Information restricted for use on-site.* Information that the inspected State Party permits the inspection team to use on-site during inspections but not take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team. Upon conclusion of the inspection, the inspection team shall return the information to the inspected State Party, and the facility representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

(c) *Information restricted for use on-site and requiring direct supervision.* Information that the inspected State Party permits the inspection team to use on-site only under direct supervision of the inspected State Party or the representative of the inspected facility will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site under direct supervision and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the facility will acknowledge the release of such information in writing prior to disclosure to the inspection team. The inspection team shall return the information to the inspected State Party immediately upon completion of review and the facility representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

Section 4. Media and Public Relations

1. Inspection team media and public relations are governed by the Organization's Media and Public Relations Policy. The specific arrangements for the inspection team's contacts with the media or the public, if any, in relation to inspections of the facility are contained in Attachment 4.

Section 5. Inspection Equipment

1. As agreed between the inspected State Party and the Organization, the approved equipment listed in Part A of Attachment 5 and with which the inspected State Party has been given the opportunity to familiarize itself will, at the discretion of the Organization and on a routine basis, be used specifically for the Schedule 1 inspection. The equipment will be used in accordance with the Convention, the relevant decisions taken by the Conference of States Parties, and any agreed procedures contained in Attachment 5.

2. The provisions of paragraph 1 above are without prejudice to paragraphs 27 to 29 of Part II of the Verification Annex.

3. The items of equipment available on-site, not belonging to the Organization, which the inspected State Party has volunteered to provide to the inspection team upon its request for use on-site during the conduct of inspections, together with any procedures for the use of such equipment, if required, any requested support which can be provided, and conditions for the provision of equipment are listed in Part B of Attachment 5. Prior to any use of such equipment, the inspection team may confirm that the performance characteristics of such equipment are consistent with those for similar Organization-approved equipment, or, with respect to items of equipment which are not on the list of Organization-approved

equipment, are consistent with the intended purpose for using such equipment.[2]

4. Requests from the inspection team for the inspected State Party during the inspection to provide equipment mentioned in paragraph 3 above shall be made in writing by an authorized member of the inspection team using the form contained in Attachment 5. The same procedure will also apply to other requests of the inspection team in accordance with paragraph 30 of Part II of the Verification Annex.

5. Agreed procedures for the decontamination of any equipment are contained in Part C of Attachment 5.

6. For the purpose of verification, the list of agreed on-site monitoring instruments, if any, as well as agreed conditions, procedures for use, maintenance, repair, modification, replacement and provisions for the inspected State Party's support, if required, installation points, and security measures to prevent tampering with such on-site monitoring instruments are contained in Part D of Attachment 5.

Section 6. Pre-Inspection Activities

1. The inspection team shall be given a pre-inspection briefing by the representatives of the facility in accordance with paragraph 37 of Part II of the Verification Annex. The pre-inspection briefing shall include:

(a) Information on the facility as described in Attachment 6;

(b) Health and safety specifications described in Section 2 above and detailed in Attachment 2;

(c) Any changes to the above-mentioned information since the last inspection; and

(d) Information on administrative and logistical arrangements additional to those contained in Attachment 10, if any, that shall apply during the inspection, as contained in Section 10.

2. Any information about the facility that the inspected State Party has volunteered to provide to the inspection team during the pre-inspection briefing with indications as to which information may be transferred off-site is referenced in Part B of Attachment 6.

Section 7. Conduct of the Inspection

7.1 Standing Arrangements

1. The inspection period shall begin immediately upon completion of the pre-inspection briefing unless agreed otherwise. Upon completion of the pre-inspection briefing, the inspected State Party may, on a voluntary basis, provide a site tour at the request of the inspection team. Arrangements for the conduct of a site tour, if any, are contained in Attachment 7.

2. Upon conclusion of the pre-inspection briefing, the inspection team leader shall provide to the designated representative of the inspected State Party a preliminary inspection plan to facilitate the conduct of the inspection.

3. Before commencement of inspection activities, the inspection team leader shall inform the representative of the inspected State Party about the initial steps to be taken in implementing the inspection plan. The plan will be adjusted by the inspection team as circumstances warrant throughout the inspection process in consultation with the inspected State Party as to its implementability in regard to paragraph 40 of Part II of the Verification Annex.

4. The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party and disturbance to the facility inspected. The inspection team shall avoid unnecessarily hampering or delaying the operation of a facility and avoid affecting safety. In particular, the inspection team shall not operate the facility. If the inspection team considers that, to fulfil the mandate, particular operations should be carried out in the facility, it shall request the designated representative of the facility to have them performed.

5. At the beginning of the inspection, the inspection team shall have the right to confirm the precise location of the facility utilizing visual and map reconnaissance, a site diagram, or other suitable techniques.

6. The inspection team shall, upon request of the inspected State Party, communicate with the personnel of the facility only in the presence of or through a representative of the inspected State Party.

7. The inspected State Party shall, upon request, provide a securable work space for the inspection team, including adequate space for the storage of equipment. The inspection team shall have the right to seal its work space. For ease of inspection, the inspected State Party will work with the facility representative to provide work space at the facility, if possible.

7.2 Access to the Declared Facility

1. The object of the inspection shall be the declared Schedule 1 facility as referenced in Attachment 6.

2. Pursuant to paragraph 45 of Part II of the Verification Annex, the inspection team shall have unimpeded access to the declared facility in accordance with the relevant Articles and Annexes of the Convention and Attachments 6, 8, and 9.

7.3 Access to and Inspection of Documentation and Records

1. The agreed list of the documentation and records to be routinely made available for inspection purposes to the inspection team by the inspected State Party during an inspection, as well as arrangements with regard to access to such records for the purpose of protecting confidential information, are contained in Attachment 8. Such documentation and records will be provided to the inspection team upon request.

2. Only those records placed in the custody of the inspection team that are attached to the preliminary factual findings in accordance with Section 3 may leave the premises. Those records placed in the custody of the inspection team that are not attached to the preliminary factual findings must be retained in the inspection team's on-site container or returned to the inspected State Party.

7.4 Sampling and Analysis

1. Without prejudice to paragraphs 52 to 58 of Part II of the Verification Annex, procedures for sampling and analysis for verification purposes are contained in Attachment 9.

2. Sampling and analysis, for inspection purposes, may be carried out to fulfill the inspection mandate. Each such sample will be split into a minimum of four parts at the request of the inspection team in accordance with Part C of Attachment 9. One part shall be analyzed in a timely manner on-site. The second part of the split sample may be controlled by the inspection team for future reference and, if necessary, analysis off-site at laboratories designated by the Organization. That part of the sample may be destroyed at any time in the future upon the decision of the inspection team but in any case no later than 60 days after it was taken. The third part may be retained by the inspected State Party. The fourth part may be retained by the facility.

3. Pursuant to paragraph 52 of the Part II of the Verification Annex, representatives of the inspected State Party or facility shall take samples at the request of the inspection team in the presence of inspectors. The inspected State Party will inform the inspection team of the authorized facility representative's[3] determination of whether the sample shall be taken by representatives of the facility or the inspection team or other individuals present. If inspectors are granted the right to take samples themselves in accordance with paragraph 52 of Part II of the Verification Annex, the relevant advance agreement between the inspection team and the inspected State Party shall be in writing. The representatives of the inspected State Party or of the inspected facility shall have the right to be present during sampling. Agreed conditions and procedures for such sample collection are contained in Part B of Attachment 9 to this Agreement.

4. Facility sampling equipment shall as a rule be used for taking samples required for the purposes of the inspection. This is without prejudice to the right of the inspection team pursuant to paragraph 27 of Part II of the Verification Annex to use its own approved sampling equipment in accordance with paragraph 1 of Section 5 and Parts A and B of Attachment 5 to this Agreement.

5. Should the inspection team request that a sample be taken and the inspected State Party be unable to accede or agree to the request, the inspected State Party will make every reasonable effort to satisfy the inspection team's concerns by other means to enable the inspection team to fulfil its mandate. The inspected State Party will provide a written explanation for its inability to accede or agree to the request. Any such response shall be supported by relevant document(s). The explanation of the inspected State Party shall be included in the preliminary factual findings.

6. In accordance with paragraph 53 of Part II of the Verification Annex, where possible,

[2] i.e. The inspection team may confirm that the performance characteristics of such equipment meet the technical requirements necessary to support the inspection task intended to be accomplished.

[3] The authorized facility representative is the owner or the operator, occupant or agent in charge of the premises being inspected.

the analysis of samples shall be performed on-site and the inspection team shall have the right to perform on-site analysis of samples using approved equipment brought by it for the splitting, preparation, handling, analysis, integrity and transport of samples. The assistance that will be provided by the inspected State Party and the analysis procedures to be followed are contained in Part D of Attachment 9 to this Agreement.

7. The inspection team may request the inspected State Party to perform the analysis in the inspection team's presence. The inspection team shall have the right to be present during any sampling and analysis conducted by the inspected State Party.

8. The results of such analysis shall be reported in writing as soon as possible after the sample is taken.

9. The inspection team shall have the right to request repeat analysis or clarification in connection with ambiguities.

10. If at any time, and for any reason, on-site analysis is not possible, the inspection team has the right to have sample(s) analyzed off-site at Organization-designated laboratories. In selecting such designated laboratories for the off-site analysis, the Organization will give due regard to requirements of the inspected State Party.

11. Transportation of samples will be in accordance with the procedures outlined in Part E of Attachment 9.

12. If at any time, the inspected State Party or facility representative determines that inspection team on-site analysis activities are not in accordance with the facility agreement or agreed analysis procedures, or otherwise pose a threat to safety or environmental regulations or laws, the inspected State Party, in consultation with the facility representative, will cease these on-site activities pending resolution. If both parties cannot agree to proceed with the analysis, the inspection team will document this in its preliminary factual findings.

13. Conditions and procedures for the disposal of hazardous materials generated during sampling and on-site analysis during the inspection are contained in Part F of Attachment 9 to this Agreement.

7.5 Arrangements for Interviews

1. The inspection team shall have the right, subject to applicable United States legal protections for individuals, to interview any facility personnel in the presence of representatives of the inspected State Party with the purpose of establishing relevant facts in accordance with paragraph 46 of Part II of the Verification Annex and inspected State Party's policy and procedures. Agreed procedures for conducting interviews are contained in Attachment 11.

2. The inspection team will submit to the inspected State Party names and/or positions of those desired for interviews. The requested individual(s) will be made available to the inspection team no later than 24 hours after submission of the formal request, unless agreed otherwise. The inspection team may also be requested to submit questions in writing prior to conducting interviews. The specific timing and location of interviews will be determined with the facility in coordination with the inspected State Party and consistent with adequate notification of the interviewees, and minimizing the operation impacts on the facility and individuals to be interviewed.

3. The inspected State Party may recommend to the inspection team that interviews be conducted in either ''panel'' or individual formats. At a minimum, interviews will be conducted with a member of the facility staff and an inspected State Party representative. Legal counsel may also be required to be present by the inspected State Party. The interview may be interrupted for consultation between the interviewee, the facility representative, the inspected State Party representative, and legal counsel.

4. The inspected State Party will have the right to restrict the content of interviews to information directly related to the mandate or purpose of the inspection.

5. Outside the interview process and in discharging their functions, inspectors shall communicate with personnel of the facility only through the representative(s) of the inspected State Party.

7.6 Communications

1. In accordance with paragraph 44 of Part II of the Verification Annex, the inspection team shall have the right to communicate with the headquarters of the Technical Secretariat. For this purpose they may use their own, duly certified approved equipment, in accordance with paragraph 1 of Section 5. The representative of the inspected facility retains the right to control the use of communications equipment in specific areas, buildings, or structures if such use would be incompatible with applicable safety or fire regulations.

2. In case the inspection team and the inspected State Party agree to use any of the inspected State Party's communications equipment, the list of such equipment and the provisions for its use are contained in Part B of Attachment 5 to this Agreement.

3. The agreed means of communication between inspection team sub-teams in accordance with paragraph 44 of Part II of the Verification Annex are contained in Part E of Attachment 5.

7.7 Photographs

1. In accordance with the provisions of paragraph 48 of Part II of the Verification Annex, the Confidentiality Annex and inspected State Party's policy and procedures, the inspection team shall have the right to have photographs taken at their request by the representatives of the inspected State Party or the inspected facility. One camera of the instant development type furnished by the inspection team or the inspected State Party shall be used for taking identical photographs in sequence. Cameras furnished by the inspection team will remain either in their work space or equipment storage area except when carried by inspection team members for a specific inspection activity. Cameras will only be used for specified inspection purposes. Personal cameras are not allowed to be taken to the facility.

2. Pursuant to the Confidentiality Annex, the inspected State Party, in consultation with the facility representative, shall have the right to determine that contents of the photographs conform to the stated purpose of the photographs. The inspection team shall determine whether photographs conform to those requested and, if not, repeat photographs shall be taken. Photographs that do not meet the satisfaction of both sides will be destroyed by the inspected State Party in the presence of the inspection team. The inspection team, the inspected State Party and the facility, if so requested, shall each retain one copy of every photograph. The copies shall be signed, dated, and classified, in accordance with Section 3, and note the location and subject of the photograph and carry the same identification number. Agreed procedures for photography are contained in Attachment 12.

3. The representative of the inspected facility has the right to object to the use of photographic equipment in specific areas, buildings or structures if such use would be incompatible with safety or fire regulations given the characteristics of the chemicals stored in the area in question. Restrictions for use are contained in Parts A and/or B of Attachment 5 to this Agreement. If the objection is raised due to safety concerns, the inspected State Party will, if possible, furnish photographic equipment that meets the regulations. If the use of photographic equipment is not permissible at all in specific areas, buildings or structures for the reasons stated above, the inspected State Party shall provide a written explanation of its objection to the inspection team leader. The explanation, along with the inspection team leader's comments will be included in the inspection team's preliminary factual findings.

Section 8. Visits

1. This section applies to visits conducted pursuant to paragraphs 15 and 16 of Part III of the Verification Annex.

2. The size of a team on such a visit shall be kept to the minimum number of personnel necessary to perform the specific tasks for which the visit is being conducted and shall in any case not exceed the size of inspection team referenced in paragraph 5 of Section 1.

3. The duration of the visit pursuant to this Section shall be limited to the minimum time required to perform the specific tasks relating to monitoring systems for which the visit is being conducted and in any case shall not exceed the estimated period of inspection referenced in Part B of Attachment 1 of this Agreement.

4. Access provided to the monitoring systems during the visit shall be limited to that required to perform the specific tasks for which the visit is being conducted, unless otherwise agreed to with the inspected State Party.

5. General arrangements and notifications for a visit shall be the same as for the conduct of an inspection.

Section 9. Debriefing and Preliminary Findings

1. In accordance with paragraph 60 of Part II of the Verification Annex, upon completion of an inspection the inspection team shall meet with representatives of the inspected State Party and the personnel responsible for the inspection site to review the preliminary findings of the inspection team and to clarify any ambiguities. The

inspection team shall provide to the representatives of the inspected State Party its preliminary findings in written form according to a standardized format, together with a list of any samples and copies of written information and data gathered and other material to be taken off-site. The document shall be signed by the head of the inspection team. In order to indicate that he has taken notice of the contents of the document, the representative of the inspected State Party shall countersign the document. The meeting shall be completed not later than 24 hours after the completion of the inspection.

2. The document on preliminary findings shall also include, inter alia, the list of results of analysis, if conducted on-site, records of seals, results of inventories, copies of photographs to be retained by the inspection team, and results of specified measurements. It will be prepared in accordance with the preliminary findings format referenced in Annex 5. Any substantive changes to this format will be made only after consultation with the inspected State Party.

3. Before the conclusion of the debriefing, the inspected State Party may provide comments and clarifications to the inspection team on any issue related to the conduct of the inspection. The inspection team shall provide to the representative of the inspected State Party its preliminary findings in written form sufficiently prior to the conclusion of the debriefing to permit the inspected State Party to prepare any comments and clarifications. The inspected State Party's written comments and clarifications shall be attached to the document on preliminary findings.

4. The inspection team shall depart from the site upon the conclusion of the meeting on preliminary findings.

Section 10. Administrative Arrangements

1. The inspected State Party shall provide or arrange for the provision of the amenities listed in detail in Attachment 10 to the inspection team throughout the duration of the inspection. The inspected State Party shall be reimbursed by the Organization for such costs incurred by the inspection team, unless agreed otherwise.

2. Requests from the inspection team for the inspected State Party to provide or arrange amenities shall be made in writing by an authorized member of the inspection team [4] using the form contained in Attachment 10. Requests shall be made as soon as the need for amenities has been identified. The provision of such requested amenities shall be certified in writing by the authorized member of the inspection team. Copies of all such certified requests shall be kept by both parties.

3. The inspection team has the right to refuse extra amenities that in its view are not needed for the conduct of the inspection.

Section 11. Liabilities

1. Any claim by the inspected State Party against the Organization or by the Organization against the inspected State Party in respect of any alleged damage or injury resulting from inspections at the facility in accordance with this Agreement, without prejudice to paragraph 22 of the Confidentiality Annex, shall be settled in accordance with international law and, as appropriate, with the provisions of Article XIV of the Convention.

Section 12. Status of Attachments

1. The Attachments form an integral part of this Agreement. Any reference to the Agreement includes the Attachments. However, in case of any inconsistency between this Agreement and any Attachment, the sections of the Agreement shall prevail.

Section 13. Amendments, Modifications and Updates

1. Amendments to the sections of this Agreement may be proposed by either Party and shall be agreed to and enter into force under the same conditions as provided for under paragraph 1 of Section 15.

2. Modifications to the Attachments of this Agreement, other than Attachment 1 and Part B of Attachment 5, may be agreed upon at any time between the representative of the Organization and the representative of the inspected State Party, each being specifically authorized to do so. The Director-General shall inform the Executive Council about any such modifications. Each Party to this Agreement may revoke its consent to a modification not later than four weeks after it had been agreed upon. After this time period the modification shall take effect.

3. The inspected State Party will update Part A of Attachment 1 and Part B of Attachment 5 and Attachment 6 as necessary for the effective conduct of inspections. The Organization will update Part B of Attachment 1 and Annex 5, subject to paragraph 2 of Section 9, as necessary for the effective conduct of inspections.

Section 14. Settlement of Disputes

1. Any dispute between the Parties that may arise out of the application or interpretation of this Agreement shall be settled in accordance with Article XIV of the Convention.

Section 15. Entry Into Force

1. This Agreement shall enter into force after approval by the Executive Council and signature by the two Parties. If the inspected State Party has additional internal requirements, it shall so notify the Organization in writing by the date of signature. In such cases, this Agreement shall enter into force on the date that the inspected State Party gives the Organization written notification that its internal requirements for entry into force have been met.

Section 16. Duration and Termination

1. This Agreement shall cease to be in force when, as determined by the Executive Council, the provisions of paragraphs 3 and 8 of Article VI and Part VI of the Verification Annex no longer apply to this facility.

Done at ____ in ____ copies, in English, each being equally authentic.[5]

Attachments

The following attachments shall be completed where applicable.

Attachment 1: General Factors for the Conduct of Inspections
Attachment 2: Health and Safety Requirements and Procedures
Attachment 3: Specific Arrangements in Relation to the Protection of Confidential Information at the Facility
Attachment 4: Arrangements for the Inspection Team's Contacts with the Media or the Public
Attachment 5: Inspection Equipment
Attachment 6: Information on the Facility Provided in Accordance with Section 6
Attachment 7: Arrangements for Site Tour
Attachment 8: Records Routinely Made Available to the Inspection Team at the Facility
Attachment 9: Sampling and Analysis for Verification Purposes
Attachment 10: Administrative Arrangements
Attachment 11: Agreed Procedures for Conducting Interviews
Attachment 12: Agreed Procedures for Photography

Attachment 1.—General Factors for the Conduct of Inspections

Part A. To Be Provided and Updated by the inspected State Party:

1. Schedule 1 facility(s) working hours, if applicable: [6] ____hrs to ____hrs (local time) (days)

2. Working days: _____

3. Holidays or other non-working days:

_____

_____

4. Inspection activities which could/could not [7] be supported during non-working hours with notation of times and activities:

_____

_____

5. Any other factors that could adversely affect the effective conduct of inspections:

(a) inspection requests:

Should the facility withhold consent to an inspection, the inspected State Party shall take all appropriate action under its law to obtain a search warrant from a United States magistrate judge. Upon receipt of a warrant, the inspected State Party will accede to the Organization's request to conduct an inspection. Such inspection will be carried out in accordance with the terms and conditions of the warrant.

(b) other:

_____

6. Other: notification procedures are contained in Annex 6.

Part B. To Be Provided and Updated by the Organization:

1. Inspection frequency: _____

2. Inspection intensity:

(a) maximum estimated period of inspection (for planning purposes): _____

(b) approximate inspection team size: ____

(c) estimated volume and weight of equipment to be brought on-site: _____

[4] The name of the authorized member(s) of the inspection team should be communicated to the inspected State Party no later than at the Point of Entry.

[5] The language(s) to be chosen by the inspected State Party from the languages of the Convention shall be the same as the language(s) referred to in paragraph 6 of Section 1 of this Agreement.

[6] All references to time use a 24 hour clock.

[7] Choose one option.

Attachment 2

Health and Safety Requirements and Procedures

Part A. Basic Principles:

1. Applicable health and safety regulations of the Organization, with agreed variations from strict implementation, if any:

2. Health and safety regulations applicable at the facility:

(a) federal regulations:

(b) state regulations:

(c) local regulations:

(d) facility regulations:

3. Health and safety requirements and regulations agreed between the inspected State Party and the Organization:

Part B. Detection and Monitoring:

1. Applicable specific safety standards for workplace chemical exposure limits and/or concentrations which should be observed during the inspection, if any:

2. Procedures for detection and monitoring in accordance with the Organization's Health and Safety Policy, including data to be collected by, or provided to, the inspection team:

Part C. Protection:

1. Protective equipment to be provided by the Organization and agreed procedures for equipment certification and use, if required:

2. Protective equipment to be provided by the inspected State Party, and agreed procedures, personnel training, and personnel qualification tests and certification required; and agreed procedures for use of the equipment:

Part D. Medical Requirements:

1. Applicable medical standards of the inspected State Party and, in particular, the inspected facility:

2. Medical screening procedures for members of the inspection team:

3. Agreed medical assistance to be provided by the inspected State Party:

4. Emergency medical evacuation procedures:

5. Agreed additional medical measures to be taken by the inspection team:

6. Procedures for emergency response to chemical casualties of the inspection team:

Part E. Modification of Inspection Activities:

1. Modification of inspection activities due to health and safety reasons, and agreed alternatives to accomplish the inspection goals:

Attachment 3.—Specific Arrangements in Relation to the Protection of Confidential Information at the Facility

Part A. Inspected State Party's Procedures for Designating and Classifying Documents Provided to the Inspection Team: See Annex 3 for the Organization's Policy on Confidentiality and Annex 7 for the inspected State Party's Procedures for Information Control.

Part B. Specific Procedures for Access by the Inspection Team to Confidential Areas or Materials:

Procedures in Relation to the Certification by the Inspection Team of the Receipt of Any Documents Provided by the Inspected Facility:

Part C. Storage of Confidential Documents at the Inspected Facility:

1. Procedures in relation to the storage of confidential documents or use of a dual control container on-site, if applicable: Information under restrictions provided for in the Confidentiality Annex and as such to be kept in the dual control container under joint seal shall be available to the inspection team leader and/or an inspector designated by him from the beginning of the pre-inspection briefing until the end of the debriefing upon completion of the inspection. If copies of information under dual control are permitted to be attached to the preliminary factual findings by the inspected State Party, they shall be made by the inspected State Party and retained under dual control until the debriefing. Should the medium on which such information is recorded become unusable, it shall be replaced without delay by the representative of the inspected State Party.

2. The dual control container will be placed

3. Information meeting the strict requirements for restriction pursuant to the Confidentiality Annex, and to be maintained in the dual control container located at the inspected facility between inspections is listed below:

Reference	Type of data	Recorded media	Volume	Reasons for restrictions/ remarks

Part D. Procedures for the Removal Off-Site of Any Written Information, Data, and Other Material Gathered by the Inspection Team:

Part E. Procedures for Providing the Representatives of the inspected State Party with Copies of Written Information, Inspector's Notebooks, Data and Other Material Gathered by the Inspection Team:

Part F. Other Arrangements, If Any:

1. Unless specified otherwise, all facility information shall be returned to the inspected State Party at the completion of the inspection. No copies of facility information shall be made in any manner by the inspection team or the Organization.

2. Facility information shall not be released to the public, other States Parties, or the media without the specific permission of the inspected State Party, after consultation with the facility.

3. Facility information shall not be transmitted, copied or retained electronically without the specific permission of the inspected State Party after consultation with the facility. All transmissions of information off-site shall be done in the presence of the inspected State Party.

4. Information not relevant to the purpose of the inspection will be purged from documents, photographs, etc. prior to release to the inspection team.

Attachment 4.—Arrangements for the Inspection Team's Contacts with the Media or the Public

Attachment 5.—Inspection Equipment

Part A: List of Equipment:

Item of approved inspection equipment	Agreed procedures for use			
	Nature of restrictions(s) (location, time, periods, etc.), if any	Indication of reason(s) (safety, confidentiality, etc.)	Special handling or storage requirements	Alternative for meeting inspection requirement(s), if so required by the inspection team

Part B. Equipment which the inspected State Party Has Volunteered to Provide:

Item of equipment	Procedures for use	Support to be provided, if required	Conditions (timing, costs, if any)

Part C. Procedures for the Decontamination of Equipment:

Item of equipment	Procedures for use

Part D. Agreed On-Site Monitoring Instruments:

Part E. Means of Communication between Inspection Team Sub-Teams:

Request for and Certification of Equipment Available on Site To Be Provided in Accordance With Paragraph 3 of Section 5

Date:
Facility:
Inspection number:
Name of the authorized member of the inspection team:

Type and number of item(s) of equipment requested:

Approval of the request by inspected State Party:

Comments on the request by the inspected State Party:

Indication of the costs, if any, for the use of the equipment requested/volunteered:

Certification of the authorized member of the inspection team that the requested item(s) of equipment have been provided:

Comments, if any, by the authorized member of the inspection team in regard to the equipment provided:

Name and signature of the authorized member of the inspection team:

Name and signature of the representative of the inspected State Party:

Attachment 6.—Information on the Facility Provided in Accordance With Section 6

Part A. Topics of Information for the Pre-Inspection Briefing:

1. Specification of the elements constituting the declared facility, including their physical location(s) (i.e., detail the areas, equipment, and computers), with indications as to which information may be transferred off-site:

2. Procedures for unimpeded access within the declared facility:[8]

3. Other:

Part B. Any Information about the Facility that the inspected State Party Volunteers to Provide to the Inspection Team during the Pre-Inspection Briefing with Indications as to which May Be Transferred Off-Site:

Attachment 7.—Arrangements for Site Tour

The inspected State Party may provide a site tour at the request of the inspection team. The inspected State Party may provide explanations to the inspection team during the site tour.

Attachment 8.—Records Routinely Made Available to the Inspection Team at the Facility (i.e., Identify Records and Data)

Attachment 9.—Sampling and Analysis for Verification Purposes

Part A. Agreed Sampling Points Chosen with Due Consideration to Existing Sampling Points Used by the Facility(s) Operator(s):

Part B. Procedures for Taking Samples:

Part C. Procedures for Sample Handling and Sample Splitting:

Part D. Procedures for On-Site Sample Analysis, If Any:

Part E. Procedures for Off-Site Analysis, If Any:

Part F. Procedures for Transporting Samples:

Part G. Arrangements in Regard to the Payment of Costs Associated with the Disposal or Removal by the inspected State Party of Hazardous Waste Generated during Sampling and On-Site Analysis during the Inspection:

Attachment 10.—Administrative Arrangements

Part A. The Amenities Detailed Below Shall Be Provided to the Inspection Team by the inspected State Party, Subject to Payment as Indicated in Part B Below:

1. International and local official communication (telephone, fax), including calls/faxes between site and headquarters:
2. Vehicles:
3. Working room, including adequate space for the storage of equipment:
4. Lodging:
5. Meals:
6. Medical care:
7. Interpretation Services:
(a) number of interpreters:
(b) estimated interpretation time:
(c) languages:
8. Other:

Part B. Distribution of Costs for Provision of Amenities by the inspected State Party (check one option for each amenity provided as appropriate):

[8] List the areas, equipment, and computers, if any, that are not relevant to the inspection mandate or that contain confidential business information that does not need to be divulged in order to comply with the inspection mandate.

Paragraphs 1–8 in Part A above	To be paid directly by the Organization after the inspection	To be paid by the inspection team on behalf of the Organization during the in-country period	To be paid by the inspected State Party and subsequently reimbursed by the Organization	To be paid by the inspected State Party
1 2 3 4 5 6 7 8				

Part C. Other Arrangements. 1. Number of sub-teams (consisting of no less than two inspectors per sub-team) to be accommodated: _____

Request for and Certification of Amenities To Be Provided or Arranged

Date: _____
Facility: _____
Inspection number: _____
Category of amenities requested: _____
_____
Description of amenities requested: _____
_____
Approval of the request by the inspected State Party:
_____
Comments on the request by the inspected State Party:
_____
_____
Indication of the costs for the amenities requested:
_____
_____
Certification of the authorized member of the inspection team that the requested amenities have been provided:
_____
Comments by the authorized member of the inspection team in regard to the quality of the amenities provided:
_____
_____
Name and signature of the authorized member of the inspection team:
_____
Name and signature of the representative of the inspected State Party:
_____

Attachment 11.—Agreed Procedures for Conducting Interviews

_____
_____

Attachment 12.—Agreed Procedures for Photography

_____
_____

Annexes

Note: These annexes, inter alia, can be attached if requested by the inspected State Party

Annex 1: Organization's Media and Public Relations Policy
Annex 2: Organization's Health and Safety Policy and Regulations
Annex 3: Organization's Policy on Confidentiality
Annex 4: Facility Declaration
Annex 5: Preliminary and Final Inspection Report Formats
Annex 6: Inspected State Party's Procedures for Inspection Notification
Annex 7: Inspected State Party's Procedures for Information Control

Supplement No. 3 to Part 716—Schedule 2 Model Facility Agreement

Draft Facility Agreement between the Organization for the Prohibition of Chemical Weapons and the Government of the United States of America Regarding On-Site Inspections at the _____ Schedule 2 Plant Site Located at _____

The Organization for the Prohibition of Chemical Weapons, hereinafter referred to as ''Organization,'' and the Government of the United States of America, hereinafter referred to as ''inspected State Party,'' both constituting the Parties to this Agreement, have agreed on the following arrangements in relation to the conduct of inspections pursuant to paragraph 4 of Article VI of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, hereinafter referred to as ''the Convention,'' at (insert name of the plant site, its precise location, including the address), declared under paragraphs 7 and 8 of Article VI, hereinafter referred to as ''plant site'':

Section 1. General Provisions

1. The purpose of this Agreement is to facilitate the implementation of the provisions of the Convention in relation to inspections conducted at the plant site pursuant to paragraph 4 of Article VI of the Convention, and in accordance with the obligations of the inspected State Party and the Organization under the Convention.

2. Nothing in this Agreement shall be applied or interpreted in a way that is contradictory to the provisions of the Convention, including paragraph 1 of Article VII.[1] In case of inconsistency between this Agreement and the Convention, the Convention shall prevail.

3. The Parties have agreed to apply for planning purposes the general factors contained in Attachment 1.

4. The frequency and intensity of inspections at the plant site are given in Part B of Attachment 1 and reflect the risk assessment of the Organization conducted pursuant to paragraphs 18, 20 and 24 of Part VII of the Verification Annex.

5. The inspection team shall consist of no more than ____ persons.

6. The language for communication between the inspection team and the inspected State Party during inspections shall be English.

7. The period of inspection shall not last more than ninety-six (96) hours, unless an extension has been agreed to by the inspected State Party and the inspection team.

8. In case of any development due to circumstances brought about by unforeseen events or acts of nature, which could affect inspection activities at the plant site, the inspected State Party shall notify the Organization and the inspection team as soon as practically possible.

9. In case of need for the urgent departure, emergency evacuation or urgent travel of inspector(s) from the territory of the inspected State Party, the inspection team leader shall inform the inspected State Party of such a need. The inspected State Party shall arrange without undue delay such departure, evacuation or travel. In all cases, the inspected State Party shall determine the means of transportation and routes to be taken. The costs of such departure, evacuation or travel of inspectors shall be borne by the Organization.

10. Inspectors shall wear identification badges at all times when on the premises of the plant site.

Section 2. Health and Safety

1. Health and safety matters during inspections are governed by the Convention, the Organization's Health and Safety Policy and Regulations, and applicable national, local and plant site safety and environmental regulations. The specific arrangements for implementing the relevant provisions of the Convention and the Organization's Health and Safety Policy in relation to inspections at the plant site are contained in Attachment 2.

2. Pursuant to paragraph 1 of this section, all applicable health and safety regulations relevant to the conduct of the inspection at the plant site are listed in Attachment 2 and

[1] Each State Party shall, in accordance with its constitutional processes, adopt the necessary measures to implement its obligations under this Convention.

shall be made available for use by the inspection team at the plant site.

3. In case of the need to modify any health- and safety-related arrangements at the plant site contained in Attachment 2 to this Agreement bearing on the conduct of inspections, the inspected State Party shall notify the Organization. Any such modification shall apply provisionally until the inspected State Party and the Organization have reached agreement on this issue. In case no agreement has been reached by the time of the completion of the inspection, the relevant information may be included in the preliminary factual findings. Any agreed modification shall be recorded in Attachment 2 to this Agreement in accordance with paragraph 2 of Section 12 of this Agreement.

4. In the course of the pre-inspection briefing the inspection team shall be briefed by the representatives of the plant site on all health and safety matters which, in the view of those representatives, are relevant to the conduct of the inspection at the plant site, including:

(a) the health and safety measures at the Schedule 2 plant(s) to be inspected and the likely risks that may be encountered during the inspection;

(b) any additional health and safety or regulations that need to be observed at the plant site;

(c) procedures to be followed in case of an accident or in case of other emergencies, including a briefing on emergency signals, routes and exits, and the location of emergency meeting points and medical facilities; and

(d) specific inspection activities which must be limited within particular areas at the plant site, and in particular within those Schedule 2 plant(s) to be inspected under the inspection mandate, for reasons of health and safety.

Upon request, the inspection team shall certify receipt of any such information if it is provided in written form.

5. During the course of an inspection, the inspection team shall refrain from any action which by its nature could endanger the safety of the team, the plant site, or its personnel or could cause harm to the environment. Should the inspected State Party refuse certain inspection activities, it may explain the circumstances and safety considerations involved, and shall provide alternative means for accomplishing the inspection activities.

6. In the case of emergency situations or accidents involving inspection team members while at the plant site, the inspection team shall comply with the plant site's emergency procedures and the inspected State Party shall to the extent possible provide medical and other assistance in a timely and effective manner with due regard to the rules of medical ethics if medical assistance is requested. Information on medical services and facilities to be used for this purpose is contained in Part D of Attachment 2. If the Organization undertakes other measures for medical support in regard to inspection team members involved in emergency situations or accidents, the inspected State Party will render assistance to such measures to the extent possible. The Organization will be responsible for the consequences of such measures.

7. The inspected State party shall, to the extent possible, assist the Organization in carrying out any inquiry into an accident or incident involving a member of the inspection team.

8. If, for health and safety reasons given by the inspected State Party, health and safety equipment of the inspected State Party is required to be used by the inspection team, the cost so incurred shall be borne by the inspected State Party.

9. The inspection team may use its own approved health and safety equipment. If the inspected State Party determines it to be necessary, the inspected State Party shall conduct a fit test on masks brought with the inspection team. If the inspected State Party so requests on the basis of confirmed contamination or hazardous waste requirements or regulations, any such piece of equipment involved in the inspection activities will be left at the plant site at the end of the inspection. The inspection team reserves the right to destroy equipment left at the plant site or witness its destruction by agreed procedures. The inspected State Party will reimburse the Organization for the loss of the inspection team's equipment.

10. In accordance with the Organization's Health and Safety Policy, the inspected State Party may provide available data based on detection and monitoring, to the agreed extent necessary to satisfy concerns that may exist regarding the health and safety of the inspection team.

Section 3. Confidentiality

1. Matters related to confidentiality are governed by the Convention, including its Confidentiality Annex and paragraph 1 of Article VII, and the Organization's Policy on Confidentiality. The specific arrangements for implementing the provisions of the Convention and the Organization's Policy on Confidentiality in relation to the protection of confidential information at the plant site are contained in Attachment 3.

2. Upon request, the inspected State Party will procure a container to be placed under joint seal to maintain documents that the inspection team, inspected State Party, or the plant site representative decides to keep as reference for future inspections. The inspected State Party shall be reimbursed by the Organization for the purchase of such container.

3. All documents, including photographs, provided to the inspection team will be controlled as follows:

(a) *Information to be taken off-site.* Information relevant to the finalization of the preliminary factual findings that the inspected State Party permits the inspection team to take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly state that the inspection team may take it off-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the plant site will acknowledge the release of such information in writing prior to disclosure to the inspection team.

(b) *Information restricted for use on-site.* Information that the inspected State Party permits the inspection team to use on-site during inspections but not take off-site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the plant site will acknowledge the release of such information in writing prior to disclosure to the inspection team. Upon conclusion of the inspection, the inspection team shall return the information to the inspected State Party, and the plant site representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

(c) *Information restricted for use on-site and requiring direct supervision.* Information that the inspected State Party permits the inspection team to use on-site only under direct supervision of the inspected State Party or the representative of the inspected plant site will be marked and numbered by the inspected State Party. In accordance with the inspected State Party's Procedures for Information Control, markings on the information will clearly restrict its use on-site under direct supervision and will contain a classification pursuant to the Organization's Policy on Confidentiality at a level requested by the inspected State Party. The representative of the plant site will acknowledge the release of such information in writing prior to disclosure to the inspection team. The inspection team shall return the information to the inspected State Party immediately upon completion of review and the plant site representative shall acknowledge receipt in writing. If so requested by the inspection team, the information can be placed in the joint sealed container for future reference.

Section 4. Media and Public Relations

1. Inspection team media and public relations are governed by the Organization's Media and Public Relations Policy. The specific arrangements for the inspection team's contacts with the media or the public, if any, in relation to inspections of the plant site are contained in Attachment 4.

Section 5. Inspection Equipment

1. As agreed between the inspected State Party and the Organization, the approved equipment listed in Part A of Attachment 5 and with which the inspected State Party has been given the opportunity to familiarize itself will, at the discretion of the Organization and on a routine basis, be used specifically for the Schedule 2 inspection. The equipment will be used in accordance with the Convention, the relevant decisions taken by the Conference of States Parties, and any agreed procedures contained in Attachment 5.

2. The provisions of paragraph 1 above are without prejudice to paragraphs 27 to 29 of Part II of the Verification Annex.

3. The items of equipment available on-site and not belonging to the Organization which the inspected State Party has volunteered to provide to the inspection team upon its request for use on-site during the conduct of inspections, together with any procedures for the use of such equipment, if required, any requested support which can be provided, and conditions for the provision of equipment are listed in Part B of Attachment 5. Prior to any use of such equipment, the inspection team may confirm that the performance characteristics of such equipment are consistent with those for similar Organization-approved equipment, or—with respect to items of equipment which are not on the list of Organization-approved equipment—are consistent with the intended purpose for using such equipment.[2]

4. Requests from the inspection team for the inspected State Party during the inspection to provide equipment mentioned in paragraph 3 above shall be made in writing by an authorized member of the inspection team using the form contained in Attachment 5. The same procedure will also apply to other requests of the inspection team in accordance with paragraph 30 of Part II of the Verification Annex.

5. Agreed procedures for the decontamination of any equipment are contained in Part C of Attachment 5.

Section 6. Pre-Inspection Activities

1. The inspection team shall be given a pre-inspection briefing by the representatives of the plant site in accordance with paragraph 37 of Part II of the Verification Annex. The pre-inspection briefing shall include:

(a) information on the plant site as described in Attachment 6;

(b) health and safety specifications described in Section 2 above and detailed in Attachment 2;

(c) any changes to the above-mentioned information since the last inspection; and

(d) information on administrative and logistical arrangements additional to those contained in Attachment 11, if any, that shall apply during the inspection, as contained in Section 9.

2. Any information about the plant site that the inspected State Party has volunteered to provide to the inspection team during the pre-inspection briefing with indications as to which information may be transferred off-site is referenced in Part B of Attachment 6.

Section 7. Conduct of the Inspection

7.1 Standing Arrangements

1. The inspection period shall begin immediately upon completion of the pre-inspection briefing unless agreed otherwise.

2. Upon conclusion of the pre-inspection briefing, the inspection team leader shall provide to the designated representative of the inspected State Party a preliminary inspection plan to facilitate the conduct of the inspection.

3. Arrangements for the conduct of a site tour, if any, are contained in Attachment 7 to this Agreement.

4. Before commencement of inspection activities, the inspection team leader shall inform the representative of the inspected State Party about the initial steps to be taken in implementing the inspection plan. The plan will be adjusted by the inspection team as circumstances warrant throughout the inspection process in consultation with the inspected State Party as to its implementability in regard to paragraph 40 of Part II of the Verification Annex.[3]

5. The inspection team leader shall inform the representative of the inspected State Party during the inspection in a timely manner about each subsequent step to be taken by the inspection team in implementing the inspection plan. Without prejudice to paragraph 40 of Part II of the Verification Annex, this shall be done in time to allow the inspected State Party to arrange for the necessary measures to be taken to provide access and support to the inspection team as appropriate without causing unnecessary delay in the conduct of inspection activities.

6. At the beginning of the inspection, the inspection team shall have the right to confirm the precise location of the plant site utilizing visual and map reconnaissance, a site diagram, or other suitable techniques.

7. The inspection team shall, upon request of the inspected State Party, communicate with the personnel of the plant site only in the presence of or through a representative of the inspected State Party.

8. The inspected State Party shall, upon request, provide a securable work space for the inspection team, including adequate space for the storage of equipment. The inspection team shall have the right to seal its work space. For ease of inspection, the inspected State Party will work with the plant site representative to provide work space at the plant site, if possible.

7.2 Access to and Inspection of Areas, Buildings and Structures

1. The focus of the inspection shall be the declared Schedule 2 plant(s) within the declared plant site as referenced in Attachment 8. If the inspection team requests access to other parts of the plant site, access to these areas shall be granted in accordance with the obligation to provide clarification pursuant to paragraph 51 of Part II and paragraph 25 of Part VII of the Verification Annex, and in accordance with Attachment 8.

2. Pursuant to paragraph 45 of Part II of the Verification Annex, the inspection team shall have unimpeded access to the declared Schedule 2 plant(s) in accordance with the relevant Articles and Annexes of the Convention and Attachments 8, 9, and 10. Areas of the declared plant(s) likely to be inspected are mentioned in paragraph 28 of Part VII of the Verification Annex. Pursuant to Section C of Part X of the Verification Annex, the inspection team shall have managed access to the other areas of the plant site. Procedures for access to these areas are contained in Attachment 8.

7.3 Access to and Inspection of Documentation and Records

1. The agreed list of the documentation and records to be routinely made available for inspection purposes, mentioned in paragraph 26 of Part VII of the Verification Annex, to the inspection team by the inspected State Party during an inspection, as well as arrangements with regard to access to such records for the purpose of protecting confidential information, are contained in Attachment 9. Such documentation and records will be provided upon request.

2. Only those records placed in the custody of the inspection team that are attached to the preliminary factual findings in accordance with Section 3 may leave the premises. Those records placed in the custody of the inspection team that are not attached to the preliminary factual findings must be retained in the on-site container or returned to the inspected State Party.

7.4 Sampling and Analysis

1. Without prejudice to paragraphs 52 to 58 of Part II of the Verification Annex, procedures for sampling and analysis for verification purposes as mentioned in paragraph 27 of Part VII of the Verification Annex are contained in Attachment 10 of this Agreement.

2. Sampling and analysis, for inspection purposes, may be carried out to check whether undeclared scheduled chemicals are detected. Each such sample will be split into a minimum of four parts at the request of the inspection team in accordance with Part C of Attachment 10. One part shall be analyzed in a timely manner on-site. The second part of the split sample may be controlled by the inspection team for future reference and, if necessary, analysis off-site at laboratories designated by the Organization. That part of the sample may be destroyed at any time in the future upon the decision of the inspection team but in any case no later than 60 days after it was taken. The third part may be retained by the inspected State Party. The fourth part may be retained by the plant site.

3. Pursuant to paragraph 52 of the Part II of the Verification Annex, representatives of the inspected State Party or plant site shall take samples at the request of the inspection team in the presence of inspectors. The inspected State Party will inform the inspection team of the authorized plant site representative's [4] determination of whether the sample shall be taken by representatives of the plant site or the inspection team or other individuals present. If inspectors are

[2] I.e., the inspection team may confirm that the performance characteristics of such equipment meet the technical requirements necessary to support the inspection task intended to be accomplished.

[3] The activities of the inspection team shall be so arranged as to ensure the timely and effective discharge of its functions and the least possible inconvenience to the inspected State Party and disturbance to the plant site inspected. The inspection team shall avoid unnecessarily hampering or delaying the operation of the plant site and avoid affecting its safety. In particular, the inspection team shall not operate the plant site. If the inspection team considers that, to fulfil the mandate, particular operations should be carried out at the plant site, it shall request the designated representative of the plant site to have them performed.

[4] The authorized plant site representative is the owner or the operator, occupant or agent in charge of the premises being inspected.

granted the right to take samples themselves in accordance with paragraph 52 of Part II of the Verification Annex, the relevant advance agreement between the inspection team and the inspected State Party shall be in writing. The representatives of the inspected State Party and the inspected plant site shall have the right to be present during sampling. Agreed conditions and procedures for such sample collection are contained in Part B of Attachment 10 to this Agreement.

4. Plant site sampling equipment shall as a rule be used for taking samples required for the purposes of the inspection. This is without prejudice to the right of the inspection team pursuant to paragraph 27 of Part II of the Verification Annex to use its own approved sampling equipment in accordance with paragraph 1 of Section 5 and Parts A and B of Attachment 5 to this Agreement.

5. Should the inspection team request that a sample be taken and the inspected State Party be unable to accede or agree to the request, the inspected State Party will make every reasonable effort to satisfy the inspection team's concerns by other means to enable the inspection team to fulfil its mandate. The inspected State Party will provide a written explanation for its inability to accede or agree to the request. Any such response shall be supported by relevant document(s). The explanation of the inspected State Party shall be included in the preliminary factual findings.

6. In accordance with paragraph 53 of Part II of the Verification Annex, where possible, the analysis of samples shall be performed on-site and the inspection team shall have the right to perform on-site analysis of samples using approved equipment brought by it for the splitting, preparation, handling, analysis, integrity and transport of samples. The assistance that will be provided by the inspected State Party and the analysis procedures to be followed are contained in Part D of Attachment 10 to this Agreement.

7. The inspection team may request the inspected State Party to perform the analysis in the inspection team's presence. The inspection team shall have the right to be present during any sampling and analysis conducted by the inspected State Party.

8. The results of such analysis shall be reported in writing as soon as possible after the sample is taken.

9. The inspection team shall have the right to request repeat analysis or clarification in connection with ambiguities.

10. If at any time, and for any reason, on-site analysis is not possible, the inspection team has the right to have sample(s) analyzed off-site at Organization-designated laboratories. In selecting such designated laboratories for the off-site analysis, the Organization will give due regard to requirements of the inspected State Party.

11. Transportation of samples will be in accordance with the procedures outlined in Part E of Attachment 10.

12. If at any time, the inspected State Party or plant site representative determines that inspection team on-site analysis activities are not in accordance with the facility agreement or agreed analysis procedures, or otherwise pose a threat to safety or environmental regulations or laws, the inspected State Party, in consultation with the plant site representative, will cease these on-site analysis activities pending resolution . If both parties cannot agree to proceed with the analysis, the inspection team will document this in its preliminary factual findings.

13. Conditions and procedures for the disposal of hazardous materials generated during sampling and on-site analysis during the inspection are contained in Part F of Attachment 10 to this Agreement.

7.5 Arrangements for Interviews

1. The inspection team shall have the right, subject to applicable United States legal protections for individuals, to interview any plant site personnel in the presence of representatives of the inspected State Party with the purpose of establishing relevant facts in accordance with paragraph 46 of Part II of the Verification Annex and inspected State Party's policy and procedures. Agreed procedures for conducting interviews are contained in Attachment 12.

2. The inspection team will submit to the inspected State Party names and/or positions of those desired for interviews. The requested individual(s) will be made available to the inspection team no later than 24 hours after submission of the formal request, unless agreed otherwise. The inspection team may also be requested to submit questions in writing prior to conducting interviews. The specific timing and location of interviews will be determined with the plant site in coordination with the inspected State Party and consistent with adequate notification of the interviewees, and minimizing the operation impacts on the plant site and individuals to be interviewed.

3. The inspected State Party may recommend to the inspection team that interviews be conducted in either ''panel'' or individual formats. At a minimum, interviews will be conducted with a member of the plant site staff and an inspected State Party representative. Legal counsel may also be required to be present by the inspected State Party. The interview may be interrupted for consultation between the interviewee, the plant site representative, the inspected State Party representative, and legal counsel.

4. The inspected State Party will have the right to restrict the content of interviews to information directly related to the mandate or purpose of the inspection.

5. Outside the interview process and in discharging their functions, inspectors shall communicate with personnel of the plant site only through the representative(s) of the inspected State Party.

7.6 Communications

1. In accordance with paragraph 44 of Part II of the Verification Annex, the inspection team shall have the right to communicate with the headquarters of the Technical Secretariat. For this purpose they may use their own, duly certified approved equipment, in accordance with paragraph 1 of Section 5. The representative of the inspected plant site retains the right to control the use of communications equipment in specific areas, building or structures if such use would be incompatible with applicable safety or fire regulations.

2. In case the inspection team and the inspected State Party agree to use any of the inspected State Party's communications equipment, the list of such equipment and the provisions for its use are contained in Part B of Attachment 5 to this Agreement.

3. The agreed means of communication between inspection team sub-teams in accordance with paragraph 44 of Part II of the Verification Annex are contained in Part D of Attachment 5.

7.7 Photographs

1. In accordance with the provisions of paragraph 48 of Part II of the Verification Annex, the Confidentiality Annex and inspected State Party's policy and procedures, the inspection team shall have the right to have photographs taken at their request by the representatives of the inspected State Party or the inspected plant site. One camera of the instant development type furnished by the inspection team or the inspected State Party shall be used for taking identical photographs in sequence. Cameras furnished by the inspection team will remain either in their work space or equipment storage area except when carried by inspection team members for a specific inspection activity. Cameras will only be used for specified inspection purposes. Personal cameras are not allowed to be taken to the plant site.

2. Pursuant to the Confidentiality Annex, the inspected State Party, in consultation with the plant site representative, shall have the right to determine that contents of the photographs conform to the stated purpose of the photographs. The inspection team shall determine whether photographs conform to those requested and, if not, repeat photographs shall be taken. Photographs that do not meet the satisfaction of both sides will be destroyed by the inspected State Party in the presence of the inspection team. The inspection team, the inspected State Party and the plant site, if so requested, shall each retain one copy of every photograph. The copies shall be signed, dated, and classified, in accordance with Section 3, and note the location and subject of the photograph and carry the same identification number. Agreed procedures for photography are contained in Attachment 13.

3. The representative of the inspected plant site has the right to object to the use of photographic equipment in specific areas, buildings or structures if such use would be incompatible with safety or fire regulations given the characteristics of the chemicals stored in the area in question. Restrictions for use are contained in Parts A and/or B of Attachment 5 to this Agreement. If the objection is raised due to safety concerns, the inspected State Party will, if possible, furnish photographic equipment that meets the regulations. If the use of photographic equipment is not permissible at all in specific areas, buildings or structures for the reasons stated above, the inspected State Party shall provide a written explanation of its objection to the inspection team leader. The explanation, along with the inspection team leader's comments will be included in the inspection team's preliminary factual findings.

Section 8. Debriefing and Preliminary Findings

1. In accordance with paragraph 60 of Part II of the Verification Annex, upon completion of an inspection the inspection team shall meet with representatives of the inspected State Party and the personnel responsible for the inspection site to review the preliminary findings of the inspection team and to clarify any ambiguities. The inspection team shall provide to the representatives of the inspected State Party its preliminary findings in written form according to a standardized format, together with a list of any samples and copies of written information and data gathered and other material to be taken off-site. The document shall be signed by the head of the inspection team. In order to indicate that he has taken notice of the content of this document, the representative of the inspected State Party shall countersign the document. The meeting shall be completed not later than 24 hours after the completion of the inspection.

2. The document on preliminary findings shall also include, inter alia, the list of results of analysis, if conducted on-site, records of seals, and copies of photographs to be retained by the inspection team. It will be prepared in accordance with the preliminary findings format referenced in Annex 5. Any substantive changes to this format will be made only after consultation with the inspected State Party.

3. Before the conclusion of the debriefing, the inspected State Party may provide comments and clarifications to the inspection team on any issue related to the conduct of the inspection. The inspection team shall provide to the representative of the inspected State Party its preliminary findings in written form sufficiently prior to the conclusion of the debriefing to permit the inspected State Party to prepare any comments and clarifications. The inspected State Party's written comments and clarifications shall be attached to the document on preliminary findings.

4. The inspection team shall depart from the site upon the conclusion of the meeting on preliminary findings.

Section 9. Administrative Arrangements

1. The inspected State Party shall provide or arrange for the provision of the amenities listed in detail in Attachment 11 to the inspection team in a timely manner throughout the duration of the inspection. The inspected State Party shall be reimbursed by the Organization for such costs incurred by the inspection team, unless agreed otherwise.

2. Requests from the inspection team for the inspected State Party to provide or arrange amenities shall be made in writing by an authorized member of the inspection team [5] using the form contained in Attachment 11. Requests shall be made as soon as the need for amenities has been identified. The provision of such requested amenities shall be certified in writing by the authorized member of the inspection team. Copies of all such certified requests shall be kept by both parties.

3. The inspection team has the right to refuse extra amenities that in its view are not needed for the conduct of the inspection.

Section 10. Liabilities

1. Any claim by the inspected State Party against the Organization or by the Organization against the inspected State Party in respect of any alleged damage or injury resulting from inspections at the plant site in accordance with this Agreement, without prejudice to paragraph 22 of the Confidentiality Annex, shall be settled in accordance with international law and, as appropriate, with the provisions of Article XIV of the Convention.

Section 11. Status of Attachments

1. The Attachments form an integral part of this Agreement. Any reference to the Agreement includes the Attachments. However, in case of any inconsistency between this Agreement and any Attachment, the sections of the Agreement shall prevail.

Section 12. Amendments, Modifications and Updates

1. Amendments to the sections of this Agreement may be proposed by either Party and shall be agreed to and enter into force under the same conditions as provided for under paragraph 1 of Section 14.

2. Modifications to the Attachments of this Agreement, other than Attachment 1 and Part B of Attachment 5, may be agreed upon at any time between the representative of the Organization and the representative of the inspected State Party, each being specifically authorized to do so. The Director-General shall inform the Executive Council about any such modifications. Each Party to this Agreement may revoke its consent to a modification not later than four weeks after it had been agreed upon. After this time period the modification shall take effect.

3. The inspected State Party will update Part A of Attachment 1 and Part B of Attachment 5, and Attachment 6 as necessary for the effective conduct of inspections. The Organization will update Part B of Attachment 1 and Annex 5, subject to paragraph 2 of Section 8, as necessary for the effective conduct of inspections.

Section 13. Settlement of Disputes

1. Any dispute between the Parties that may arise out of the application or interpretation of this Agreement shall be settled in accordance with Article XIV of the Convention.

Section 14. Entry into Force

1. This Agreement shall enter into force after approval by the Executive Council and signature by the two Parties. If the inspected State Party has additional internal requirements, it shall so notify the Organization in writing by the date of signature. In such cases, this Agreement shall enter into force on the date that the inspected State Party gives the Organization written notification that its internal requirements for entry into force have been met.

Section 15. Duration and Termination.

1. This Agreement shall cease to be in force when the provisions of paragraph 12 of Part VII of the Verification Annex no longer apply to this plant site, except if the continuation of the Agreement is agreed by mutual consent of the Parties.

Done at _____ in _____ copies, in English, each being equally authentic.[6]

Attachments

The following attachments shall be completed where applicable.

Attachment 1: General Factors for the Conduct of Inspections
Attachment 2: Health and Safety Requirements and Procedures
Attachment 3: Specific Arrangements in Relation to the Protection of Confidential Information at the Plant Site
Attachment 4: Arrangements for the Inspection Team's Contacts with the Media or the Public
Attachment 5: Inspection Equipment
Attachment 6: Information on the Plant Site Provided in Accordance with Section 6
Attachment 7: Arrangements for Site Tour
Attachment 8: Access to the Plant Site in Accordance with Section 7.2.
Attachment 9: Records Routinely Made Available to the Inspection Team at the Plant Site
Attachment 10: Sampling and Analysis for Verification Purposes
Attachment 11: Administrative Arrangements
Attachment 12: Agreed Procedures for Conducting Interviews
Attachment 13: Agreed Procedures for Photography

Attachment 1.—General Factors for the Conduct of Inspections

Part A. To Be Provided and Updated by the inspected State Party:

1. Plant site: _____

(a) working hours: [7] _____ hrs to _____ hrs (local time) (days)

(b) working days: _____

(c) holidays or other non-working days: _____

_____

2. Schedule 2 plant(s):

(a) working hours, if applicable: _____ hrs to _____ hrs (days)

(b) working days: _____

(c) holidays or other non-working days: _____

_____

3. Inspection activities which could/could not [8] be supported during non-working hours with notation of times and activities:

_____

4. Any other factors that could adversely affect the effective conduct of inspections:

(a) inspection requests:

Should the plant site withhold consent to an inspection, the inspected State Party shall take all appropriate action under its law to obtain a search warrant from a United States magistrate judge. Upon receipt of a warrant, the inspected State Party will accede to the

[5] The name of the authorized member(s) of the inspection team should be communicated to the inspected State Party no later than at the Point of Entry.

[6] The language(s) to be chosen by the inspected State Party from the languages of the Convention shall be the same as the language(s) referred to in paragraph 6 of Section 1 of this Agreement.

[7] All references to time use a 24 hour clock.

[8] Choose one option.

Organization's request to conduct an inspection. Such inspection will be carried out in accordance with the terms and conditions of the warrant.

(b) other:

5. Other: Notification procedures are contained in Annex 6.

Part B. To Be Provided and Updated by the Organization:

1. Inspection frequency: _____

2. Inspection intensity:

(a) maximum estimated period of inspection (for planning purposes):[9] _____

(b) approximate inspection team size: _____

(c) estimated volume and weight of equipment to be brought on-site: _____

Attachment 2.—Health and Safety Requirements and Procedures

Part A. Basic Principles:

1. Applicable health and safety regulations of the Organization, with agreed variations from strict implementation, if any:

2. Health and safety regulations applicable at the plant site:

(a) federal regulations:

(b) state regulations:

(c) local regulations:

(d) plant site regulations:

3. Health and safety requirements and regulations agreed between the inspected State Party and the Organization:

Part B. Detection and Monitoring:

1. Applicable specific safety standards for workplace chemical exposure limits and/or concentrations which should be observed during the inspection, if any:

2. Procedures, if any, for detection and monitoring in accordance with the Organization's Health and Safety Policy, including data to be collected by, or provided to, the inspection team:

Part C. Protection:

1. Protective equipment to be provided by the Organization and agreed procedures for equipment certification and use, if required:

2. Protective equipment to be provided by the inspected State Party, and agreed procedures, personnel training, and personnel qualification tests and certification required; and agreed procedures for use of the equipment:

Part D. Medical Requirements:

1. Applicable medical standards of the inspected State Party and, in particular, the inspected plant site:

2. Medical screening procedures for members of the inspection team:

3. Agreed medical assistance to be provided by the inspected State Party:

4. Emergency medical evacuation procedures:

5. Agreed additional medical measures to be taken by the inspection team:

6. Procedures for emergency response to chemical casualties of the inspection team:

Part E. Modification of Inspection Activities:

1. Modification of inspection activities due to health and safety reasons, and agreed alternatives to accomplish the inspection goals:

Attachment 3.—Specific Arrangements in Relation to the Protection of Confidential Information at the Plant Site

Part A. Inspected State Party's Procedures for Designating and Classifying Documents Provided to the Inspection Team:

See Annex 3 for the Organization's Policy on Confidentiality and Annex 7 for the inspected State Party's Procedures for Information Control.

Part B. Specific Procedures for Access by the Inspection Team to Confidential Areas or Materials:

Part C. Procedures in Relation to the Certification by the Inspection Team of the Receipt of Any Documents Provided by the Inspected Plant Site:

Part D. Storage of Confidential Documents at the Inspected Plant Site:

1. Procedures in relation to the storage of confidential documents or use of a dual control container on-site, if applicable:

Information under restrictions provided for in the Confidentiality Annex and as such to be kept in the dual control container under joint seal shall be available to the inspection team leader and/or an inspector designated by him from the beginning of the pre-inspection briefing until the end of the debriefing upon completion of the inspection in accordance with Section 3. If copies of information under dual control are permitted to be attached to the preliminary factual findings by the inspected State Party, they shall be made by the inspected State Party and retained under dual control until the debriefing. Should the medium on which such information is recorded become unusable, it shall be replaced without delay by the representative of the inspected State Party.

2. The dual control container will be placed _____

3. Information meeting the strict requirements for restriction pursuant to the Confidentiality Annex, and to be maintained in the dual control container located at the inspected plant site between inspections is listed below:

Reference	Type of data	Recorded media	Volume	Reasons for restrictions/ remarks

Part E. Procedures for the Removal Off-Site of Any Written Information, Data, and Other Materials Gathered by the Inspection Team:

Part F. Procedures for Providing the Representatives of the inspected State Party with Copies of Written Information, Inspector's Notebooks, Data and Other Material Gathered by the Inspection Team:

Part G. Other Arrangements, If Any:

1. Unless specified otherwise, all plant site information shall be returned to the inspected State Party at the completion of the inspection. No copies of plant site information shall be made in any manner by the inspection team or the Organization.

2. Plant site information shall not be released to the public, other States Parties, or the media without the specific permission of the inspected State Party, after consultation with the plant site.

3. Plant site information shall not be transmitted, copied or retained electronically without the specific permission of the inspected State Party after consultation with the plant site. All transmissions of information off-site shall be done in the presence of the inspected State Party.

4. Information not relevant to the purpose of the inspection will be purged from documents, photographs, etc. prior to release to the inspection team.

Attachment 4.—Arrangements for the Inspection Team's Contacts with the Media or the Public

Attachment 5.—Inspection Equipment

Part A: List of Equipment:

[9] Any figure indicated is without prejudice to paragraph 29 of Part VII of the Verification Annex.

Item of approved inspection equipment	Agreed procedures for use Nature of restrictions(s) (location, time, periods, etc.), if any	Indication of reason(s) (safety, confidentiality, etc.)	Special handling or storage requirements	Alternative for meeting inspection requirement(s), if so required by the inspection team

Part B. Equipment which the inspected State Party Has Volunteered to Provide:

Item of equipment	Procedures for use	Support to be provided, if required	Conditions (timing, costs, if any)

Part C. Procedures for the Decontamination of Equipment:

Item of equipment	Procedures for use

Part D. Means of Communication between Inspection Team Sub-Teams:

_____

Request for and Certification of Equipment Available on Site To Be Provided in Accordance With Paragraph 3 of Section 5

Date: _____
Plant Site: _____
Inspection number: _____
Name of the authorized member of the inspection team: _____
Type and number of item(s) of equipment requested: _____
Approval of the request by inspected State Party: _____
Comments on the request by the inspected State Party: _____
Indication of the costs, if any, for the use of the equipment requested/volunteered:

_____

Certification of the authorized member of the inspection team that the requested item(s) of equipment have been provided:

_____

Comments, if any, by the authorized member of the inspection team in regard to the equipment provided:

_____

Name and signature of the authorized member of the inspection team: _____

_____

Name and signature of the representative of the inspected State Party: _____

_____

Attachment 6.—Information on the Plant Site Provided in Accordance With Section 6

Part A. Topics of Information for the Pre-Inspection Briefing:

_____

Part B. Any Information about the Plant Site that the inspected State Party Volunteers to Provide to the Inspection Team during the Pre-Inspection Briefing and which May Be Transferred Off-Site:

_____

Attachment 7.—Arrangements for Site Tour

The inspected State Party, in consultation with the plant site, may provide a site tour at the request of the inspection team. Such tour shall take no more than 2 hours. If a site tour is conducted, the inspected State Party may provide explanations to the inspection team during the site tour.

Attachment 8.—Access to the Plant Site in Accordance With Section 7.2

Part A. Areas of the Declared Plant Site to which Inspectors Are Granted Access (i.e., detail the areas, equipment, and computers):

1. Declared Plant:[10,11]

2. Declared Plant Site:[12]

Part B. Arrangements with Regard to the Scope of the Inspection Effort in Agreed Areas Referenced in Part A:[13]

_____

Attachment 9.—Records Routinely Made Available to the Inspection Team at the Plant Site:[14]

Attachment 10.—Sampling and Analysis for Verification Purposes

Part A. Agreed Sampling Points Chosen with Due Consideration to Existing Sampling Points Used by the Plant(s) Operator(s):

[10] Plant means a relatively self-contained area, structure or building containing one or more units with auxiliary and associated infrastructure, such as:

[11] Areas to be inspected may include:

(a) small administrative section;

(b) storage/handling areas for feedstock and products;

(c) effluent/waste handling/treatment area;

(d) control/analytical laboratory;

(e) first aid service/related medical section;

(f) records associated with the movement into, around and from the site, of declared chemicals and their feedstock or product chemicals formed from them, as appropriate.

(a) areas where feed chemicals (reactants) are delivered or stored;

(b) areas where manipulative processes are performed upon the reactants prior to addition to the reaction vessels;

(c) feed lines as appropriate from the areas referred to in subparagraph (a) or subparagraph (b) to the reaction vessels together with any associated valves, flow meters, etc.;

(d) the external aspect of the reaction vessels and ancillary equipment;

(e) lines from the reaction vessels leading to long- or short-term storage or to equipment further processing the declared Schedule 2 chemicals;

(f) control equipment associated with any of the items under subparagraphs (a) to (e);

(g) equipment and areas for waste and effluent handling;

(h) equipment and areas for disposition of chemicals not up to specification.

[12] Plant Site means the local integration of one or more plants, with any intermediate administrative levels, which are under one operational control, and includes common infrastructure, such as:

(a) administration and other offices;

(b) repair and maintenance shops;

(c) medical center;

(d) utilities;

(e) central analytical laboratory;

(f) research and development laboratories;

(g) central effluent and waste treatment area; and

(h) warehouse storage.

[13] List the areas, equipment, and computers, if any, that are not relevant to the inspection mandate or that contain confidential business information that does not need to be divulged in order to comply with the inspection mandate.

[14] Some illustrative examples of records and data to be detailed are given below. The actual list will be dependent on the specifics of the inspection site. Information about the format and language in which records are kept at the plant site should be mentioned. It is understood that confidential information not related to the implementation of the Convention, such as prices, will be excluded by the State Party from scrutiny.

(a) inventory and accountancy records in relation to the production, processing or consumption of the declared Schedule 2 chemicals and their storage or transportation on to or off the site;

(b) operational records for the unit(s) producing, processing or consuming Schedule 2 chemicals (units) (batch cards, log books);

(c) Schedule 2 plant(s) dispatch records within the plant site and off-site dispatches;

Part B. Procedures for Taking Samples:

Part C. Procedures for Sample Handling and Sample Splitting:

Part D. Procedures for Sample Analysis:

Part E. Procedures for Transporting Samples:

Part F. Arrangements in Regard to the Payment of Costs Associated with the Disposal or Removal by the inspected State Party of Hazardous Waste Generated during Sampling and On-Site Analysis during the Inspection:

Attachment 11.—Administrative Arrangements

Part A. The Amenities Detailed Below Shall Be Provided to the Inspection Team by the inspected State Party, Subject to Payment as Indicated in Part B Below:

1. International and local official communication (telephone, fax), including calls/faxes between site and headquarters:

2. Vehicles:

3. Working room, including adequate space for the storage of equipment:

4. Lodging:
5. Meals:
6. Medical care:
7. Interpretation Services:
(a) number of interpreters:
(b) estimated interpretation time:
(c) languages:
8. Other:

Part B. Distribution of Costs for Provision of Amenities by the inspected State Party (check one option for each amenity provided as appropriate):

Paragraphs 1–8 in Part A above	To be paid directly by the Organization after the inspection	To be paid by the inspection team on behalf of the Organization during the in-country period	To be paid by the inspected State Party and subsequently reimbursed by the Organization	To be paid by the inspected State Party
1 2 3 4 5 6 7 8				

Part C. Other Arrangements.

1. Number of sub-teams (consisting of no less than two inspectors per sub-team) to be accommodated:

Request for and Certification of Amenities to be Provided or Arranged

Date:
Plant site:
Inspection number:
Category of amenities requested:
Description of amenities requested:
Approval of the request by the inspected State Party:
Comments on the request by the inspected State Party:

Indication of the costs for the amenities requested:
Certification of the authorized member of the inspection team that the requested amenities have been provided:

Comments by the authorized member of the inspection team in regard to the quality of the amenities provided:

Name and signature of the authorized member of the inspection team:

Name and signature of the representative of the inspected State Party:

Attachment 12.—Agreed Procedures for Conducting Interviews

Attachment 13.—Agreed Procedures for Photography

Annexes

Note: These annexes, inter alia, can be attached if requested by the inspected State Party

Annex 1: Organization's Media and Public Relations Policy
Annex 2: Organization's Health and Safety Policy and Regulations
Annex 3: Organization's Policy on Confidentiality
Annex 4: Plant Site Declaration
Annex 5: Preliminary and Final Inspection Report Formats
Annex 6: Inspected State Party's Procedures for Inspection Notification
Annex 7: Inspected State Party's Procedures for Information Control

PART 717—CLARIFICATION OF POSSIBLE NON-COMPLIANCE WITH THE CONVENTION; CHALLENGE INSPECTION PROCEDURES

Sec.

717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.
717.2 Challenge inspections.
717.3 Samples.
717.4 Report of inspection-related costs.

Authority: 22 U.S.C. 6701 *et seq.*, 2681; E.O. 13128, 64 FR 36703.

§ 717.1 Clarification procedures; challenge inspection requests pursuant to Article IX of the Convention.

(a) Article IX of the Convention sets forth procedures for clarification, between States Parties, of issues about compliance with the Convention. If States Parties are unable to resolve such issues through consultation between themselves or through the Organization for the Prohibition of Chemical Weapons (OPCW), a State Party may request the OPCW to conduct an on-site challenge inspection of any facility or location in the territory or in any other place under the jurisdiction or control of any other State Party. Such an on-site challenge inspection request shall be for the sole purpose of clarifying and resolving any questions concerning possible non-compliance with the Convention.

(b) Any person or facility subject to the CWCR (parts 710 through 722 of this subchapter) must, within five working days, provide information required by the Department of Commerce pursuant to an Article IX clarification request from another State Party, or the OPCW, concerning possible non-compliance with the reporting, declaration, notification, or inspection requirements set forth in parts 712 through 716 of this subchapter.

(d) Schedule 2 plant(s) maintenance schedule records;
(e) Schedule 2 plant(s) waste disposal records;
(f) Schedule 2 plant(s) (unit) calibration records;
(g) Schedule 2 plant(s) sales reports, as appropriate;
(h) sales or transfers, whether to another industry, trader, or other destination, and if possible, of final product types;
(i) data on direct exports/imports and to/from which States;
(j) other shipments, including specification of these other purposes; and (k) other.

§ 717.2 Challenge inspections.

Any person or facility subject to the CWCR (see § 710.2 of this subchapter), whether or not required to submit declarations or reports, may be subject to a challenge inspection by the OPCW concerning possible non-compliance with the requirements of the Convention. The Department of Commerce will host and escort the international Inspection Team for all challenge inspections of persons or facilities subject to the CWCR concerning possible non-compliance with the requirements set forth in parts 712 through 716 of this subchapter.

(a) *Warrants.* In instances where consent is not provided by the owner, operator, occupant or agent in charge of the facility or location, the Department of Commerce will assist the Department of Justice in seeking a criminal warrant as provided by the Act. The existence of a facility agreement does not in any way limit the right of the operator of the facility to withhold consent to a challenge inspection request.

(b) *Notification of challenge inspection.* Challenge inspections may be made only upon issuance of written notice by the United States National Authority (USNA) to the owner and to the operator, occupant or agent in charge of the premises. The Department of Commerce will provide Host Team notification to the inspection point of contact if such notification is deemed appropriate. If the United States is unable to provide actual written notice to the owner, operator, or agent in charge, the Department of Commerce, or if the Department of Commerce is unable, another appropriate agency, may post notice prominently at the plant, plant site or other facility or location to be inspected.

(1) *Timing.* The OPCW will notify the USNA of a challenge inspection not less than 12 hours before the planned arrival of the Inspection Team at the U.S. point of entry. Written notice will be provided to the owner and to the operator, occupant, or agent in charge of the premises at any appropriate time determined by the USNA after receipt of notification from the OPCW Technical Secretariat.

(2)(i) *Content of notice.* The notice shall include all appropriate information provided by the OPCW to the United States National Authority concerning:

(A) The type of inspection;

(B) The basis for the selection of the facility or locations for the type of inspection sought;

(C) The time and date that the inspection will begin and the period covered by the inspection;

(D) The names and titles of the inspectors; and

(E) All appropriate evidence or reasons provided by the requesting State Party for seeking the inspection.

(ii) In addition to appropriate information provided by the OPCW in its notification to the USNA, the Department of Commerce's Host Team notification to the facility or plant site will state whether an advance team is available to assist the site in preparation for the inspection. If an advance team is available, facilities that request advance team assistance are not required to reimburse the U.S. Government for costs associated with these activities.

(c) *Period of inspection.* Challenge inspections will not exceed 84 hours, unless extended by agreement between the Inspection Team and the Host Team Leader.

(d) *Scope and conduct of inspections.* (1) *General.* Each inspection shall be limited to the purposes described in this section and conducted in the least intrusive manner, consistent with the effective and timely accomplishment of its purpose as provided in the Convention.

(2) *Scope of inspections.* If an owner, operator, occupant, or agent in charge of a facility or location consents to a challenge inspection, the inspection will be conducted in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention. If consent is not granted, the inspection will be conducted in accordance with a criminal warrant, as provided by the Act, and in accordance with the provisions of Article IX and applicable provisions of the Verification Annex of the Convention. A challenge inspection will also be conducted in accordance with a facility agreement, if a facility agreement has been concluded for the subject facility, to the extent the terms of the facility agreement are relevant to the challenge inspection request.

(3) *Hours of inspections.* Consistent with the provisions of the Convention, the Host Team will ensure, to the extent possible, that each inspection is commenced, conducted, and concluded during ordinary working hours, but no inspection shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(4) *Health and safety regulations and requirements.* In carrying out their activities, the Inspection Team and Host Team shall observe federal, state, and local health and safety regulations and health and safety requirements established at the inspection site, including those for the protection of controlled environments within a facility and for personal safety.

§ 717.3 Samples.

The owner, operator, occupant or agent in charge of a facility or location must provide a sample, as provided for in the Convention and consistent with requirements set forth by the Director of the United States National Authority in 22 CFR part 103.

§ 717.4 Report of inspection-related costs.

Pursuant to section 309(b)(5) of the Act, any facility that has undergone any inspections pursuant to this subchapter during a given calendar year must report to BXA within 90 days of an inspection on its total costs related to that inspection. Although not required, such reports should identify categories of costs separately if possible, such as personnel costs (production-line, administrative, legal), costs of producing records, and costs associated with shutting down chemical production or processing during inspections, if applicable. This information should be reported to BXA on company letterhead at the address given in § 716.6(d) of this subchapter, with the following notation:

''ATTN: Report of Inspection-related Costs.''

PART 718—CONFIDENTIAL BUSINESS INFORMATION

Sec.

718.1 Definition.
718.2 Identification of confidential business information.
718.3 Disclosure of confidential business information.

Supplement No. 1 to Part 718—Confidential Business Information Declared or Reported

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 718.1 Definition.

The Chemical Weapons Convention Implementation Act of 1998 (''the Act'') defines confidential business information as information included in categories specifically identified in sections 103(g)(1) and 304(e)(2) of the Act and other trade secrets as follows:

(a) Financial data;

(b) Sales and marketing data (other than shipment data);

(c) Pricing data;

(d) Personnel data;

(e) Research data;

(f) Patent data;

(g) Data maintained for compliance with environmental or occupational health and safety regulations;

(h) Data on personnel and vehicles entering and personnel passenger vehicles exiting the facility;

(i) Any chemical structure;

(j) Any plant design, process, technology or operating method;

(k) Any operating requirement, input, or result that identifies any type or quantity of chemicals used, processed or produced;

(l) Any commercial sale, shipment or use of a chemical; or

(m) Information that qualifies as a trade secret under 5 U.S.C. 552(b)(4) (Freedom of Information Act), provided such trade secret is obtained from a U.S. person or through the U.S. Government.

§ 718.2 Identification of confidential business information.

(a) *General.* Certain confidential business information submitted to BXA in declarations and reports does not need to be specifically identified and marked by the submitter, as described in paragraph (b) of this section. Other confidential business information submitted to BXA in declarations and reports and confidential business information provided to the Host Team during inspections must be identified by the inspected facility so that the Host Team can arrange appropriate marking and handling.

(b) *Confidential business information contained in declarations and reports.* (1) BXA has identified those data fields on the declaration and report forms that request ''confidential business information'' as defined by the Act. These data fields are identified in the table provided in Supplement No. 1 to this part.

(2) You must specifically identify in a cover letter submitted with your declaration or report any additional information on a declaration or report form (i.e., information not provided in one of the data fields listed in the table included in Supplement No. 1 to this part), including information provided in attachments to Form A or Form B, that you believe is confidential business information, as defined by the Act, and must describe how disclosure would likely result in competitive harm.

Note to paragraph (b): BXA has also determined that descriptions of Schedule 1 facilities submitted with Initial Declarations as attachments to Form A contain confidential business information, as defined by the Act.

(c) *Confidential business information contained in notifications.* Information contained in advance notifications of exports and imports of Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. You must identify information in your notifications of Schedule 1 imports that you consider to be privileged and confidential, and describe how disclosure would likely result in competitive harm. See § 718.3(b) for provisions on disclosure to the public of such information by the U.S. Government.

(d) *Confidential business information related to inspections disclosed to, reported to, or otherwise acquired by, the U.S. Government.* (1) During inspections, certain confidential business information, as defined by the Act, may be disclosed to the Host Team. Facilities being inspected are responsible for identifying confidential business information to the Host Team, so that if it is disclosed to the Inspection Team, appropriate marking and handling can be arranged, in accordance with the provisions of the Convention (see § 718.3(c)(1)(ii)). Confidential business information not related to the purpose of an inspection or not necessary for the accomplishment of an inspection, as determined by the Host Team, may be removed from sight, shrouded, or otherwise not disclosed.

(2) Before or after inspections, confidential business information related to an inspection that is contained in any documents or that is reported to, or otherwise acquired by, the U.S. Government, such as facility information for pre-inspection briefings, facility agreements, and inspection reports, must be identified by the facility so that it may be appropriately marked and handled. If the U.S. Government creates derivative documents from such documents or reported information, they will also be marked and handled as confidential business information.

§ 718.3 Disclosure of confidential business information.

(a) *General.* Confidentiality of information will be maintained by BXA consistent with the non-disclosure provisions of the Act, the Export Administration Regulations (15 CFR parts 730 through 799), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate.

(b) *Disclosure of confidential business information contained in notifications.* Information contained in advance notifications of exports and imports of Schedule 1 chemicals is not subject to the confidential business information provisions of the Act. Disclosure of such information will be in accordance with the provisions of the relevant statutory and regulatory authorities as follows:

(1) *Exports of Schedule 1 chemicals.* Confidentiality of all information contained in these notifications will be maintained consistent with the non-disclosure provisions of the Export Administration Regulations (15 CFR parts 730 through 799), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and applicable exemptions under the Freedom of Information Act, as appropriate; and

(2) *Imports of Schedule 1 chemicals.* Confidentiality of information contained in these notifications will be maintained pursuant to applicable exemptions under the Freedom of Information Act.

(c) *Disclosure of confidential business information pursuant to § 404(b) of the Act.* (1) *Disclosure to the Organization for the Prohibition of Chemical Weapons (OPCW).* (i) As provided by Section 404(b)(1) of the Act, the U.S. Government will disclose or otherwise provide confidential business information to the Technical Secretariat of the OPCW or to other States Parties to the Convention, in accordance with provisions of the Convention, particularly with the provisions of the Annex on the Protection of Confidential Information (Confidentiality Annex).

(ii) *Convention provisions.* (A) The Convention provides that States Parties may designate information submitted to the Technical Secretariat as confidential, and requires the OPCW to limit access to, and prevent disclosure of, information so designated, except that the OPCW may disclose certain confidential information submitted in declarations to other States Parties if requested. The OPCW has developed a classification system whereby States Parties may designate the information they submit in their declarations as ''restricted,'' ''protected,'' or ''highly protected,'' depending on the sensitivity of the information. Other States Parties are obligated, under the Convention, to store and restrict access to information which they receive from the OPCW in accordance with the level of confidentiality established for that information.

(B) OPCW inspectors are prohibited, under the terms of their employment contracts and pursuant to the Confidentiality Annex of the Convention, from disclosing to any unauthorized persons, for five years after termination of their employment, any confidential information coming to their knowledge or into their possession in the performance of their official duties.

(iii) *U.S. Government designation of information to the Technical Secretariat.* It is the policy of the U.S. Government to designate all facility

information it provides to the Technical Secretariat in declarations, reports and Schedule 1 notifications as ''protected.'' It is the policy of the U.S. Government to designate confidential business information that it discloses to Inspection Teams during inspections as ''protected'' or ''highly protected,'' depending on the sensitivity of the information. The Technical Secretariat is responsible for storing and limiting access to any confidential business information contained in a document according to its established procedures.

(2) *Disclosure to Congress.* Section 404(b)(2) of the Act provides that the U.S. Government must disclose confidential business information to any committee or subcommittee of Congress with appropriate jurisdiction upon the written request of the chairman or ranking minority member of such committee or subcommittee. No such committee or subcommittee, and no member and no staff member of such committee or subcommittee, may disclose such information or material except as otherwise required or authorized by law.

(3) *Disclosure to other Federal agencies for law enforcement actions and disclosure in enforcement proceedings under the Act.* Section 404(b)(3) of the Act provides that the U.S. Government must disclose confidential business information to other Federal agencies for enforcement of the Act or any other law, and must disclose such information when relevant in any proceeding under the Act. Disclosure will be made in such manner as to preserve confidentiality to the extent practicable without impairing the proceeding. Section 719.14(b) of this subchapter provides that all hearings will be closed, unless the Administrative Law Judge for good cause shown determines otherwise. Section 719.20 of this subchapter provides that parties may request that the administrative law judge segregate and restrict access to confidential business information contained in material in the record of an enforcement proceeding.

(4) *Disclosure to the public; national interest determination.* Section 404(c) of the Act provides that confidential business information, as defined by the Act, that is in the possession of the U.S. Government, is exempt from public disclosure in response to a Freedom of Information Act request, except when such disclosure is determined to be in the national interest.

(i) *National interest determination.* The United States National Authority (USNA), in coordination with the CWC interagency group, shall determine on a case-by-case basis if disclosure of confidential business information in response to a Freedom of Information Act request is in the national interest.

(ii) *Notification of intent to disclose pursuant to a national interest determination.* The Act provides for notification to the affected person of intent to disclose confidential business information based on the national interest, unless such notification of intent to disclose is contrary to national security or law enforcement needs. If, after coordination with the agencies that constitute the CWC interagency group, the USNA does not determine that such notification of intent to disclose is contrary to national security or law enforcement needs, the USNA will notify the person that submitted the information and the person to whom the information pertains of the intent to disclose the information.

SUPPLEMENT NO. 1 TO PART 718.—CONFIDENTIAL BUSINESS INFORMATION DECLARED OR REPORTED*

	Fields containing confidential business information
Schedule 1 Forms:	
Certification Form	None.
Form 1–1	None.
Form 1–2	All fields.
Form 1–2A	All fields.
Form 1–2B	All fields.
Form 1–3	All fields.
Form 1–4	All fields.
Schedule 2 Forms:	
Certification Form	None.
Form 2–1	None.
Form 2–2	Questions 2–2.8.
Form 2–3	All fields.
Form 2–3A	All fields.
Form 2–3B	All fields.
Form 2–3C	All fields.
Form 2–4	All fields.
Schedule 3 Forms:	
Certification Form	None.
Form 3–1	None.
Form 3–2	None.
Form 3–3	All fields.
Form 3–4	All fields.
Unscheduled Discrete Organic Chemicals Forms:	
Certification Form	None.
Form UDOC	None.
Forms A and B and attachments (all Schedules and UDOCs).	Case-by-case; must be identified by submitter.

SUPPLEMENT NO. 1 TO PART 718.—CONFIDENTIAL BUSINESS INFORMATION DECLARED OR REPORTED*—Continued

*This table lists those data fields on the Declaration and Report Forms that request ''confidential business information'' (CBI) as defined by the Act (sections 103(g) and 304(e)(2)). As provided by section 404(a) of the Act, CBI is exempt from disclosure in response to a Freedom of Information Act (FOIA) request under sections 552(b)(3) and 552(b)(4) (5 U.S.C.A. 552(b)(3)–(4)), unless a determination is made, pursuant to section 404(c) of the Act, that such disclosure is in the national interest. Other FOIA exemptions to disclosure may also apply. You must identify CBI provided in Form A and/or Form B attachments, and provide the reasons supporting your claim of confidentiality, except that Schedule 1 facility technical descriptions submitted with initial declarations are always considered to include CBI. If you believe that information you are submitting in a data field marked ''none'' in the Table is CBI, as defined by the Act, you must identify the specific information and provide the reasons supporting your claim of confidentiality in a cover letter.

PART 719—ENFORCEMENT

Sec.

719.1 Scope and definitions.
719.2 Violations of the Act subject to administrative and criminal enforcement proceedings.
719.3 Violations of the IEEPA subject to judicial enforcement proceedings.
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Authority: 22 U.S.C. 6701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13128, 64 FR 36703.

§ 719.1 Scope and definitions.

(a) *Scope.* This part 719 describes the various sanctions that apply to violations of the Act and this subchapter. It also establishes detailed administrative procedures for certain violations of the Act. The three categories of violations are as follows:

(1) *Violations of the Act subject to administrative and criminal enforcement proceedings.* This CWCR sets forth in § 719.2 violations for which the statutory basis is the Act. The Department of Commerce investigates these violations and, for administrative proceedings, prepares charges, provides legal representation to the U.S. Government, negotiates settlements, and makes recommendations to officials of the Department of State with respect to the initiation and resolution of proceedings. The administrative procedures applicable to these violations are found in §§ 719.5 through 719.22 of this part. The Department of State gives notice of initiation of administrative proceedings and issues orders imposing penalties pursuant to 22 CFR part 103, subpart C.

(2) *Violations of the International Emergency Economic Powers Act (IEEPA) subject to judicial enforcement proceedings.* Section 719.3 sets forth violations of the Chemical Weapons Convention for which the statutory basis is the IEEPA. The Department of Commerce refers these violations to the Department of Justice for civil or criminal judicial enforcement.

(3) *Violations and sanctions under the Act not subject to proceedings under this subchapter.* Section 719.4 sets forth violations and sanctions under the Act that are not violations of this subchapter and that are not subject to proceedings under this subchapter. This section is included solely for informational purposes. The Department of Commerce may assist in investigations of these violations, but has no authority to initiate any enforcement action under this subchapter.

Note to paragraph (a): This part 719 does not apply to violations of the export requirements imposed pursuant to the Chemical Weapons Convention and set forth in the Export Administration Regulations (EAR) (15 CFR parts 730 through 799) and in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130).

(b) *Definitions.* The following are definitions of terms as used only in parts 719 and 720. For definitions of terms applicable to parts 710 through 722 of this subchapter, see part 710 of this subchapter.

The Act. The Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6701–6777).

Assistant Secretary for Export Enforcement. The Assistant Secretary for Export Enforcement, Bureau of Export Administration, United States Department of Commerce.

Final decision. A decision or order assessing a civil penalty, or otherwise disposing of or dismissing a case, which is not subject to further administrative review, but which may be subject to collection proceedings or judicial review in an appropriate Federal court as authorized by law.

IEEPA. The International Emergency Economic Powers Act, as amended (50 U.S.C. 1701–1706).

Office of Chief Counsel. The Office of Chief Counsel for Export Administration, United States Department of Commerce.

Report. For purposes of parts 719 and 720 of this subchapter, the term ''report'' means any declaration, report, or notification required under parts 712 through 715 of this subchapter.

Respondent. Any person named as the subject of a letter of intent to charge, or a Notice of Violation and Assessment (NOVA) and proposed order.

Under Secretary for Export Administration. The Under Secretary for Export Administration, Bureau of Export Administration, United States Department of Commerce.

§ 719.2 Violations of the Act subject to administrative and criminal enforcement proceedings.

(a) *Violations.* (1) *Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or disrupt, delay or otherwise impede an inspection, authorized by the Act.

(2) *Failure to establish or maintain records.* No person may willfully fail or refuse:

(i) To establish or maintain any record required by the Act or this subchapter; or

(ii) To submit any report, notice, or other information to the United States Government in accordance with the Act or this subchapter; or

(iii) To permit access to or copying of any record that is exempt from disclosure under the Act or this subchapter.

(b) *Civil penalties.* (1) *Civil penalty for refusal to permit entry or inspection.* Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have disrupted, delayed or otherwise impeded an authorized inspection, as set forth in paragraph (a)(1) of this section, shall pay a civil penalty in an amount not to exceed $25,000 for each violation. Each day the violation continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record or submit any report, notice, or other information required by the Act or this subchapter, or to permit access to or copying of any record exempt from disclosure under the Act or this subchapter as set forth in paragraph (a)(2) of this section, shall pay a civil penalty in an amount not to exceed $5,000 for each violation.

(c) *Criminal penalty.* Any person that knowingly violates the Act by willfully failing or refusing to permit entry or inspection authorized by the Act; or by willfully disrupting, delaying or otherwise impeding an inspection authorized by the Act; or by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice, or other information; or by willfully failing or refusing to permit access to or copying of any record exempt from disclosure under the Act or CWCR, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, be imprisoned for not more than one year, or both.

(d) *Denial of export privileges.* Any person in the United States or any U.S. national may be subject to a denial of export privileges after notice and opportunity for hearing pursuant to part 720 of this subchapter if that person has been convicted under Title 18, section 229 of the United States Code.

§ 719.3 Violations of the IEEPA subject to judicial enforcement proceedings.

(a) *Violations.* (1) *Import restrictions involving Schedule 1 chemicals.* Except as otherwise provided in § 712.1 of this subchapter, no person may import any Schedule 1 chemical (See Supplement No. 1 to part 712 of this subchapter) *unless*:

(i) The import is from a State Party;

(ii) The import is for research, medical, pharmaceutical, or protective purposes;

(iii) The import is in types and quantities strictly limited to those that can be justified for such purposes; and

(iv) The importing person has notified the Department of Commerce 45 calendar days prior to the import pursuant to § 712.4 of this subchapter.

(2) *Import restrictions involving Schedule 2 chemicals.* Except as otherwise provided in § 713.1 of this subchapter, no person may, on or after April 29, 2000, import any Schedule 2 chemical (see Supplement No. 1 to part

713 of this subchapter) from any destination other than a State Party.

(b) *Civil penalty.* A civil penalty not to exceed $11,000 may be imposed in accordance with this part on any person for each violation of this section.[1]

(c) *Criminal penalty.* Whoever willfully violates paragraph (a)(1) or (2) of this section shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by like fine, imprisonment, or both.[2]

§ 719.4 Violations and sanctions under the Act not subject to proceedings under this subchapter.

(a) *Criminal penalties for development or use of a chemical weapon.* Any person who violates 18 U.S.C. 229 shall be fined, or imprisoned for any term of years, or both. Any person who violates 18 U.S.C. 299 and by whose action the death of another person is the result shall be punished by death or imprisoned for life.

(b) *Civil penalty for development or use of a chemical weapon.* The Attorney General may bring a civil action in the appropriate United States district court against any person who violates 18 U.S.C. 229 and, upon proof of such violation by a preponderance of the evidence, such person shall be subject to pay a civil penalty in an amount not to exceed $100,000 for each such violation.

(c) *Criminal forfeiture.* (1) Any person convicted under section 229A(a) of Title 18 of the United States Code shall forfeit to the United States irrespective of any provision of State law:

(i) Any property, real or personal, owned, possessed, or used by a person involved in the offense;

(ii) Any property constituting, or derived from, and proceeds the person obtained, directly or indirectly, as the result of such violation; and

(iii) Any of the property used in any manner or part, to commit, or to facilitate the commission of, such violation.

(2) In lieu of a fine otherwise authorized by section 229A(a) of Title 18 of the United States Code, a defendant who derived profits or other proceeds from an offense may be fined not more than twice the gross profits or other proceeds.

(d) *Injunction.* (1) The United States may, in a civil action, obtain an injunction against:

(i) The conduct prohibited under section 229 or 229C of Title 18 of the United States Code; or

(ii) The preparation or solicitation to engage in conduct prohibited under section 229 or 229D of Title 18 of the United States Code.

(2) In addition, the United States may, in a civil action, restrain any violation of section 306 or 405 of the Act, or compel the taking of any action required by or under the Act or the Convention.

§ 719.5 Initiation of administrative proceedings.

(a) *Request for Notice of Violation and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Export Administration, may request that the Secretary of State initiate an administrative enforcement proceeding under this § 719.5 and 22 CFR 103.7. If the request is in accordance with applicable law, the Secretary of State will initiate an administrative enforcement proceeding by issuing a NOVA. The Office of Chief Counsel shall serve the NOVA as directed by the Secretary of State.

(b) *Letter of intent to charge.* The Director of the Office of Export Enforcement, Bureau of Export Administration, may notify a respondent by letter of the intent to charge. This letter of intent to charge will advise a respondent that the Department of Commerce has conducted an investigation and intends to recommend that the Secretary of State issue a NOVA. The letter of intent to charge will be accompanied by a draft NOVA and proposed order, and will give the respondent a specified period of time to contact BXA to discuss settlement of the allegations set forth in the draft NOVA. An administrative enforcement proceeding is not initiated by a letter of intent to charge. If the respondent does not contact BXA within the specified time, or if the respondent requests it, BXA will make its request for initiation of an administrative enforcement proceeding to the Secretary of State in accordance with paragraph (a) of this section.

(c) *Content of NOVA.* The NOVA shall constitute a formal complaint, and will set forth the basis for the issuance of the proposed order. It will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the amount of the civil penalty to be assessed. The NOVA will inform the respondent of the right to request a hearing pursuant to § 719.6, inform the respondent that failure to request such a hearing shall result in the proposed order becoming final and unappealable on signature of the Secretary of State, and provide payment instructions. A copy of the regulations that govern the administrative proceedings will accompany the NOVA.

(d) *Proposed order.* A proposed order shall accompany every NOVA, letter of intent to charge, and draft NOVA. It will briefly set forth the substance of the alleged violation(s) and the statutory, regulatory or other provisions violated. It will state the amount of the civil penalty to be assessed.

(e) *Notice.* Notice of the intent to charge or of the initiation of formal proceedings shall be given to the respondent (or respondent's agent for service of process, or attorney) by sending relevant documents, via first class mail, facsimile, or by personal delivery.

§ 719.6 Request for hearing and answer.

(a) *Time to answer.* If the respondent wishes to contest the NOVA and proposed order issued by the Secretary of State, the respondent must request a hearing in writing within 15 days from the date of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 days from the date of the request for hearing. The request for hearing and answer must be filed with the Administrative Law Judge (ALJ), along with a copy of the NOVA and proposed order, and served on the Office of Chief Counsel, and any other address(es) specified in the NOVA, in accordance with § 719.8.

(b) *Content of answer.* The respondent's answer must be responsive to the NOVA and proposed order, and must fully set forth the nature of the respondent's defense(s). The answer must specifically admit or deny each separate allegation in the NOVA; if the respondent is without knowledge, the answer will so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

[1] The maximum civil penalty allowed under the International Emergency Economic Powers Act is $11,000 for any violation committed on or after October 23, 1996 (15 CFR 6.4(a)(3)).

[2] Alternatively, sanctions may be imposed under 18 U.S.C. 3571, a criminal code provision that establishes a maximum criminal fine for a felony that is the greatest of: (1) the amount provided by the statute that was violated; (2) an amount not more than $250,000 for an individual, or not more than $500,000 for an organization; or (3) an amount based on gain or loss from the offense.

(c) *English required.* The request for hearing, answer, and all other papers and documentary evidence must be submitted in English.

(d) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times provided constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA and proposed order. If no hearing is requested and no answer is provided, the proposed order will be signed and become final and unappealable.

§ 719.7 Representation.

A respondent individual may appear and participate in person, a corporation by a duly authorized officer or employee, and a partnership by a partner. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides, if not the United States. The U.S. Government will be represented by the Office of Chief Counsel. A respondent personally, or through counsel or other representative who has the power of attorney to represent the respondent, shall file a notice of appearance with the ALJ, or, in cases where settlement negotiations occur before any filing with the ALJ, with the Office of Chief Counsel.

§ 719.8 Filing and service of papers other than the NOVA.

(a) *Filing.* All papers to be filed with the ALJ shall be addressed to ''CWC Administrative Enforcement Proceedings'' at the address set forth in the NOVA, or such other place as the ALJ may designate. Filing by United States mail (first class postage prepaid), by express or equivalent parcel delivery service, via facsimile, or by hand delivery, is acceptable. Filing from a foreign country shall be by airmail or via facsimile. A copy of each paper filed shall be simultaneously served on all parties.

(b) *Service.* Service shall be made by United States mail (first class postage prepaid), by express or equivalent parcel delivery service, via facsimile, or by hand delivery of one copy of each paper to each party in the proceeding. The Department of State is a party to cases under this subchapter, but will be represented by the Office of Chief Counsel. Therefore, service on the government party in all proceedings shall be addressed to Office of Chief Counsel for Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–3839, Washington, D.C. 20230, or faxed to (202) 482–0085. Service on a respondent shall be to the address to which the NOVA and proposed order was sent, or to such other address as the respondent may provide. When a party has appeared by counsel or other representative, service on counsel or other representative shall constitute service on that party.

(c) *Date.* The date of filing or service is the day when the papers are deposited in the mail or are delivered in person, by delivery service, or by facsimile. Refusal by the person to be served, or by the person's agent or attorney, of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal.

(d) *Certificate of service.* A certificate of service signed by the party making service, stating the date and manner of service, shall accompany every paper, other than the NOVA and proposed order, filed and served on the parties.

(e) *Computation of time.* In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which case the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is 7 days or less.

§ 719.9 Summary decision.

The ALJ may render a summary decision disposing of all or part of a proceeding on the motion of any party to the proceeding, provided that there is no genuine issue as to any material fact and the party is entitled to summary decision as a matter of law.

§ 719.10 Discovery.

(a) *General.* The parties are encouraged to engage in voluntary discovery regarding any matter, not privileged, which is relevant to the subject matter of the pending proceeding. The provisions of the Federal Rules of Civil Procedure relating to discovery apply to the extent consistent with this part and except as otherwise provided by the ALJ or by waiver or agreement of the parties. The ALJ may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. These orders may include limitations on the scope, method, time and place of discovery, and provisions for protecting the confidentiality of classified or otherwise sensitive information, including Confidential Business Information (CBI) as defined by the Act.

(b) *Interrogatories and requests for admission or production of documents.* A party may serve on any party interrogatories, requests for admission, or requests for production of documents for inspection and copying, and a party concerned may apply to the ALJ for such enforcement or protective order as that party deems warranted with respect to such discovery. The service of a discovery request shall be made at least 20 days before the scheduled date of the hearing unless the ALJ specifies a shorter time period. Copies of interrogatories, requests for admission and requests for production of documents and responses thereto shall be served on all parties and a copy of the certificate of service shall be filed with the ALJ. Matters of fact or law of which admission is requested shall be deemed admitted unless, within a period designated in the request (at least 10 days after service, or within such additional time as the ALJ may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party to whom the request is directed cannot truthfully either admit or deny such matters.

(c) *Depositions.* Upon application of a party and for good cause shown, the ALJ may order the taking of the testimony of any person by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and set forth the facts sought to be established through the deposition.

(d) *Enforcement.* The ALJ may order a party to answer designated questions, to produce specified documents or things or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the ALJ may make a determination or enter any order in the proceeding as the ALJ deems reasonable and appropriate. The ALJ may strike related charges or defenses in whole or in part or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purposes of the proceeding in

accordance with the contentions of the party seeking discovery. In addition, enforcement by any district court of the United States in which venue is proper may be sought as appropriate.

§ 719.11 Subpoenas.

(a) *Issuance.* Upon the application of any party, supported by a satisfactory showing that there is substantial reason to believe that the evidence would not otherwise be available, the ALJ may issue subpoenas to any person requiring the attendance and testimony of witnesses and the production of such books, records or other documentary or physical evidence for the purpose of the hearing, as the ALJ deems relevant and material to the proceedings, and reasonable in scope. Witnesses shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States. In case of contempt, challenge or refusal to obey a subpoena served upon any person pursuant to this paragraph, any district court of the United States, in which venue is proper, has jurisdiction to issue an order requiring any such person to comply with such subpoena. Any failure to obey such order of the court is punishable by the court as a contempt thereof.

(b) *Service.* Subpoenas issued by the ALJ may be served by any of the methods set forth in § 719.8(b).

(c) *Timing.* Applications for subpoenas must be submitted at least 10 days before the scheduled hearing or deposition, unless the ALJ determines, for good cause shown, that extraordinary circumstances warrant a shorter time.

§ 719.12 Matters protected against disclosure.

(a) *Protective measures.* The ALJ may limit discovery or introduction of evidence or issue such protective or other orders as in the ALJ's judgment may be needed to prevent undue disclosure of classified or sensitive documents or information, including Confidential Business Information as defined by the Act. Where the ALJ determines that documents containing classified or sensitive matter must be made available to a party in order to avoid prejudice, the ALJ may direct the other party to prepare an unclassified and nonsensitive summary or extract of the documents. The ALJ may compare the extract or summary with the original to ensure that it is supported by the source document and that it omits only so much as must remain undisclosed. The summary or extract may be admitted as evidence in the record.

(b) *Arrangements for access.* If the ALJ determines that the summary procedure outlined in paragraph (a) of this section is unsatisfactory, and that classified or otherwise sensitive matter must form part of the record in order to avoid prejudice to a party, the ALJ may provide the parties opportunity to make arrangements that permit a party or a representative to have access to such matter without compromising sensitive information. Such arrangements may include obtaining security clearances or giving counsel for a party access to sensitive information and documents subject to assurances against further disclosure, including a protective order, if necessary.

§ 719.13 Prehearing conference.

(a) On the ALJ's own motion, or on request of a party, the ALJ may direct the parties to participate in a prehearing conference, either in person or by telephone, to consider:

(1) Simplification of issues;

(2) The necessity or desirability of amendments to pleadings;

(3) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or (4) Such other matters as may expedite the disposition of the proceedings.

(b) The ALJ may order the conference proceedings to be recorded electronically or taken by a reporter, transcribed and filed with the ALJ.

(c) If a prehearing conference is impracticable, the ALJ may direct the parties to correspond with the ALJ to achieve the purposes of such a conference.

(d) The ALJ will prepare a summary of any actions agreed on or taken pursuant to this section. The summary will include any written stipulations or agreements made by the parties.

§ 719.14 Hearings.

(a) *Scheduling.* Upon receipt of a written and dated request for a hearing, the ALJ shall, by agreement with all the parties or upon notice to all parties of at least 30 days, schedule a hearing. All hearings will be held in Washington, D.C., unless the ALJ determines, for good cause shown, that another location would better serve the interest of justice.

(b) *Hearing procedure.* Hearings will be conducted in a fair and impartial manner by the ALJ. All hearings will be closed, unless the ALJ for good cause shown determines otherwise. The rules of evidence prevailing in courts of law do not apply, and all evidentiary material deemed by the ALJ to be relevant and material to the proceeding and not unduly repetitious will be received and given appropriate weight, except that any evidence of settlement which would be excluded under Rule 408 of the Federal Rules of Evidence is not admissible. Witnesses will testify under oath or affirmation, and shall be subject to cross-examination.

(c) *Testimony and record.* (1) A verbatim record of the hearing and of any other oral proceedings will be taken by reporter or by electronic recording, and filed with the ALJ. If any party wishes to obtain a written copy of the transcript, that party shall pay the costs of transcription. The parties may share the costs if both wish a transcript.

(2) Upon such terms as the ALJ deems just, the ALJ may direct that the testimony of any person be taken by deposition and may admit an affidavit or declaration as evidence, provided that any affidavits or declarations have been filed and served on the parties sufficiently in advance of the hearing to permit a party to file and serve an objection thereto on the grounds that it is necessary that the affiant or declarant testify at the hearing and be subject to cross-examination.

(d) *Failure to appear.* If a party fails to appear in person or by counsel at a scheduled hearing, the hearing may nevertheless proceed. The party's failure to appear will not affect the validity of the hearing or any proceeding or action taken thereafter.

§ 719.15 Procedural stipulations.

Unless otherwise ordered and subject to § 719.16, a written stipulation agreed to by all parties and filed with the ALJ will modify the procedures established by this part.

§ 719.16 Extension of time.

The parties may extend any applicable time limitation by stipulation filed with the ALJ before the time limitation expires, or the ALJ may, on the ALJ's own initiative or upon application by any party, either before or after the expiration of any applicable time limitation, extend the time, except that the requirement that a hearing be demanded within 15 days, and the requirement that a final agency decision be made within 30 days, may not be modified.

§ 719.17 Post-hearing submissions.

All parties shall have the opportunity to file post-hearing submissions that may include findings of fact and conclusions of law, supporting evidence and legal arguments, exceptions to the ALJ's rulings or to the admissibility of evidence, and proposed orders and settlements.

§ 719.18 Decisions.

(a) *Initial decision.* After considering the entire record in the case, the ALJ

will issue an initial decision based on a preponderance of the evidence. The decision will include findings of fact, conclusions of law, and a decision based thereon as to whether the respondent has violated the Act If the ALJ finds that the evidence of record is insufficient to sustain a finding that a violation has occurred with respect to one or more allegations, the ALJ shall order dismissal of the allegation(s) in whole or in part, as appropriate. If the ALJ finds that one or more violations have been committed, the ALJ shall issue an order imposing administrative sanctions.

(b) *Factors considered in assessing penalties.* In determining the amount of a civil penalty, the ALJ shall take into account the nature, circumstances, extent and gravity of the violation(s), and, with respect to the respondent, the respondent's ability to pay the penalty, the effect of a civil penalty on the respondent's ability to continue to do business, the respondent's history of prior violations, the respondent's degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(c) *Certification of initial decision.* The ALJ shall immediately certify the initial decision and order to the Executive Director of the Office of Legal Adviser, U.S. Department of State, 2201 C Street, N.W., Room 5519, Washington, D.C. 20520, to the Office of Chief Counsel at the address in § 719.8, and to the respondent, by personal delivery or overnight mail.

(d) *Review of initial decision.* The initial decision shall become the final agency decision and order unless, within 30 days, the Secretary of State modifies or vacates it, with or without conditions, in accordance with 22 CFR 103.8.

§ 719.19 Settlement.

(a) *Settlements before issuance of a NOVA.* When the parties have agreed to a settlement of the case, the Director of the Office of Export Enforcement will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(a), the Secretary of State will sign if the recommended settlement is in accordance with applicable law.

(b) *Settlements following issuance of a NOVA.* The parties may enter into settlement negotiations at any time during the time a case is pending before the ALJ. If necessary, the parties may extend applicable time limitations or otherwise request that the ALJ stay the proceedings while settlement negotiations continue. When the parties have agreed to a settlement of the case, the Office of Chief Counsel will recommend the settlement to the Secretary of State, forwarding a proposed settlement agreement and order, which, in accordance with 22 CFR 103.9(b), the Assistant Secretary will sign if the recommended settlement is in accordance with applicable law.

(c) *Settlement scope.* Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought under this part. This reflects the fact that the government officials involved have neither the authority nor the responsibility for initiating, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility are vested in the Attorney General and the Department of Justice.

(d) *Finality.* Cases that are settled may not be reopened or appealed.

§ 719.20 Record for decision.

(a) *The record.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings, and, for purposes of any appeal under § 719.18 or under 22 CFR 103.8, the decision of the ALJ and such submissions as are provided for under § 719.18 or 22 CFR 103.8 will constitute the record and the exclusive basis for decision. When a case is settled, the record will consist of any and all of the foregoing, as well as the NOVA or draft NOVA, settlement agreement, and order.

(b) *Restricted access.* On the ALJ's own motion, or on the motion of any party, the ALJ may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record is responsible, prior to the close of the proceeding, for submitting a version of the document(s) proposed for public availability that reflects the requested deletion. The restricted access portion of the record will be placed in a separate file and the file will be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The ALJ may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted access portion of the record.

(c) *Availability of documents.* (1) *Scope.* All NOVAs and draft NOVAs, answers, settlement agreements, decisions and orders disposing of a case will be made available for public inspection in the BXA Freedom of Information Records Inspection Facility, U.S. Department of Commerce, Room H–6624, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. The complete record for decision, as defined in paragraphs (a) and (b) of this section will be made available on request.

(2) *Timing.* The record for decision will be available only after the final administrative disposition of a case. Parties may seek to restrict access to any portion of the record under paragraph (b) of this section.

§ 719.21 Payment of final assessment.

(a) *Time for payment.* Full payment of the civil penalty must be made within 30 days of the date upon which the final order becomes effective, or within the time specified in the order. Payment shall be made in the manner specified in the NOVA.

(b) *Enforcement of order.* The government party may, through the Attorney General, file suit in an appropriate district court if necessary to enforce compliance with a final order issued under these CWCR (this subchapter). This suit will include a claim for interest at current prevailing rates from the date payment was due or ordered.

(c) *Offsets.* The amount of any civil penalty imposed by a final order may be deducted from any sum(s) owed by the United States to a respondent.

§ 719.22 Reporting a violation.

If a person learns that a violation of the Convention, the Act, or this subchapter has occurred or may occur, that person may notify: Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–4520, Washington, D.C. 20230; Tel: (202) 482–1208; Facsimile: (202) 482–0964.

PART 720—DENIAL OF EXPORT PRIVILEGES

Sec.

720.1 Denial of export privileges for convictions under 18 U.S.C. 229.
720.2 Initiation of administrative action denying export privileges.
720.3 Final decision on administrative action denying export privileges.
720.4 Effect of denial.

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 720.1 Denial of export privileges for convictions under 18 U.S.C. 229.

Any person in the United States or any U.S. national may be denied export privileges after notice and opportunity for hearing if that person has been

convicted under Title 18, Section 229 of the United States Code of knowingly:

(a) Developing, producing, otherwise acquiring, transferring directly or indirectly, receiving, stockpiling, retaining, owning, possessing, or using, or threatening to use, a chemical weapon; or

(b) Assisting or inducing, in any way, any person to violate paragraph (a) of this section, or attempting or conspiring to violate paragraph (a) of this section.

§ 720.2 Initiation of administrative action denying export privileges.

(a) *Notice*. BXA will notify any person convicted of Section 229, Title 18, United States Code, of BXA's intent to deny that person's export privileges. The notification letter shall reference the person's conviction, specify the number of years for which BXA intends to deny export privileges, set forth the statutory and regulatory authority for the action, state whether the denial order will be standard or non-standard pursuant to Supplement No. 1 to Part 764 of the Export Administration Regulations (15 CFR parts 730 through 799), and provide that the person may request a hearing before the Administrative Law Judge within 30 days from the date of the notification letter.

(b) *Waiver*. The failure of the notified person to file a request for a hearing within the time provided constitutes a waiver of the person's right to contest the denial of export privileges that BXA intends to impose.

(c) *Order of Assistant Secretary*. If no hearing is requested, the Assistant Secretary for Export Enforcement will order that export privileges be denied as indicated in the notification letter.

§ 720.3 Final decision on administrative action denying export privileges.

(a) *Hearing.* Any hearing that is granted by the ALJ shall be conducted in accordance with the procedures set forth in § 719.14 of this subchapter.

(b) *Initial decision and order.* After considering the entire record in the proceeding, the ALJ will issue an initial decision and order, based on a preponderance of the evidence. The ALJ may consider factors such as the seriousness of the criminal offense that is the basis for conviction, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures. The ALJ may dismiss the proceeding if the evidence is insufficient to sustain a denial of export privileges, or may issue an order imposing a denial of export privileges for the length of time the ALJ deems appropriate. An order denying export privileges may be standard or non-standard, as provided in Supplement No. 1 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799). The initial decision and order will be served on each party, and will be published in the **Federal Register** as the final decision of the Department of Commerce 30 days after service, unless an appeal is filed in accordance with paragraph (c) of this section.

(c) *Grounds for appeal.* (1) A party may, within 30 days of the ALJ's initial decision and order, petition the Under Secretary for Export Administration for review of the initial decision and order. A petition for review must be filed with the Office of Under Secretary for Export Administration, Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, and shall be served on the Office of Chief Counsel for Export Administration or on the respondent. Petitions for review may be filed only on one or more of the following grounds:

(i) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

(ii) That a necessary legal conclusion or finding is contrary to law;

(iii) That prejudicial procedural error occurred; or

(iv) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion.

(2) The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal was taken.

(d) *Appeal procedure.* The Under Secretary for Export Administration normally will not hold hearings or entertain oral arguments on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his/her discretion, the Under Secretary may accept new submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(e) *Decisions.* The Under Secretary's decision will be in writing and will be accompanied by an order signed by the Under Secretary for Export Administration giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the ALJ, or may refer the case back to the ALJ for further proceedings. Any order that imposes a denial of export privileges will be published in the **Federal Register**.

§ 720.4 Effect of denial.

Any person denied export privileges pursuant to this part shall be considered a ''person denied export privileges'' for purposes of the Export Administration Regulations (15 CFR parts 730 through 799). The name and address of the denied person will be published on the Denied Persons List found in Supplement 2 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 799).

PART 721—INSPECTION OF RECORDS AND RECORDKEEPING

Sec.

721.1 Inspection of records.
721.2 Recordkeeping.
721.3 Destruction or disposal of records.

Authority: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703.

§ 721.1 Inspection of records.

Upon request by the Department of Commerce or any other agency of competent jurisdiction, you must permit access to and copying of any record relating to compliance with the requirements of this subchapter. This requires that you make available the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record.

§ 721.2 Recordkeeping.

(a) *General.* Each facility required to submit a declaration, report or notification under parts 712 through 715 of this subchapter must retain all supporting materials and documentation used by a unit, plant, facility and plant site to prepare such declaration, report or notification to determine production, processing, consumption, export or import of chemicals.

(b) *Five year retention period.* All supporting materials and documentation required to be kept under paragraph (a) of this section must be retained for five years from the due date of the applicable declaration, report, or notification, or for five years from the date of submission of the applicable declaration, report or notification, whichever is later. Due dates for declarations, reports and notifications are provided in parts 712 through 715 of this subchapter.

(c) *Location of records.* If a facility is subject to inspection under part 716 of this subchapter, records retained under this section must be maintained at the facility or must be accessible electronically at the facility for purposes of inspection of the facility by Inspection Teams. If a facility is *not* subject to inspection under part 716 of this subchapter, records retained under

this section may be maintained either at the facility subject to a declaration, report, or notification requirement, or at a remote location, but all records must be accessible to any authorized agent, official or employee of the U.S. Government under § 721.1.

(d) *Reproduction of original records.* (1) You may maintain reproductions instead of the original records provided all of the requirements of paragraph (b) of this section are met.

(2) If you must maintain records under this part, you may use any photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:

(i) The system must be capable of reproducing all records on paper.

(ii) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides (unless blank) of paper documents in legible form.

(iii) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.

(iv) The system must preserve the initial image (including both obverse and reverse sides, unless blank, of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner that none of it may be altered once it is initially recorded.

(v) You must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(vi) You must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(3) *Requirements applicable to a system based on digital images.* For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. The system must be able to locate and reproduce all records according to the same criteria that would have been used to organize the records had they been maintained in original form.

(4) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the records must be maintained according to an index of all records in the system following the same criteria that would have been used to organize the records had they been maintained in original form.

§ 721.3 Destruction or disposal of records.

If the Department of Commerce or other authorized U.S. government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the requesting entity.

PART 722—INTERPRETATIONS—[RESERVED]

Note: This part is reserved for interpretations of parts 710 through 721 and also for applicability of decisions by the Organization for the Prohibition of Chemical Weapons (OPCW).

Dated: December 16, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–33149 Filed 12–30–99; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Part 103

[Public Notice 3183]

RIN 1400–ZA01

Chemical Weapons Convention and the Chemical Weapons Convention Implementation Act of 1998; Taking of Samples; Recordkeeping and Inspections

AGENCY: Bureau of Arms Control, State.

ACTION: Final rule.

SUMMARY: The Department of State is issuing this final rule to implement the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, also known as the Chemical Weapons Convention (CWC or Convention), and the Chemical Weapons Convention Implementation Act of 1998 (Act) on the taking of samples and on the enforcement of the requirements concerning record keeping and inspections. The Act authorizes the United States Government to implement provisions of the Convention. These regulations will enable the United States Government to execute the relevant provisions of the Convention and the Act.

EFFECTIVE DATE: December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Coffee, Office of the Legal Adviser (L/ACN), 2201 C Street, N.W., Washington, DC 20520.

SUPPLEMENTARY INFORMATION: In Part II of the July 21, 1999 **Federal Register**, the Department of State (64 Fed. Reg. 39244) and the Department of Commerce (64 Fed. Reg. 39194) published, with a thirty day public comment period, proposed rules to implement provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction and the Chemical Weapons Convention Implementation Act of 1998.

On April 25, 1997, the United States ratified the CWC. The Convention is both an arms control and nonproliferation treaty. As such, the Convention bans the development, production, stockpiling, and use of chemical weapons, and prohibits States Parties from assisting or encouraging anyone to engage in any activity prohibited by the Convention. States Parties to the Convention, including the United States, have agreed to a comprehensive verification regime that provides transparency and ensures that no State Party to the Convention is engaging in activity prohibited by the Convention. The verification regime includes declarations and reports by, and on-site inspection of, facilities engaged in or formerly engaged in activities involving certain chemicals. To further its nonproliferation objectives, the Convention requires restrictions on the import and export of certain chemicals. This rule implements §§ 304(f)(1) and 501 of the Chemical Weapons Convention Implementation Act of 1998, 22 U.S.C. 6701 *et seq.* These regulations provide the guidelines under which the taking of a sample may be required during an on-site inspection conducted pursuant to the Convention. These regulations will also establish the civil enforcement regime for a violation of §§ 306 or 405 of the Act.

A number of responses were received by the Department of State. Following are relevant comments raised as well as the Department of State's response.

1. *Conformity with the Department of Commerce's Regulations.* One respondent indicated that the Departments of State's and Commerce's proposed regulations implementing the Convention and the Act did not always conform. The regulations have been modified to be more consistent.

2. *Definitions.* One respondent indicated that the definition of Administrative Law Judge was circular. As Administrative Law Judges are established by Title 5 of the United States Code, and are already defined in § 719.1(b) of the Department of Commerce's regulations, the term will not be defined in this rule. At the request of the same respondent, ''Inspection assistant'' has been defined. The same respondent requested a definition of ''Site representatives.'' Because the term is self-explanatory, it will not be defined in this rule.

3. *Consultation with facility prior to requiring a sample.* All respondents requested that the Host Team Leader communicate with a representative of the site prior to the requirement of a sample. In practice, the site representative will be involved throughout the inspection. In § 103.3(a), the rule now explicitly gives the site representative the right to communicate reasons for which a sample should not be required.

4. *Voluntary provision of samples.* One respondent stated that a facility should be able to provide a sample without being required to do so. Although the section requiring the provision of samples had been drafted for situations in which samples are not volunteered, a new provision has been inserted in § 103.3(a) recognizing that samples may be voluntarily provided.

5. *Written notification of requirement to provide a sample.* One respondent requested that the notification of a requirement to provide a sample be in writing. This request has been approved, and is reflected in § 103.3(b).

6. *Purpose of analysis of samples.* All respondents commented on the limitation of the language concerning the reasons for analysis of samples. The provision has been deleted as it is unnecessary. Part II, paragraph 39, of the Convention's Verification Annex already provides that the Inspection Team may only engage in activities that are necessary to discharge its functions.

7. *On-site analysis of samples.* All respondents recommended that samples be analyzed on-site, where possible. This will occur pursuant to paragraph 53 of Part II of the Convention's Verification Annex, which provides that ''[w]here possible, the analysis of samples shall be performed on-site.''

8. *Observing the taking of a sample.* One respondent suggested that the owner or operator of a facility should be permitted to observe the taking of a sample. The owner or operator, occupant or agent in charge of the inspected premises already has the right to decide whether a representative of the premises will take the sample. The rule has been modified in § 103.3(f) to explicitly allow the owner or operator, occupant or agent in charge of the inspected premises to elect to have a representative present during the taking of a sample.

9. *United States National Authority (USNA) decision that a sample is not required.* One respondent requested clarification that a decision by the USNA not to require a sample will result in no requirement to provide a sample. The rule has been modified in § 103.3(e)(2) accordingly.

10. *Failure to comply with section 103.3 of this rule.* One respondent has questioned the text in § 103.3(i). Because a failure to provide a required sample might delay or impede an inspection, it may be determined to be a violation of § 306 of the Act.

11. *Handling of samples.* One respondent has recommended that samples should be handled in a manner consistent with facility rules. Such a provision belongs in a facility agreement between the United States and the Organization for the Prohibition of Chemical Weapons.

12. *Interpretation of Sections 306 and 405 of the Act.* All respondents sought clarity concerning actions that will be considered violations of sections 306 and 405 of the Act. Because determinations of violations are fact-specific, it would be impossible to adequately ''interpret'' these provisions in this rule.

13. *Recordkeeping Requirement.* One respondent stated that § 103.5(b)(3) of the proposed rule exceeded the authority of § 405(3) of the Act. That provision had been modified to provide clarity to the public. However, to avoid confusion, § 103.5(b)(3) now repeats the language of § 405(3) of the Act.

14. *Requesting a hearing.* One respondent suggested that thirty (30) days should be permitted to respond to a Notice of Violation and Assessment and a proposed order. Because § 501(a)(2)(A) of the Act establishes a fifteen (15) day timeframe for a response, this rule permits only fifteen (15) days for a response.

15. *Computation of time for section 103.8 of this rule.* One respondent requested that this rule adopt rules to compute time for purposes of § 103.8. A computation rule is included in § 103.8(c).

16. *Timing of review of initial decision.* All respondents requested more time during the review of the initial decision in § 103.8(a). Under § 501(a)(3) of the Act, an initial decision and order becomes final unless the head of the USNA modifies or vacates the decision and order within thirty (30) days. Minor changes were made to the timelines in § 103.8(a) to the extent possible, consistent with § 501(a)(3) of the Act.

17. *Introduction of new or additional evidence.* One respondent recommended that new or additional evidence be permitted during the review of an initial decision. Text has been deleted from § 103.8(a)(2); instead § 557 of the Administrative Procedure Act shall govern.

18. *Oral Argument.* Two respondents recommended that oral argument should not be explicitly precluded. Section 103.8(a)(6) no longer explicitly precludes oral argument. The Administrative Law Judge will have discretion in permitting oral argument.

Administrative Procedure Act Requirements

Because this rule involves a foreign affairs function of the United States, it is not subject to 5 U.S.C. 553 and 554. However, the Department has previously issued this rule in proposed form and comments were encouraged for the development of this final rule.

Regulatory Flexibility Analysis

Because this rule involves a foreign affairs function of the United States, the Department of State is not required to prepare a regulatory flexibility analysis.

Executive Order 12866 Determiniation

This rule is exempt from Executive Order 12866, but has been reviewed internally by the Department to ensure consistency with the purposes thereof.

Paperwork Reduction Act Statement

Section 103.5(b) of this rule states that no person may willfully fail or refuse: (1) to establish or maintain any record required under the Chemical Weapons Convention Implementation Act or 15 CFR Parts 710 through 722; (2) to submit any report, notice, or other information prescribed by the Act or 15 CFR Parts 710 through 722; or (3) to permit access to or copying of any record that is exempt from disclosure under the Act or 15 CFR Parts 710 through 722.

Notwithstanding any other provision of law, no person is required, nor shall any person be subject to a penalty for failure, to comply with a collection of

information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. In promulgating 15 CFR Parts 710 through 722, the Department of Commerce revised an existing collection of information requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), which has been submitted for approval to the Office of Management and Budget. Accordingly, the Department of State will not seek the approval of the Office of Management and Budget. The public reporting burdens for the new collections of information are estimated to average 9 hours for Schedule 1 chemicals, 7.2 hours for Schedule 2 chemicals, 2.5 hours for Schedule 3 chemicals, 5.3 hours for unscheduled discrete organic chemicals, and .17 hours for Schedule 1 notifications. These estimates include the time required to complete the required forms.

Unfunded Mandates Reform Act Requirements

No actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Federalism Assessment

Because this rule will not have a substantial direct effect 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, a Federalism Assessment is not warranted.

List of Subjects in 22 CFR Part 103

Administrative practice and procedures, Chemicals, Foreign relations, Freedom of information, International organizations, Investigations, National security information, Penalties, Reporting and recordkeeping requirements, Treaties.

For the reasons set forth in the preamble, the Department adds to subchapter K the following part 103 to Title 22 of the Code of Federal Regulations:

PART 103—REGULATIONS FOR IMPLEMENTATION OF THE CHEMICAL WEAPONS CONVENTION AND THE CHEMICAL WEAPONS CONVENTION IMPLEMENTATION ACT OF 1998 ON THE TAKING OF SAMPLES AND ON ENFORCEMENT OF REQUIREMENTS CONCERNING RECORDKEEPING AND INSPECTIONS

Subpart A—General

Sec.
103.1 Purpose.
103.2 Definitions.

Subpart B—Samples

103.3 Requirement to provide a sample.

Subpart C—Recordkeeping and Inspection Requirements

103.4 General.
103.5 Violations.
103.6 Penalties.
103.7 Initiation of administrative enforcement proceedings.
103.8 Final agency decision after administrative proceedings.
103.9 Final agency decision after settlement negotiations.
103.10 Appeals.
103.11 Payment of final assessment.
103.12 Reporting a violation.

Authority: Pub. L. 105–277, 112 Stat. 2681, Div. I (22 U.S.C. 6701 *et seq.*).

Subpart A—General

§ 103.1 Purpose.

This part is intended to implement sections 304(f)(1) and 501 of the Chemical Weapons Convention Implementation Act of 1998 (Act), 22 U.S.C. 6701 *et seq.* The Chemical Weapons Convention Regulations promulgated by the Department of Commerce, 15 CFR Parts 710 through 722, also implement sections of the Act.

§ 103.2 Definitions.

The following are definitions of terms as used in this part only.

Bureau of Export Administration (BXA). The Bureau of Export Administration of the United States Department of Commerce, including the Office of Export Administration and the Office of Export Enforcement.

Chemical Weapons Convention (CWC or Convention). The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, and its annexes opened for signature on January 13, 1993, and entered into force on April 29, 1997.

CWCIA. The Chemical Weapons Convention Implementation Act of 1998. (22 U.S.C. 6701 *et seq.*)

CWCR. The Chemical Weapons Convention Regulations promulgated by the Department of Commerce. (15 CFR parts 710 through 722.)

Executive Director. The Executive Director, Office of the Legal Adviser, U.S. Department of State.

Facility agreement. A written agreement or arrangement between a State Party to the Convention and the Organization for the Prohibition of Chemical Weapons relating to a specific facility subject to on-site verification pursuant to Articles IV, V, and VI of the Convention.

Final decision. A decision or order assessing a civil penalty, or otherwise disposing of or dismissing a case, which is not subject to further administrative review under this part, but which may be subject to collection proceedings or judicial review in an appropriate federal court as authorized by law.

Host Team. The U.S. Government team that accompanies the Inspection Team during a CWC inspection to which this part applies.

Host Team Leader. The head of the U.S. Government team that hosts and accompanies the Inspection Team during a CWC inspection to which this part applies.

Inspection assistant. An individual designated by the Technical Secretariat to assist inspectors in an inspection, such as medical, security and administrative personnel and interpreters.

Inspection Team. The group of inspectors and inspection assistants assigned by the Director-General of the OPCW's Technical Secretariat to conduct a particular inspection.

Lead agency. The executive department or agency responsible for implementation of the CWC declaration and inspection requirements for specified facilities. The lead agencies are the Department of Defense (DOD) for facilities owned and operated by DOD (including those operated by contractors to the agency), and those facilities leased to and operated by DOD (including those operated by contractors to the agency); the Department of Energy (DOE) for facilities owned and operated by DOE (including those operated by contractors to the agency), and those facilities leased to and operated by DOE (including those operated by contractors to the agency), including the National Laboratories and components of the nuclear weapons complex; and the Department of Commerce (DOC) for all facilities that are not owned and operated by or leased to and operated by DOD, DOE or other U.S. Government agencies. Other departments and agencies that have notified the United States National Authority of their decision to be excluded from the CWCR shall also have lead agency responsibilities for facilities that are

owned or operated by (including those operated by contractors to the agency), or that are leased to or operated by, those other departments and agencies (including those operated by contractors to the agency).

Office of Chemical and Biological Weapons Conventions. The office in the Bureau of Arms Control of the United States Department of State that includes the United States National Authority Coordinating Staff.

Organization for the Prohibition of Chemical Weapons (OPCW). The entity established by the Convention to achieve the object and purpose of the Convention, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among States Parties.

Party. The United States Department of State and any person named as a respondent under this part.

Perimeter. In case of a challenge inspection, the external boundary of the site, defined by either geographic coordinates or description on a map.

Person. Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

Respondent. Any person named as the subject of a letter of intent to charge, or a Notice of Violation and Assessment (NOVA) and proposed order.

Secretary. The Secretary of State.

Technical Secretariat. The Technical Secretariat of the Organization for the Prohibition of Chemical Weapons established by the Chemical Weapons Convention.

United States National Authority. The Department of State serving as the national focal point for effective liaison with the Organization for the Prohibition of Chemical Weapons and States Parties to the Convention and implementing the provisions of the CWCIA in coordination with an interagency group designated by the President consisting of the Secretary of Defense, the Attorney General, the Secretary of Commerce, the Secretary of Energy, the Chairman of the Joint Chiefs of Staff and the heads of agencies considered necessary or advisable by the President, or their designees. The Secretary of State is the Director of the United States National Authority.

Subpart B—Samples

§ 103.3 Requirement to provide a sample.

(a) *Voluntary provision of a sample.* The Host Team Leader will notify appropriate site representatives of any request by an Inspection Team to take a sample. At the request of the appropriate site representative, this notification will be in writing. A site representative may volunteer to provide a sample to the Inspection Team, or may communicate to the Host Team Leader any reason for which the representative believes a sample should not be required.

(b) *Notification of requirement to provide a sample.* If a sample is not provided pursuant to paragraph (a) of this section, the Host Team Leader will notify, in writing, the owner or operator, occupant or agent in charge of an inspected premises of any requirement, under paragraph (c) or (e) of this section, to provide a sample pursuant to a request, made in accordance with paragraph (k) of this section, of an Inspection Team of the Technical Secretariat.

(c) *Requirement to provide a sample.* Pursuant to section 304(f)(1) of the CWCIA, unless a lead agency advises the United States National Authority pursuant to paragraph (d) of this section, the owner or operator, occupant or agent in charge of the premises to be inspected is hereby required to provide a sample pursuant to a request, made in accordance with paragraph (k) of this section, of an Inspection Team of the Technical Secretariat that a sample be taken in accordance with the applicable provisions contained in the Chemical Weapons Convention and the CWCIA.

(d) *Consultations with the United States National Authority.* After consulting with the Host Team Leader, a lead agency that finds that any of the following conditions, as modified pursuant to paragraph (j) of this section if applicable, may not have been satisfied shall promptly advise the United States National Authority, which, in coordination with the interagency group designated by the President in section 2 of Executive Order 13128, shall make a decision:

(1) The taking of a sample is consistent with the inspection aims under the Convention and with its Confidentiality Annex;

(2) The taking of a sample does not unnecessarily hamper or delay the operation of a facility or affect its safety, and is arranged so as to ensure the timely and effective discharge of the Inspection Team's functions with the least possible inconvenience and disturbance to the facility;

(3) The taking of a sample is consistent with the applicable facility agreement. In particular:

(i) Any sample will be taken at sampling points agreed to in the relevant facility agreement; and

(ii) Any sample will be taken according to procedures agreed to in the relevant facility agreement;

(4) In the absence of a facility agreement, due consideration is given to existing sampling points used by the owner or operator, occupant or agent in charge of the premises, consistent with any procedures developed pursuant to the CWCR (15 CFR parts 710 through 722);

(5) The taking of a sample does not affect the safety of the premises and will be consistent with safety regulations established at the premises, including those for protection of controlled environments within a facility and for personal safety;

(6) The taking of a sample does not pose a threat to the national security interests of the United States; and

(7) The taking of a sample is consistent with any conditions negotiated pursuant to paragraph (j) of this section, if applicable.

(e) *Determination by United States National Authority.* (1) If, after being advised by the lead agency pursuant to paragraph (d) of this section, the United States National Authority, in coordination with the interagency group designated by the President to implement the provisions of the CWCIA, determines that all of the conditions of paragraph (d) are satisfied and that a sample shall be required, then the owner or the operator, occupant or agent in charge of the premises shall provide a sample pursuant to a request of the Inspection Team of the Technical Secretariat.

(2) If, however, after being advised by the lead agency pursuant to paragraph (d) of this section, the United States National Authority, in coordination with the interagency group designated by the President to implement the provisions of the CWCIA, determines that any of the conditions of paragraph (d) are not satisfied and that a sample shall not be required, then the owner or the operator, occupant or agent in charge of the premises shall not be required to provide a sample pursuant to a request of the Inspection Team of the Technical Secretariat.

(f) *Person to take a sample.* If a sample is required, the owner or the operator, occupant or agent in charge of the inspected premises will determine whether the sample will be taken by a representative of the premises, the Inspection Team, or any other

individual present. The owner or the operator, occupant or agent in charge of the inspected premises may elect to have a representative present during the taking of a sample.

(g) *Requirement that samples remain in the United States.* No sample collected in the United States pursuant to an inspection permitted by the CWCIA may be transferred for analysis to any laboratory outside the territory of the United States.

(h) *Handling of samples.* Samples will be handled in accordance with the Convention, the CWCIA, other applicable law, and the provisions of any applicable facility agreement.

(i) *Failure to comply with this section.* Failure by any person to comply with this section may be treated as a violation of section 306 of the Act and section 103.5(a).

(j) *Conditions that restrict sampling activities during challenge inspections.* During challenge inspections within the inspected premises the Host Team may negotiate conditions that restrict activities regarding sampling, e.g., conditions that restrict where, when, and how samples are taken, whether samples are removed from the site, and how samples are analyzed.

(k) *Format of Inspection Team request.* It is the policy of the United States Government that Inspection Team requests for samples should be in written form from the head of the Inspection Team. When necessary, before a sample is required to be provided, the Host Team Leader should seek a written request from the head of the Inspection Team.

(l) *Requirement to provide a sample in the band around the outside of the perimeter during a challenge inspection.* In a band, not to exceed a width of 50 meters, around the outside of the perimeter of the inspected site, the Inspection Team, during a challenge inpsection, may take wipes, air, soil or effluent samples where either:

(1) There is consent; or

(2) Such activity is authorized by a search warrant obtained pursuant to section 305(b)(4) of the CWCIA.

Subpart C—Recordkeeping and Inspection Requirements

§ 103.4 General.

This subpart implements the enforcement of the civil penalty provisions of section 501 of the Chemical Weapons Convention Implementation Act of 1998 (CWCIA), and sets forth relevant administrative proceedings by which such violations are adjudicated. Both the Department of State (in this subpart), and the Department of Commerce (in part 719 of the CWCR at 15 CFR parts 710 through 722) are involved in the implementation and enforcement of section 501.

§ 103.5 Violations.

(a) *Refusal to permit entry or inspection.* No person may willfully fail or refuse to permit entry or inspection, or disrupt, delay or otherwise impede an inspection, authorized by the CWCIA.

(b) *Failure to establish or maintain records.* No person may willfully fail or refuse:

(1) To establish or maintain any record required by the CWCIA or the Chemical Weapons Convention Regulations (CWCR, 15 CFR parts 710 through 722) of the Department of Commerce; or

(2) To submit any report, notice, or other information to the United States Government in accordance with the CWCIA or CWCR; or

(3) To permit access to or copying of any record that is exempt from disclosure under the CWCIA or the CWCR.

§ 103.6 Penalties.

(a) *Civil penalties.* (1) *Civil penalty for refusal to permit entry or inspection.* Any person that is determined to have willfully failed or refused to permit entry or inspection, or to have willfully disrupted, delayed or otherwise impeded an authorized inspection, as set forth in § 103.5(a), shall pay a civil penalty in an amount not to exceed $25,000 for each violation. Each day the violation continues constitutes a separate violation.

(2) *Civil penalty for failure to establish or maintain records.* Any person that is determined to have willfully failed or refused to establish or maintain any record, or to submit any report, notice, or other information required by the CWCIA or the CWCR, or to permit access to or copying of any record exempt from disclosure under the CWCIA or CWCR as set forth in § 103.5(b), shall pay a civil penalty in an amount not to exceed $5,000 for each violation.

(b) *Criminal penalties.* Any person that knowingly violates the CWCIA by willfully failing or refusing to permit entry or inspection; or by disrupting, delaying or otherwise impeding an inspection authorized by the CWCIA; or by willfully failing or refusing to establish or maintain any required record, or to submit any required report, notice, or other information; or by willfully failing or refusing to permit access to or copying of any record exempt from disclosure under the CWCIA or CWCR, shall, in addition to or in lieu of any civil penalty that may be imposed, be fined under Title 18 of the United States Code, or be imprisoned for not more than one year, or both.

(c) *Other remedial action.* (1) *Injunction.* The United States may, in a civil action, obtain an injunction against:

(i) The conduct prohibited under 18 U.S.C. 229 or 229C; or

(ii) The preparation or solicitation to engage in conduct prohibited under 18 U.S.C. 229 or 229D.

(2) In addition, the United States may, in a civil action, restrain any violation of section 306 or section 405 of the CWCIA, or compel the taking of any action required by or under the CWCIA or the Convention.

§ 103.7 Initiation of administrative enforcement proceedings.

(a) *Issuance of Notice of Violation and Assessment (NOVA).* The Director of the Office of Export Enforcement, Bureau of Export Administration, Department of Commerce, may request that the Secretary initiate an administrative enforcement proceeding under this section and 15 CFR 719.5. If the request is in accordance with applicable law, the Secretary will initiate an administrative enforcement proceeding by issuing a Notice of Violation and Assessment (NOVA). The Office of Chief Counsel for Export Administration, Department of Commerce shall serve the NOVA as directed by the Secretary.

(b) *Content of NOVA.* The NOVA shall constitute a formal complaint, and will set forth the basis for the issuance of the proposed order. It will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the amount of the civil penalty to be assessed. The NOVA will inform the respondent of the right to request a hearing pursuant to paragraph (e) of this section and the CWCR (15 CFR parts 710 through 722) at 15 CFR 719.6, inform the respondent that failure to request such a hearing shall result in the proposed order becoming final and unappealable on signature of the Secretary of State, and provide payment instructions. A copy of the regulations that govern the administrative proceedings will accompany the NOVA.

(c) *Proposed order.* A proposed order shall accompany every NOVA. It will briefly set forth the substance of the alleged violation(s) and the statutory, regulatory or other provisions violated. It will state the amount of the civil penalty to be assessed.

(d) *Notice.* The Secretary shall notify, via the Department of Commerce, the respondent (or respondent's agent for service of process or attorney) of the initiation of administrative proceedings by sending, via first class mail, facsimile, or by personal delivery, the relevant documents.

(e) *Time to answer.* If the respondent wishes to contest the NOVA and proposed order issued by the Secretary, the respondent must request a hearing in writing within 15 days from the date of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 days from the date of the request for hearing. The request for hearing and answer must be filed with the Administrative Law Judge (ALJ), along with a copy of the NOVA and proposed order, and served on the Office of Chief Counsel for Export Administration, Department of Commerce, and any other address(es) specified in the NOVA, in accordance with 15 CFR 719.8.

(f) *Content of answer.* The respondent's answer must be responsive to the NOVA and proposed order, and must fully set forth the nature of the respondent's defense(s). The answer must specifically admit or deny each separate allegation in the NOVA; if the respondent is without knowledge, the answer will so state and will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

(g) *English required.* The request for hearing, answer, and all other papers and documentary evidence must be submitted in English.

(h) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times provided constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA and proposed order. If no hearing is requested and no answer is provided, the Secretary will sign the proposed order, which shall, upon signature, become final and unappealable.

(i) *Administrative procedures.* The regulations that govern the administrative procedures that apply when a hearing is requested are set forth in the CWCR at 15 CFR part 719.

§ 103.8 Final agency decision after administrative proceedings.

(a) *Review of initial decision.*

(1) *Petition for review.* Any party may, within 7 days of the Administrative Law Judge's (ALJ) certification of the initial decision and order, petition the Secretary for review of the initial decision. A petition for review shall be addressed to and served on the Executive Director of the Office of the Legal Adviser, U.S. Department of State, 2201 C Street, N.W., Room 5519, Washington D.C. 20520, and shall also be served on the Chief Counsel for Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H–3839, Washington, D.C. 20230, and on the respondent. Petitions for review may be filed only on one or more of the following grounds:

(i) That a necessary finding of fact is omitted, erroneous or not supported by substantial evidence of record;

(ii) That a necessary legal conclusion or finding is contrary to law;

(iii) That a prejudicial procedural error has occurred; or

(iv) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion.

(2) *Content of petition for review.* The petition must specifically set forth the grounds on which review is requested and be supported by citations to the record, statutes, regulations, and principal authorities.

(3) *Decision to review.* Review of the initial decision by the Secretary is discretionary, and is not a matter of right. The Secretary shall accept or decline review of the initial decision and order within 3 days after a petition for review is filed. If no such petition is filed, the Secretary may, on his or her own initiative, notify the parties within 10 days after the ALJ's certification of the initial decision and order that he or she intends to exercise his or her discretion to review the initial decision.

(4) *Effect of decision to review.* The initial decision is stayed until further order of the Secretary upon a timely petition for review, or upon action to review taken by the Secretary on his or her own initiative.

(5) *Review declined.* If the Secretary declines to exercise discretionary review, such order, and the resulting final agency decision, will be served on all parties personally, by overnight mail, or by registered or certified mail, return receipt requested. The Secretary need not give reasons for declining review.

(6) *Review accepted.* If the Secretary grants a petition for review or decides to review the initial decision on his or her own initiative, he or she will issue an order confirming that acceptance and specifying any issues to be briefed by all parties within 10 days after the order. Briefing shall be limited to the issues specified in the order. Only those issues specified in the order will be considered by the Secretary. The parties may, within 5 days after the filing of any brief of the issues, file and serve a reply to that brief. The Department of Commerce shall review all written submissions, and, based on the record, make a recommendation to the Secretary as to whether the ALJ's initial decision should be modified or vacated. The Secretary will make a final decision within 30 days after the ALJ's certification of the initial decision and order.

(b) *Final decision.* Unless the Secretary, within 30 days after the date of the ALJ's certification of the initial decision and order, modifies or vacates the decision and order, with or without conditions, the ALJ's initial decision and order shall become effective as the final decision and order of the United States Government. If the Secretary does modify or vacate the initial decision and order, that decision and order of the Secretary shall become the final decision and order of the United States Government. The final decision and order shall be served on the parties and will be made available to the public.

(c) *Computation of time for the purposes of this section.* In computing any period of time prescribed or allowed by this section, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the period is computed to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which case the period runs until the end of the next day that is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is 7 days or less.

§ 103.9 Final agency decision after settlement negotiations.

(a) *Settlements based on letter of intent to charge.*—(1) *Approval of settlement.* Pursuant to § 719.5(b) of the CWCR (15 CFR parts 710 through 722), the Department of Commerce may notify a respondent by letter of the intent to charge. If, following the issuance of such a letter of intent to charge, the Department of Commerce and respondent reach an agreement to settle a case, the Department of Commerce will recommend the proposed settlement to the Secretary. If the

recommended settlement is in accordance with applicable law the Secretary will approve and sign it. No action is required by the ALJ in cases where the Secretary approves and signs such a settlement agreement and order.

(2) *Refusal to approve settlement.* If the Secretary refuses to approve the recommended settlement, the Secretary will notify the parties and the case will proceed as though no settlement proposal had been made.

(b) *Settlements following issuance of a NOVA.*—(1) *Approval of settlement.* When the Department of Commerce and respondent reach an agreement to settle a case after administrative proceedings have been initiated before an ALJ, the Department of Commerce will recommend the settlement to the Secretary of State. If the recommended settlement is in accordance with applicable law, the Secretary will approve and sign it. If the Secretary approves the settlement, the Secretary shall notify the ALJ that the case is withdrawn from adjudication.

(2) *Refusal to approve settlement.* If the Secretary of State refuses to approve the recommended settlement, the Secretary will notify the parties of the disapproval, and the case will proceed as though no settlement proposal had been made.

(c) *Scope of settlement.* Any respondent who agrees to an order imposing any administrative sanction does so solely for the purpose of resolving the claims in the administrative enforcement proceeding brought pursuant to this part. This reflects the fact that the Government officials involved have neither the authority nor the responsibility for initiating, conducting, settling, or otherwise disposing of criminal proceedings. That authority and responsibility is vested in the Attorney General and the Department of Justice.

(d) *Finality.* Cases that are settled may not be reopened or appealed.

§ 103.10 Appeals.

Any person adversely affected by a final order respecting an assessment may, within 30 days after the final order is issued, file a petition in the Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business, to appeal the order.

§ 103.11 Payment of final assessment.

(a) *Time for payment.* Full payment of the civil penalty must be made within 30 days of the date upon which the final order becomes effective, or within the time specified in the order. Payment shall be made in the manner specified in the NOVA.

(b) *Enforcement of order.* The Secretary, through the Attorney General, may file suit in an appropriate district court if necessary to enforce compliance with a final order issued pursuant to this part. This suit will include a claim for interest at current prevailing rates from the date payment was due or ordered or, if an appeal was filed pursuant to § 103.10, from the date of final judgment.

(c) *Offsets.* The amount of any civil penalty imposed by a final order may be deducted from any sum(s) owed by the United States to a respondent.

§ 103.12 Reporting a violation.

If a person learns that a violation of the Convention, the CWCIA, this part, or the CWCR (15 CFR parts 710 through 722) has occurred or may occur, that person may notify: United States National Authority, Office of Chemical and Biological Weapons Conventions, Bureau of Arms Control, U.S. Department of State, Washington, DC 20520, Telephone: (703) 235–1204 or toll-free (877) CWC–NACS ((877) 292–6227), Facsimile: (703) 235–1065.

Avis Bohlen,

Assistant Secretary of State, Bureau of Arms Control.

[FR Doc. 99–33239 Filed 12–29–99; 8:45 am]

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Federal Register

Thursday
December 30, 1999

Part IV

Department of the Interior

Minerals Management Service

30 CFR Part 206

Establishing Oil Value for Royalty Due on Federal Leases; Proposed Rule

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC09

Establishing Oil Value for Royalty Due on Federal Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Further supplementary proposed rule.

SUMMARY: The Minerals Management Service (MMS) is proposing further changes to its proposed rulemaking regarding the valuation, for royalty purposes, of crude oil produced from Federal leases. MMS is proposing to: eliminate MMS-published differentials; change the way that actual costs of transportation are calculated; change the definition of ''affiliate'' because of a judicial decision in a case decided after the close of the most recent comment period; issue binding value determinations; and add specific regulatory language regarding the issue of ''second-guessing'' a sale under an arm's-length contract. These amendments are intended to simplify and improve the proposed rule.

DATES: Submit comments on or before January 31, 2000.

ADDRESSES: Send your written comments to David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, P.O. Box 25165, M.S. 3021, Denver, Colorado 80225–0165; or e-Mail *David__*Guzy@mms.gov.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, Royalty Management Program, Minerals Management Service, phone (303) 231–3432, FAX (303) 231–3385, e-Mail David__Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The principal authors of this further supplementary proposed rule are David A. Hubbard and Deborah Gibbs Tschudy of the Royalty Management Program (RMP) and Peter Schaumberg and Geoffrey Heath of the Office of the Solicitor in Washington, D.C.

MMS is specifying a deadline for comments that is less than the 60 days recommended by Executive Order No. 12866. MMS believes that a 30-day comment period is appropriate in this instance because it previously extended and reopened the comment periods for several earlier proposed versions of this rule. MMS also held numerous workshops across the country to obtain public input on this proposed rulemaking. MMS also plans to hold public hearings during the 30-day comment period to give interested parties the opportunity to fully discuss and comment on this further supplementary proposed rule. MMS will publish specific dates and locations for the hearings in the **Federal Register**.

Most of the provisions in this supplementary proposed rule were in included in previous proposed rules. All of the comments we received thus far are part of the rulemaking record and MMS will consider all such comments before issuing a final rule. Therefore, it is unnecessary for commenters to resubmit earlier comments on provisions that are not proposed for further change. MMS requests that comments focus on the new proposals addressed in this supplementary proposed rule.

I. Background

This further supplementary proposed rule proposes changes to valuation rules in 30 CFR part 206 that have been in effect since March 1, 1988 (the 1988 rules).

The 1988 rules were developed based on the concept that gross proceeds received under an arm's-length contract represented the best measure of the value of production for royalty purposes. Further, those rules implicitly assumed the existence of a competitive and transparent market at the lease (or in the field or area) that could be used to determine the value of production not sold at arm's-length.

Characteristics of competitive markets include: (1) There is a large number of sellers, no one of whom commands a large share of the total market, (2) the products of different sellers are functionally identical and buyers have no preference among sellers, (3) there are so many buyers that sellers and buyers do not establish personal relationships with one another, and (4) buyers are perfectly informed about the prices of different sellers. In the context of particular leases or fields, generally there is not a large number of sellers. Further, one or a few of the producers in the lease or field often control a large share of the production sold. In addition, at the lease or field level, there are a limited number of buyers and sellers. Moreover, because of the proprietary nature of individual contract sales of crude oil, lessees usually will not know the prices at which other lease interest holders sell their oil. In other words, generally there is no price transparency at the lease or field level. None of the comments submitted throughout this nearly four-year rulemaking effort demonstrated that as a general rule a competitive market exists at the lease.

The overall lack of a truly competitive market at the lease has been compounded by the significant changes that occurred in the domestic industry during the 1980's and early 1990's, which had a profound effect on how crude oil is marketed today. These changes included: (1) The major oil companies' creation of separate affiliates for production, marketing and refining; (2) overall decline in domestic production and increased dependence on foreign imports and influence of international trading practices on domestic supply; (3) sharply increased volatility of oil prices marked by the price collapse in early 1986 (the last year in which posted prices exceeded spot market prices), and the rapid rise and decline in prices in late 1990 and early 1991 in response to the Gulf War; (4) entry and expansion of resellers, traders, and brokers who bought, transported, and sold domestic crude oil, taking advantage of pricing and location discrepancies in much the same way they were doing on the international market; and (5) development of a futures market for crude oil which alleviated many of the risks of spot trading. While many of these factors may be seen as increasing the level of competition, none of them served to increase the level of price transparency (i.e., the ability to discern the prices actually paid) at the lease or field or to simplify application of the existing oil valuation rules.

The 1988 rules placed heavy emphasis on posted prices as a measure of royalty value, particularly when valuing oil disposed of not at arm's-length and under no-sales conditions. Posted prices historically were the primary mechanism for pricing domestic crude oil before the 1980's. However, with the disruption of global petroleum supplies in the 1970's and decontrol of domestic crude oil prices in 1981, the domestic petroleum industry began moving away from posted prices and towards the spot and futures markets to buy and sell crude oil. In fact, studies commissioned by States and advice from MMS consultants (Innovation & Information Consultants, Inc.; Micronomics, Inc.; Reed Consulting Group; and Summit Resource Management, Inc.) found that: (1) sales prices are often above posted prices and are linked, in some form, to market prices, such as spot or futures prices, or represent premia over posted prices; (2) major producers have few truly outright sales; (3) most major producers use buy/sell exchanges; (4) there are regional differences in the

domestic crude oil market, particularly on the West Coast and in the Rocky Mountain Region, owing to differences in market concentration and availability of transportation options; and (5) posted prices have become a progressively less reliable indicator of the market value of crude oil since the late 1980s.

Development of the futures market and comprehensive publication of spot prices increased the market transparency of crude oil clearing prices. As a result, market participants became less willing to accept long-term sales contracts at fixed prices and instead negotiated short-term contracts with sales prices linked to spot or futures prices or to premia over posted prices. Major oil companies, however, generally continued to pay royalties on their production transferred not at arm's-length based on posted prices.

Recognizing that posted prices no longer reflected market value, State and private royalty owners in Alaska, California, Louisiana, New Mexico, and Texas brought lawsuits against several major oil companies over improper oil pricing and underpaid royalties. These lawsuits resulted in several oil companies paying additional royalties and some adjusting their posted prices to better reflect market value.

The majority of Federal lease oil production in fact is not sold at arm's length at or near the lease. Most Federal lease oil production is either moved directly to a refinery without a sale or disposed of under an exchange agreement (*e.g.,* buy/sell agreements) in which the lessee exchanges oil at one location for oil at another location. Exchange agreements frequently do not reference a price, but rather only the relative difference in the value of crude oils exchanged and thereby obscure the oil's actual market value. When the agreement does state a price but is conditioned upon the lessee's purchase of crude oil at a subsequent exchange point, the price specified in the exchange agreement does not represent the value of the oil. In a buy-sell exchange, the parties may state any base price they wish, because their primary concern is the difference in value between the oil sold and the oil purchased.

This rulemaking proposes to amend the current regulations by eliminating posted prices as a measure of value and relying instead on arm's-length sales prices and spot market prices as market value indicators. Today, spot prices are readily available to industry participants via price reporting services, and these and similar prices play a significant role in crude oil marketing in terms of the basis upon which deals are negotiated and priced.

Comments received so far during the rulemaking process made it apparent that regional differences exist in the domestic crude oil market. These differences are due in large part to geographic isolation of markets. Accordingly, this further proposed rule would establish different valuation procedures for three different regions: California and Alaska, the Rocky Mountain Region, and the rest of the country.

This proposal adopts parts of the February 1998 proposal, but includes modifications contemplated in the outline published in the March 12, 1999 notice of reopening of public comment period and notice of workshops, and a variety of other modifications in response to public comments.

II. History of This Rulemaking

MMS published an advance notice of its intent to amend the 1988 rules on December 20, 1995 (60 FR 65610). The purpose of that notice was to solicit comments on new methodologies to establish the royalty value of Federal (and Indian) crude oil production in view of the changes in the domestic petroleum market and particularly the market's move away from posted prices as an indicator of market value. The comment period on this advance notice closed on March 19, 1996.

Based on comments received on the advance notice, together with information gained from a number of presentations by experts in the oil marketing business, MMS published its initial notice of proposed rulemaking on January 24, 1997 (62 FR 3742). That proposal set out specific valuation procedures that focused on New York Mercantile Exchange (NYMEX) prices and Alaska North Slope (ANS) spot prices as value indicators, depending on the location of the production. It also clarified the lessee's duty to market the production at no cost to the Federal Government and required the lessee to use actual transportation costs instead of Federal Energy Regulatory Commission (FERC) tariffs for transportation allowances. The comment period for that proposal was to expire March 25, 1997, but was twice extended—first to April 28, 1997 (62 FR 7189), and then to May 28, 1997 (62 FR 19966). MMS held public meetings in Lakewood, Colorado, on April 15, 1997, and Houston, Texas, on April 17, 1997, to hear comments on the proposal.

In response to the variety of comments received on the initial proposal, MMS published a supplementary proposed rule on July 3, 1997 (62 FR 36030). That proposal expanded the eligibility requirements for valuing oil disposed of under arm's-length transactions. The comment period on that proposal closed August 4, 1997.

Because of the substantial comments received on both proposals, MMS reopened the rulemaking to public comment on September 22, 1997 (62 FR 49460). MMS specifically requested comments on five valuation alternatives arising from the public comments. The initial comment period for that request was to close October 22, 1997, but was extended to November 5, 1997 (62 FR 52518). During the comment period MMS held seven public workshops to discuss valuation alternatives: in Lakewood, Colorado, on September 30 and October 1, 1997 (62 FR 50544); Houston, Texas, on October 7 and 8, 1997, and again on October 14, 1997 (62 FR 50544); Bakersfield, California, on October 16, 1997 (62 FR 52518); Casper, Wyoming, on October 16, 1997 (62 FR 52518); Roswell, New Mexico, on October 21, 1997 (62 FR 52518); and Washington, D.C. on October 27, 1997 (62 FR 52518).

As a result of comments received on the proposed alternatives and comments made at the public workshops, MMS published a second supplementary proposed rule on February 6, 1998 (63 FR 6113), applicable to Federal leases only. The comment period for this second supplementary proposed rule was to close on March 23, 1998, but was extended to April 7, 1998 (63 FR 14057). MMS held five public workshops (63 FR 6887) on the second supplementary proposed rule, as follows: Houston, Texas, on February 18, 1998; Washington, D.C. on February 25, 1998; Lakewood, Colorado, on March 2, 1998; Bakersfield, California, on March 11, 1998; and Casper, Wyoming, on March 12, 1998.

Based on a request by Senator Breaux (Louisiana) to hold a meeting between industry and the Department of the Interior (DOI) to explain the direction DOI was going in the final rule, MMS once again opened the public comment period from July 9 through July 24, 1998. Two such meetings were held, on July 9 and July 22.

On July 16, 1998, as a result of comments during the prior comment period, MMS published a further supplementary proposed rule that clarified some of the changes MMS intended to make when the proposed rule became final.

Also, on July 21, Representatives Miller (California) and Maloney (New York) sponsored a meeting between DOI, States, the Indian community, and

multiple special interest groups. In that meeting DOI received a variety of comments in support of its efforts to move forward with the rule and against some of the changes promoted by industry.

The July 22 meeting involved further discussion of industry's issues and recommendations regarding the proposed rule. MMS immediately developed written responses to each industry issue and recommendation based on its published statements in prior proposed rules. MMS also extended the comment period for the proposed rule until July 31 to permit comment on the industry recommendations and MMS's responses.

On July 28, 1998, MMS and Departmental officials met with Senate staff members to further explain the content and rationale of the proposed rule. The notes from all of these meetings were posted on MMS's Internet Homepage for interested parties to review during the comment period.

On August 31, 1998, the Assistant Secretary for Land and Minerals Management wrote a letter to members of the Senate outlining the direction the final rule might take on several of the major issues. On October 8, 1998, the President signed the FY 1999 Department of the Interior Appropriations Act that contained language extending the moratorium prohibiting MMS from publishing a final rule until June 1, 1999. On March 4, 1999, the Secretary announced a reopening of the comment period in response to requests by Members of Congress and parties interested in moving the process forward to publish a final rule. The MMS published a **Federal Register** Notice on March 12, 1999, reopening the comment period through April 12, 1999, and announced that it would hold public workshops in Houston, Texas; Albuquerque, New Mexico; and Washington, D.C. to discuss specific areas of the rule. The MMS extended the comment period through April 27, 1999, to provide commenters adequate time to provide comments following the workshops.

The February 6, 1998, proposal, as modified by the July 16, 1998, further supplementary proposed rule and through consideration of all comments received during the rulemaking process, led to this further supplementary proposed rule.

In the discussion below, we use the following conventions: the January 24, 1997, proposed rule is termed the January 1997 proposal; the July 3, 1997, supplementary proposed rule is termed the July 1997 proposal; the September 22, 1997, notice reopening the public comment period is termed the September 1997 notice; the February 6, 1998, second supplementary proposed rule is termed the February 1998 proposal; the July 16, 1998, further supplementary proposed rule is termed the July 1998 proposal; and the March 12, 1999, notice of reopening of public comment period and notice of workshops is termed the March 1999 notice.

III. Summary and Discussion of Proposed Rule

This proposed rule incorporates changes made in response to comments on the January 1997 proposal, the July 1997 proposal, the September 1997 notice, the February 1998 proposal, the July 1998 proposal, and the March 1999 notice. As in the February 1998 proposal, we also added and renumbered sections and further reorganized the rule for readability.

Because this proposed rule is a product of changes made in response to comments received throughout this rulemaking, the preambles of each of the previous proposals and notices may be consulted in conjunction with this preamble to trace the evolution of this proposal.

Note that the renumbering and reorganization for this proposal resulted in the following modifications to the existing rule:

Section	Modification
§§ 206.100 and 206.101.	Revised.
§ 206.102	Revised and redesignated as §§ 206.102, 206.103, 206.104, 206.105, 206.106, 206.107, and 206.108.
§§ 206.103 and 206.104.	Redesignated as §§ 206.119 and 206.109, respectively.
§ 206.105	Revised and redesignated as §§ 206.110, 206.111, 206.114, 206.115, 206.116, 206.117, and 206.118.
§ 206.106	Revised and redesignated as § 206.120.
New §§ 206.112 and 206.113.	Added.

In addition, we rewrote all sections of the existing rule in plain English so the entire rule would read consistently.

Before proceeding with the summary and discussion of this proposal, it is necessary to explain further why MMS is not proposing further changes in certain areas.

Duty to Market. It is a well-established principle that lessees have the obligation to market lease production for the mutual benefit of the lessee and lessor, without deduction for the costs of marketing. See, e.g., Walter Oil and Gas Corp., 111 IBLA 260 (1989); Arco Oil and Gas Co., 112 IBLA 8 (1989); Taylor Energy Co., 143 IBLA 80 (1998) (motion for reconsideration pending); Yates Petroleum Corp., 148 IBLA 33 (1999); Amerac Energy Corp., 148 IBLA 82 (1999) (motion for reconsideration pending); Texaco Exploration and Production Inc., No. MMS–92–0306–O&G (1999) (concurrence by the Secretary) (action for judicial review pending, *Texaco Exploration and Production Inc.* v. *Babbitt,* No. 1:99CV01670 (D.D.C.)).

In the context of Federal leases, the D.C. Circuit referred to this implied lease covenant many years ago in *California Co.* v. *Udall,* 296 F.2d 384, 387 (D.C. Cir. 1961), stating that ''the lessee was obligated to market the product.'' The duty to market at no cost to the lessor is not unique to Federal leases. See, e.g., Merrill, Covenants Implied in Oil and Gas Leases (2d Ed. 1940), §§ 84–86 (Noting ''[n]o part of the costs of marketing or of preparation for sale is chargeable to the lessor''); ''Direct Gas Sales: Royalty Problems for the Producer,'' 46 Okla. L. Rev. 235 (1993); *Amoco Production Co.* v. *First Baptist Church of Pyote,* 579 S.W.2d 280 (Tex. Civ. App. 1979), writ ref'd n.r.e., 611 S.W.2d 610 (Tex. 1981), and cases cited in these authorities.

This duty to market means that the lessee must act as a prudent marketer. The duty to market is an implied covenant of virtually all oil and gas leases, whether the leases are private, Federal, or State leases. MMS as lessor has never shared in the ''risks'' of marketing and has never allowed deductions from royalty value for marketing costs. This proposed rulemaking makes no change to the lessee's duty to market.

The decisions cited above establish several principles. First, the lessee has an implied duty to prudently market the production for the mutual benefit of both the lessee and the lessor. The creation and development of markets is the essence of that obligation. As the IBLA correctly expressed it ten years ago in Arco Oil and Gas Co., supra:

> The creation and development of markets for production is the very essence of the lessee's implied obligation to prudently market production from the lease at the highest price obtainable for the mutual benefit of the lessee and lessor. Traditionally,

Federal gas lessees have borne 100 percent of the costs of developing a market for gas. Appellant has cited no authority, nor do we find any, which supports an allowance for creation and development of markets for the royalty share of production.

112 IBLA at 11.

Because of industry's repeatedly-expressed concerns in the comments and workshops, MMS emphasizes that this does not imply that lessees are somehow prohibited from marketing at the lease and must market production ''downstream.'' Lessees may market at the lease without breaching the duty to market. However, if a lessee chooses to market downstream, the choice to do so is for the mutual benefit of itself and the lessor, and does not affect the lessee's relationship to the lessor. The choice to market downstream does not make marketing costs deductible or permit the lessee to disregard part of the sales price obtained at a downstream market.

In addition, lessees have always borne all of the marketing costs. The Department has not knowingly permitted an allowance or deduction from royalty value for marketing costs. As the Board held a decade ago in Walter Oil and Gas Corp., supra:

The only allowances recognized as proper deductions in determining royalty value are transportation allowances for the cost of transporting production from the leasehold to the first available market, which has been considered a relevant factor pursuant to 30 CFR. § 206.150(e) * * * and processing allowances for processed gas authorized by 30 C.F.R. § 206.152(a)(2) (1987) * * *. Walter's unsupported assumption that it is somehow entitled to deduct its marketing costs from royalty value fails in the face of contrary regulatory requirements * * *.

111 IBLA at 265.

Lessees may deduct from value only those costs allowed by the regulations. The only deductible costs are transportation costs, processing costs (for ''wet'' gas with heavier entrained liquid hydrocarbons), and, for leases which so provide, an operating allowance under § 206.120.

Further, marketing costs are not deductible, regardless of whether the lessee bears them directly or transfers the marketing function or costs to a contractor or an affiliate.

Moreover, the fact that marketing arrangements enhance the lessee's ability to obtain a higher price does not imply that marketing costs are deductible. It also follows that a lessee may not deduct or disregard for royalty purposes the additional benefits it gains or value it receives through obtaining a higher price through its marketing skill or expertise. If the lessee manages to obtain a higher price for its oil through skillful marketing efforts, that higher price, less transportation costs, is the minimum royalty value under the gross proceeds rule.

At the same time, the location of the market at which the lessee chooses to sell its production does not change the lessee's obligation. Much of industry's opposition to the duty-to-market provision during this rulemaking process revolves around the argument that when royalty value is based on the sale of production at a downstream location, the downstream transportation, risks, and related services add more value to the oil than is reflected in allowances MMS permits.

The industry commenters' argument is contrary to established principles and uniform longstanding practice. Valuation based upon a ''downstream'' sale or disposition of production has been commonplace for many years. For sales at distant markets, the lessee is entitled to an allowance for transportation costs, but not for marketing costs. Sales away from (or ''downstream'' from) the lease often are the starting point for determining royalty value, and the costs of transportation always have been allowed in order to ascertain value at or near the lease. A lessee who transports production to sell it at a market remote from the lease or field is entitled to an allowance for the costs of transportation. See 30 C.F.R. 206.104, 206.105 (crude oil), 206.156 and 206.157 (gas) (1988–present). Before the 1988 regulations, transportation costs were allowed under judicial and administrative cases. *See, e.g., United States* v. *General Petroleum Corp.*, 73 F. Supp 225 (S.D. Cal. 1946), aff'd, *Continental Oil Co.* v. *United States*, 184 F.2d 802 (9th Cir. 1950); *Arco Oil and Gas Co.*, 109 IBLA 34 (1989); *Shell Oil Co.*, 52 IBLA 15 (1981); *Shell Oil Co.*, 70 I.D. 393, 396 (1963).

An excellent example is *Marathon Oil Co.* v. *United States*, 604 F. Supp. 1375 (D. Alaska 1985), aff'd, 807 F.2d 759 (9th Cir. 1986), cert. denied, 480 U.S. 940 (1987). In that case, Marathon produced natural gas from Federal leases in Alaska, and sold it in Japan after overseas transportation in liquid form by tanker. The court held that MMS properly deducted Marathon's costs of transportation (including liquefaction) from the sales price in Japan to derive the royalty value (gross proceeds) at the lease.

Indeed, transportation allowances have been common for decades precisely because the initial basis for establishing value often is a ''downstream'' sales price. Industry's argument that MMS is somehow improperly trying to ''tap into'' the benefits industry derives from its marketing expertise clouds the real issue. If a lessee can obtain a better price by selling away from the lease, then it will do so. How the lessee markets its production is its decision. The lessor is entitled to its royalty share of the total value derived from the production regardless of how the lessee chooses to dispose of it. The United States as lessor always has shared in the ''benefit'' of ''downstream'' marketing away from the lease, and has allowed deductions for the cost of transportation accordingly.

Moreover, these principles do not change in the event that a wholly-owned or wholly-commonly-owned affiliated marketing entity buys other production at arm's length from other working interest holders in the field at the same price it pays to its affiliated producer. The industry wants to limit royalty value to supposedly ''comparable'' sales at the lease even when the lessee receives a higher price for its production. In effect, industry wants to force MMS to adopt a ''lowest common denominator'' theory of valuation—*i.e.,* the price at which any production is sold at arm's length at the lease will be the value of production initially transferred non-arm's-length, even if the latter production nets a higher price in the open market. That position is incorrect for several reasons.

First, it would enable a lessee whose enterprise realizes more proceeds or greater value for its production than some other producers in the field to avoid paying royalty on part of those proceeds. If the lessee sells downstream, its gross proceeds are the higher price realized on the sale downstream, minus the lessee's transportation costs, regardless of the fact that other producers sold for less. The industry's position is directly contrary to *Marathon Oil Co.* v. *United States, supra.* If the lessee first transfers to a wholly-owned or wholly-commonly-owned affiliate who then resells at arm's length downstream, it is still true that the producing entity could have sold its production at the point and at the price its affiliate did, instead of using the wholly-owned affiliate arrangement. It is perfectly proper to value the production of a producer who markets through a wholly-owned affiliate at a higher level than the production that other producers sell at arm's length in the first instance, when the gas (or oil) marketed through the wholly-owned affiliate commands a higher price. Indeed, this is the very situation which the Third Circuit correctly anticipated in *Shell Oil Co.* v. *Babbitt,* 125 F.3d 172 (3d Cir. 1997).

Further, the industry's position would create an incentive for a lessee to sell some small percentage of its production at the lease at arm's length for a lower price so that it can pay royalty on the rest of its production at that price. Such a result is contrary to the intent and meaning of the gross proceeds rule.

MMS agrees that the duty to market production for the mutual benefit of the lessee and the lessor at no cost to the lessor is not the same as the lessee's duty to put production into marketable condition at no cost to the lessor. However, the fact that the two duties are not identical does not support the industry commenters' position. The decision of the Secretary and the Assistant Secretary for Land and Minerals Management in *Texaco Exploration and Production Inc., supra* (at pp. 16–19), discusses the relationship of the two duties and MMS affirms their rationale.

Industry comparable sales model. In this proposal, MMS did not adopt the industry-proposed comparable sales model to value production not sold at arm's length. We continue to believe that there are meaningful spot prices applicable to production in all areas other than the Rocky Mountains. With the exception of the Rocky Mountain Region, spot and spot-related prices drive the manner in which crude oil is bought and traded in the U.S. Spot prices play a major role in crude oil marketing and are readily available to lessees through price reporting services.

We believe spot prices are the best indicator of the value of production and are preferable to attempting to use supposedly comparable arm's-length sales in the field or area. Commenters have not demonstrated the consistent existence or availability of such transactions for volumes sufficient to use for royalty valuation. Contrary to the industry commenters, MMS believes that nationwide about two-thirds of crude oil production is disposed of non-arm's length. As previously mentioned, the general lack of competitive and transparent markets at the lease makes the attempt to find comparable sales transactions far inferior to the use of index prices.

In addition, the various industry proposals have substantial practical difficulties since companies are not privy to other companies' ''comparable'' sales transactions. Even if a comparable sales model included only a lessee's own arm's-length sales or purchases, such information is unaudited for current periods. Further, it is difficult to determine what portion of lease production must be sold at arm's length to reliably determine the value of the remainder of the production. This supplementary proposed rule thus primarily uses index prices, adjusted for location and quality, to establish value for oil not sold at arm's length.

California, and the West Coast in general, has long been recognized as a separate crude oil market isolated from the rest of the country. ANS crude is competitive with California crudes. While it may be true that only 10 percent of ANS crude is sold on the spot market, over 30 percent of the oil refined in California is ANS oil. An interagency study has found that companies engaged in buying and selling California crude oil commonly use ANS spot prices as the benchmark for determining California crude values (Final Interagency Report on the Valuation of Oil Produced from Federal Leases in California, May 16, 1996; Long Beach litigation). These companies apparently have no difficulty in adjusting the ANS prices for quality differences to derive the prices, including premia over postings, they are willing to pay for California crude oils. MMS believes ANS spot prices are a recognized benchmark for valuing California crudes and a reliable indicator of the market value of California crude oils.

Comments alleging that ANS spot prices are unreliable because ANS crude is thinly traded were analyzed for MMS by Innovation & Information Consultants, Inc. (Memorandum to MMS file, September 25, 1997). They report that it is the spot market for local California crude oils, not ANS crude, that is thinly traded and thus leads to unreliable price indices. They also report that there is a high degree of correlation between ANS spot prices and prices actually paid for California crudes. They indicate that the major oil companies in California regularly make comparisons between California crude oils and ANS with the understanding and expectation that a California crude should equate to ANS in value after accounting for location and quality differences.

The Rocky Mountain benchmarks for production not sold at arm's length are hierarchical and would not allow lessees to choose the benchmark most favorable to them. Rather, a lessee would have to use the first benchmark that applies to its situation—that is, first tendering, then a weighted average of sales and purchases, then Cushing, Oklahoma, adjusted spot prices, and lastly an MMS-established value. MMS proposes adopting a particular tendering alternative (designed with what MMS intends as safeguards against manipulation) as a first benchmark for the Rocky Mountain Region for production not sold at arm's length because of the lack of a reliable spot price in that region. One of the Rocky Mountain State commenters recommended this method as the initial benchmark in that region. MMS has acquiesced in that recommendation but nevertheless has substantial concerns about the potential for manipulation of tendering programs. MMS would closely monitor the reliability and workability of this benchmark. MMS's response to the comments regarding minimum volume and bid requirements is provided in Section IV below.

IV. Section-by-Section Analysis

Before discussing the individual sections of this proposed rule, it is appropriate to review the basic premises of this proposal. When crude oil is produced, it is either sold at arm's length or is refined without ever being sold at arm's length. If crude oil is exchanged for other crude oil at arm's length, the oil received in the exchange is either sold at arm's length or is refined without ever being sold at arm's length. Under this proposal, oil that ultimately is sold at arm's length before refining generally will be valued based on the gross proceeds accruing to the seller under the arm's-length sale. This includes oil that is exchanged at arm's length where the oil received in exchange is ultimately sold at arm's length. (The exceptions reflect particular circumstances in which MMS believes the arm's-length sale does not or may not reliably reflect the real value.) However, this proposal also provides the option for the lessee to apply index prices or benchmark values because of the difficulty of ''tracing'' production in some exchanges and affiliate resales. If oil (or oil received in exchange) is refined without being sold at arm's length, then the value would be based on appropriate index prices or other methods, as explained below.

These principles would apply regardless of whether oil is sold or transferred to one or more affiliates or other persons in non-arm's-length transactions before the arm's-length sale, and regardless of the number of those non-arm's-length transactions. They also would apply if an arm's-length exchange occurs before an arm's-length sale. (However, MMS believes that if there are multiple exchanges before an arm's-length sale, using the ultimate arm's-length sales price may in some cases require too much ''tracing'' of the oil to be cost-efficient for lessee and lessor alike. Consequently, under such circumstances, MMS would provide the option to determine value

based either on the arm's-length gross proceeds or on an index or benchmark basis. The same option would be provided for valuing production that is first sold or transferred to an affiliate and then resold at arm's length.)

Section 206.100 What is the purpose of this subpart?

Proposed section 206.100 includes the content of the existing section except for minor wording changes to improve clarity. At § 206.100(a), we have added some further language clarifying the respective roles of lessees and designees. (Those terms are defined in § 206.101, and those definitions follow the definitions contained in Section 3 of the Federal Oil and Gas Royalty Management Act, 30 U.S.C. 1702, as amended by Section 2 of the Federal Oil and Gas Royalty Simplification and Fairness Act, Public Law 104–185, 110 Stat. 1700.)

Specifically, if you are a designee and you or your affiliate dispose of production on behalf of a lessee, references to ''you'' and ''your'' in the rule would refer to you or your affiliate. In this event, you would have to report and pay royalty by applying the rule to your and your affiliate's disposition of the lessee's oil. If you are a designee and you report and pay royalties for a lessee but do not dispose of the lessee's production, the references to ''you'' and ''your'' would refer to the lessee. In that case, you as a designee would have to determine royalty value and report and pay royalty by applying the rule to the lessee's disposition of its oil. Some examples will illustrate the principle.

Assume that the designee is the unit operator, and that the operator sells all of the production of the respective working interest owners on their behalf and is the designee for each of them. For each of those working interest owners, the operator, as designee, would report and pay royalties on the basis of the operator's disposition of the production. For example, if the operator transferred the oil to its affiliate, who then resold the oil at arm's length, the royalty value would be the gross proceeds accruing to the designee's affiliate in the arm's-length resale under § 206.102, or the appropriate index or benchmark value under § 206.103, as explained further below.

Alternatively, assume the operator is the designee but a lessee disposes of its own production. Assume the lessee transfers its oil to an affiliate, who then resells the oil at arm's length. In this case, the operator would have to obtain the information from the lessee, and report and pay royalties on the basis of the gross proceeds accruing to the lessee's affiliate in the arm's-length resale under § 206.102, or, at the lessee's option, on the basis of the appropriate index or benchmark value under § 206.103.

In some cases, the designee is the purchaser of the oil. Assume the operator disposes of the lessee's oil and that the operator is not affiliated with the designee-purchaser. Because the lessee's sale to the designee is an arm's-length transaction, then under § 206.102 the designee would report and pay royalty on the total consideration (the gross proceeds) it paid to the lessee.

The content of proposed § 206.100(b) and (c) is the same as in the corresponding existing paragraphs, but we rewrote them for clarity. Paragraph (b) says that this subpart would not apply if these regulations are inconsistent with a Federal statute, a settlement agreement between the United States and a lessee resulting from administrative or judicial litigation, or an express provision of an oil and gas lease subject to this subpart. If so, the statute, settlement agreement, or lease provision would govern to the extent of the inconsistency.

Proposed paragraph (c) says MMS may audit and adjust all royalty payments. We removed existing paragraph (d). It said the regulations in this subpart are intended to ensure that the United States discharges its trust responsibilities concerning Indian oil and gas leases. Since Indian leases are subject to a separate set of valuation regulations at 30 CFR 206.50 that include the same language as existing paragraph (d), we believe the existing language at paragraph 206.100(d) is not needed.

Section 206.101 Definitions.

The definitions section remains largely the same as in the January 1997 proposal. However, MMS proposes several additions and clarifications consistent with changes to the rule throughout the rulemaking process and in response to comments received.

The July 1997 proposal (62 FR 36030) added a definition of *non-competitive crude oil call* as well as a new definition of *competitive crude oil call.* This supplementary proposed rule does not use either of these terms. Therefore, they have been deleted from the proposed definitions section.

However, oil subject to a noncompetitive crude oil call would be examined in view of paragraphs 206.102(c)(1) and (c)(2) to determine whether the prices received represent market value. The value of oil involved in a noncompetitive crude oil call thus ultimately would be the lessee's total consideration or the value determined by the non-arm's-length methods in § 206.103.

We propose to modify the definition of *arm's-length contract* to remove the criteria for determining affiliation. Instead, these criteria would be included in the new definition of *affiliate* discussed below.

We also propose to modify the definition of *exchange agreement* to delete the statement that exchange agreements do not include agreements whose principal purpose is transportation. MMS believes that transportation exchanges, while having different purposes than other types of exchanges, properly should be included under the generic definition of exchange agreements. We also propose to add, for clarity, several examples of other types of exchange agreements. These would include, but not be limited to, exchanges of produced oil for specific types of crude oil (e.g., West Texas Intermediate); exchanges of produced oil for other crude oil at other locations (Location Trades); exchanges of produced oil for futures contracts (Exchanges for Physical, or EFP); exchanges of produced oil for similar oil produced in different months (Time Trades); exchanges of produced oil for other grades of oil (Grade Trades); and multi-party exchanges (for example, party A exchanges with party B, who then exchanges with party C, who then exchanges with party A).

We also propose to modify the definition of *gross proceeds* to clarify that they include payments made to reduce or buy down the purchase price of oil to be produced later. The concept that such payments are part of gross proceeds was included in the January 1997 proposal at paragraph 206.102(a)(5). Moving this provision directly to the gross proceeds definition would further clarify the components of gross proceeds and improve the structure of the rule.

We also clarified that gross proceeds would include payments for marketing, along with payments for such services as dehydration, measurement, and gathering. All of these are services that the lessee must perform at no cost to the Federal Government.

Also, since this proposal bases valuation for some production on crude oil spot prices for other than ANS oil, we propose to change the definitions of *index pricing* and *MMS-approved publication* to include other spot prices. *Index pricing* would mean using ANS crude oil spot prices, WTI crude oil spot prices at Cushing, Oklahoma, or other appropriate crude oil spot prices for royalty valuation. *MMS-approved*

publication would mean a publication MMS approves for determining ANS spot prices, other spot prices, or location differentials.

We also would delete the definitions of *aggregation point, prompt month* and *NYMEX* because they are not used in this proposal. All three of these terms were used in earlier versions of the proposed rule in applying various non-arm's-length benchmarks. But this proposal would apply spot, rather than NYMEX prices, and eliminate proposed Form MMS–4415, so none of these definitions would be needed.

We also would add three new definitions of terms used in the February 1998 proposal and incorporated in this proposal. They are *affiliate, Rocky Mountain Region,* and *tendering program*.

''*Affiliate* would mean a person who controls, is controlled by, or is under common control with another person. For purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person would constitute control. Ownership of less than 10 percent creates a presumption of noncontrol which MMS may rebut.

(2) If there is ownership or common ownership of between 10 and 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person, MMS would consider the following factors in determining whether there is control under the circumstances of a particular case:

(i) the extent to which there are common officers or directors;

(ii) with respect to the voting securities, or instruments of ownership, or other forms of ownership,

(A) the percentage of ownership or common ownership;

(B) the relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons;

(C) whether a person is the greatest single owner; and

(D) whether there is an opposing voting bloc of greater ownership;

(iii) operation of a lease, plant, or other facility;

(iv) the extent of participation by other owners in operations and day-to-day management of a lease, plant, or other facility; and

(v) other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, would be affiliates.''

The July 1998 proposal (63 FR 38356) retained the criteria for determining affiliation that are contained in the existing rule. The March 1999 notice that included the letter to the Senate (64 FR 12268) also indicated that MMS likely would retain the same criteria that are in the existing rule.

In response to the March 1999 notice, industry commenters proposed a set of criteria which lessees could use to rebut the presumption of control that arises from ownership or common ownership of between 10 and 50 percent. While MMS does not agree with the industry proposal, a judicial decision in a case decided after the close of the most recent comment period affects the criteria for determining control and the associated presumption in the existing rule.

In *National Mining Association* v. *Department of the Interior,* 177 F.3d 1 (D.C. Cir. 1999) (decided May 28, 1999), the United States Court of Appeals for the District of Columbia Circuit addressed the Office of Surface Mining Reclamation and Enforcement's (OSM's) so-called ''ownership and control'' rule at 30 CFR 773.5(b). That rule presumed ownership or control under six identified circumstances. One of those circumstances was where one entity owned between 10 and 50 percent of another entity. The court found that OSM had not offered any basis to support the rule's presumption ''that an owner of as little as ten per cent of a company's stock controls it.'' 177 F.3d at 6–7. The court continued, ''While ten percent ownership may, under specific circumstances, confer control, OSM has cited no authority for the proposition that it is ordinarily likely to do so.'' Id. (Emphasis added.) In a footnote, the court referred to the existing MMS rule:

> In its brief OSM referred the court to several regulations promulgated by other agencies but none of them presumes control based simply on a ten percent ownership stake, although another Department of Interior regulation does so. See 30 CFR 206.101(b) [sic] (''based on the instruments of ownership of the voting securities of an entity, or based on other forms of ownership: * * * (b) Ownership of 10 through 50 percent creates a presumption of control''). We do not consider the validity of section 206.101 here.

The United States did not file a petition for rehearing. Nor did the United States seek Supreme Court review.

In this proposal, MMS is revising the definition of ''affiliate'' in light of the National Mining Association decision. In the event of ownership or common ownership of between 10 and 50 percent, the second paragraph of the definition in this proposal, instead of creating a presumption of control, identifies a number of factors that MMS would consider in determining whether there is control under the circumstances of a particular case.

With respect to ownership or common ownership, the new definition would identify such factors as the percentage of ownership, the relative percentage of ownership as compared with other owners, whether a person is the greatest single owner, and whether there is an opposing voting bloc of greater ownership. All of these are relevant factors in determining whether there is control in a particular case.

For example, company A could own one third of the voting stock of company B, while no other owner owns any percentage close to that. A is the greatest single owner, and it is very likely that A has control of B. If, in addition, A manages the day-to-day operations of B and the other owners effectively are passive investors, it would be very clear that A controls B and that they are affiliates.

A different example would be if A owns 20 percent of B, at the same time that C and D each own 35 percent of B. In such a case, it would be much harder to demonstrate that A controls B, and doing so would depend on additional facts that would show that A has effective control.

Yet another example would be if A owns 12 percent of B and other owners own roughly equivalent percentages of B. A may or may not control B, again depending on what additional circumstances are present.

We emphasize that simply because one entity is found not to control another on the basis of stock ownership and other factors, and therefore that the entities are not affiliates, that does not always mean that the relationship between the two entities is at arm's length. The entities may be engaged in a cooperative venture and therefore not have opposing economic interests. (An example is the situation in Xeno, Inc., 134 IBLA 172 (1995), in which a number of lessees in a large field combined to form another entity to purchase their gas, then gather, compress, and treat it, and then resell it to another purchaser.)

The proposed definition also identifies other factors in addition to ownership interests that are relevant to determining control. These include the extent of common officers or directors, operation by one entity of a lease or a

facility, the extent of participation by different owners in operations and day-to-day management of an entity, and other evidence of power to exercise control or common control. These factors would be evaluated on a case-by-case basis.

The proposed definition would continue the existing provisions that ownership of more than 50 percent constitutes control, and that relatives, either by blood or marriage, are affiliates regardless of any percentage of ownership or common ownership. Likewise, the proposed definition would continue the exiting provision that ownership of less than 10 percent would presume noncontrol that MMS may rebut. The National Mining Association decision does not affect these provisions.

Arm's-length contract would mean a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract would have to satisfy this definition for that month, as well as when the contract was executed. Again, we have defined *affiliate* separately for clarity.

In our February 1998 proposal, we asked for comments on the *Rocky Mountain Area* definition. We wanted to know whether other States or regions should be included in this definition and, conversely, whether the definition included States or regions that should be deleted. For example, although some participants in MMS's workshops believed the entire State of New Mexico belongs outside the Rocky Mountain Region for this rule's purposes, others believed that oil marketing in the northwest portion of New Mexico is similar to that in the other Rocky Mountain States. Some of these participants suggested that northwest New Mexico (not including the Permian Basin) more appropriately should be included in the Rocky Mountain Region.

Several commenters said the term's wording could conflict with the generic use of the term ''area'' elsewhere in the rule. As a result, we changed ''Rocky Mountain Area'' to ''Rocky Mountain Region'' in this supplementary proposed rule.

We received several comments, pro and con, regarding inclusion of part or all of New Mexico in the *Rocky Mountain Region* definition. The most telling comment was from the State of New Mexico itself, indicating that production there has much closer ties to Midland, Texas, than any Rocky Mountain markets. Thus, MMS has excluded New Mexico from the definition in this proposal. Other comments about additions and deletions of specific States or regions were limited, and MMS does not believe they warrant further changes to the definition. *Rocky Mountain Region* would mean the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

For the Rocky Mountain Region, this proposal incorporates *tendering* as one of the non-arm's-length valuation benchmarks; hence we propose a new definition. *Tendering program* would mean a company offer of a portion of its crude oil produced from a field or area for competitive bidding, regardless of whether the production is offered or sold at or near the lease or unit or away from the lease or unit. The definition in the February 1998 proposal said ''* * * from a field, area, or other geographical/physical unit for competitive bidding.'' Several commenters said ''or other geographical/physical unit'' was confusing, and one commenter suggested deleting it. Although our intent was to provide for circumstances where tendered oil is produced from a very specific and more finite source than a field or area, we agree that the terminology as originally written could be confusing. Thus we have deleted ''or other geographical/physical unit'' in this proposal. The revised definition should cover all circumstances, since any production tendered will be from a given field or area. The offer and sale of oil under a tendering program would not be limited to offers or sales at or near the lease or unit. Oil could be tendered for bid or sale at remote or ''downstream'' locations. The proposal includes clarifying language to remove any potential ambiguity on this point.

Several commenters said the definition of ''sale'' should be modified to describe how transfers of production from a working interest owner to the operator under a joint operating agreement should be treated for valuation purposes. Two specific circumstances were described, namely where the operator sells the working interest owner's share of production: (1) At arm's length, or (2) to the operator's affiliate. The commenters said that if the initial transfer from the working interest owner to the operator, or the sale of the working interest owner's production by the operator, were not considered an arm's-length sale, there may be an inappropriate result. For example, the working interest owner might be required to either ''trace'' value back from the operator's affiliate's resale, or apply § 206.103. We are not persuaded that the result under this proposed rule would be inappropriate, and believe that the proposed definition of ''sale'' is clear and succinct.

Section 206.102 How Do I Calculate Royalty Value for Oil That I or my Affiliate Sell(s) Under an Arm's-length Contract?

We propose to revise and reorganize § 206.102 as written in the several previous proposed rules. We would revise § 206.102 to specifically address valuation of oil ultimately sold under arm's-length contracts. That sale may occur immediately, or may follow one or more non-arm's-length transfers or sales of the oil or one or more arm's-length exchanges.

Proposed paragraph (a) states that value is the gross proceeds accruing to you or your affiliate under an arm's-length contract, less applicable allowances. Similarly, if you sell or transfer your Federal oil production to some other person at less than arm's length (except for a non-arm's-length exchange), and that person or its affiliate then sells the oil at arm's length, royalty value would be the other person's (or its affiliate's) gross proceeds under the arm's-length contract. If you transfer under a non-arm's-length exchange, you must use § 206.103.

For example, a lessee might sell its Federal oil production to a person who is not an ''affiliate'' as defined, but with whom its relationship is not one of ''opposing economic interests'' and therefore is not at arm's length. An illustrative example would be a number of working interest owners in a large field forming a cooperative venture that purchases all of the working interest owners' production and resells the combined volumes to a purchaser at arm's length. *Xeno, Inc.*, 134 IBLA 172 (1995), involved a similar situation for a gas field. If no one of the working interest owners owned 10 percent or more of the new entity, the new entity would not be an ''affiliate'' of any of them. Nevertheless, the relationship between the new entity and the respective working interest owners would not be at arm's length. In this instance, it would be appropriate to value the production based on the arm's-length sale price the cooperative venture received for the oil.

Paragraph 206.102(a)(3) of the February 1998 proposal was meant to be specific to those cases, such as *Xeno,* where the transfer is not between affiliates but the sale is not arm's length because the parties do not have opposing economic interests. However, several commenters could not see the difference between (a)(3) and (a)(2); the latter applied only to sales or transfers to an affiliate who then sells the oil at

arm's length. Because the result of both paragraphs would be the same, and to stem this confusion, we propose to eliminate previous paragraph (a)(3) and include its intent in revised paragraph (a)(2). That paragraph would now say value is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances, where you sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person or another affiliate of either of them then sells the oil under an arm's-length contract. As a result of this change, paragraph (a)(4) of the February 1998 proposal would now become paragraph (a)(3).

In all these circumstances, you would have to value the production based on the gross proceeds accruing to you, your affiliate, or other person to whom you transferred the oil (or its affiliate) when the oil ultimately was sold at arm's length unless you elect to use index pricing or benchmarks under § 206.102(d).

Paragraph (a)(5) of the January 1997 proposal dealt with inclusion in gross proceeds of payments made to reduce or buy down the price of oil to be produced in later periods. We removed this paragraph in the February 1998 proposal but added the concept within the definition of *gross proceeds* as discussed above. This supplementary proposed rule reflects the February 1998 proposal in this regard without change.

Proposed paragraph (b) would clarify how to value the oil produced from your lease when you sell or transfer it to your affiliate or to another person under a non-arm's-length contract, and your affiliate, the other person, or an affiliate of either of them sells the oil at arm's-length under multiple arm's-length contracts. In this case, value would be the volume-weighted average of the values established under paragraph (a) for each contract for the sale of oil produced from that lease.

A number of commenters said that calculating this volume-weighted average value would be extremely problematic because it often would be difficult to tie specific contracts to specific Federal oil production, especially where commingling of various production is involved. MMS acknowledges that proper royalty calculations can be complicated in such situations, but that does not diminish the lessee's duty to pay proper royalties on its Federal production. Even under the existing rules, circumstances similar to those described by the commenters often require that the lessee allocate values and volumes. We believe this provision is consistent with ongoing practice.

Proposed paragraph (c) would specify two exceptions to the use of arm's-length gross proceeds. It would also require you to apply the exceptions to each of your contracts separately. Proposed paragraphs (c)(1) and (c)(2) would remain largely unchanged from paragraphs (a)(2) and (a)(3) in the January 1997 proposal and from § 206.102(b)(1) (i) and (ii) of the existing rules, except for additional language included in (c)(2) regarding ''second guessing,'' as discussed below.

Paragraph (a)(4)(ii) of the July 1997 proposal said that where an arm's-length contract price does not represent market value because an overall balance between volumes bought and sold is maintained between the buyer and seller, royalty value would be calculated as if the sale were not at arm's length.

In the February 1998 proposal, MMS decided to remove that language as a specific, separate provision. Rather, in considering whether an arm's-length contract reflects your or your affiliates' total consideration or market value (proposed paragraphs (c)(1) and (c)(2)), MMS would examine whether the buyer and seller maintain an overall balance between volumes they bought from and sold to each other. Under these paragraphs, if an overall balance agreement were found to exist, MMS would require you to value your production under § 206.103 or the total consideration received.

Several commenters said that removal of the overall balance provision and relying on MMS to find such agreements put an undue burden on MMS. They further stated that MMS would have great difficulty verifying the existence of such agreements. We continue to believe, however, that verification of overall balancing arrangements, and appropriate follow up, is best left to audit in conjunction with the provisions of paragraphs 206.102 (c)(1) and (c)(2). Thus, this proposal does not contain any specific language regarding overall balancing agreements.

Likewise, this proposal does not contain any specific language regarding noncompetitive crude oil calls. In response to the July 1997 and February 1998 proposals, and in MMS's public workshops, several commenters asserted that producers often negotiate competitive prices even if a non-competitive call provision exists and a call on production is exercised. We agree and we propose not to treat oil sold under a noncompetitive crude oil call differently than other arm's-length sales. However, because the sale occurred in the context of a noncompetitive crude oil call, MMS would examine the transaction more carefully in view of paragraphs 206.102 (c)(1) and (c)(2) to determine whether the prices received represent market value.

This supplementary proposed rule contains language in paragraph 206.102(c)(2)(ii) regarding MMS's intent not to ''second guess'' industry marketing decisions. The rule would state that MMS will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract. The fact that the price received by the seller in an arm's-length transaction is less than other measures of market price, such as index prices or other arm's-length sales, is insufficient to establish breach of the duty to market unless MMS finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil from the lease.

In response to industry concerns, in its July 1998 proposal, MMS proposed adding specific language to § 206.102(c)(2)(ii) that MMS would not use the ''breach of duty'' provision to second-guess industry marketing decisions unless the arm's-length prices were substantially below market value. However, in their comments on the July 1998 proposal, industry and their representative organizations stated that the terms ''substantially below'' and ''market value'' were not easily defined and could lead to MMS questioning legitimate transactions. One commenter said that in the past, MMS has rejected legitimate, at-the-lease prices in favor of higher, downstream prices. One commenter believed that as long as a company is acting in good faith, they have nothing to fear with MMS ''second-guessing'' their decisions. One commenter offered alternate ''breach of duty to market'' language.

At the March 1999 workshops, industry commenters expressed concern that if a company sold production at the lease under an arm's-length arrangement, MMS might later ''second-guess'' the transaction and determine that the royalty should have been paid on a higher price than the company actually received, such as index. They proposed specific language to be added to the rule and preamble.

One State commenter also proposed specific regulatory language regarding ''second-guessing.'' A public interest group commented that it would support language that MMS will not second-guess arm's-length contract prices received, provided that lessees disclose balancing arrangements between

themselves and the unaffiliated companies.

The provision MMS was attempting to clarify with its proposed additional language is identical to the provision in the existing rules (see 30 CFR 206.102(b)(1)(iii)). It has been in those rules for over a decade and has not been used to second-guess a lessee's marketing decisions to try to impose the benchmarks at § 206.102(c) on arm's-length transactions. It is longstanding MMS policy to rely on arm's-length prices as the best measure of value, and we have no intention of changing this. We expect no expansion of the use of this provision in the future as a result of this proposed rewrite.

We propose including the term ''unreasonably'' because we think that limiting the proposed provision only to situations involving ''bad faith'' is too narrow. We do not believe that a royalty interest holder should bear the consequences of a lessee's decision to enter into a transaction that no reasonable businessman would agree to. We anticipate that such situations would be extraordinarily rare. However, we believe that the duty to market for the mutual benefit of the lessee and the lessor may be breached by unreasonable actions that do not involve knowing or deliberate bad faith. The July 1998 proposal included language that MMS would not use the provision to dispute lessees' marketing decisions made ''reasonably and in good faith.'' Although some industry commenters initially stated that the term ''good faith'' was too subjective, industry commenters later recommended including this term in their proposed rewrite of this section. Thus, we do not think that the terms ''unreasonable'' or ''bad faith'' are too subjective.

Requiring a lessee to include in gross proceeds or royalty value, amounts that were improperly deducted for marketing costs, costs of putting production in marketable condition, or other costs that are the responsibility of the lessee, does not constitute ''second-guessing'' an arm's-length contract.

Proposed paragraph 206.102(d)(1) provides the option, where arm's-length sales follow one or more arm's-length exchanges, to apply either the arm's-length gross proceeds or the index or benchmark value appropriate to the region of production.

In the February 1998 proposal, MMS expanded gross proceeds valuation to include situations where the oil received in exchange is ultimately sold at arm's length, regardless of the number of exchanges involved. However, many industry comments claimed that tracing multiple exchanges would be overly burdensome. MMS understands the potential administrative burden of tracing. However, we also are well aware of the desire of other producers, as expressed in the meetings sponsored by Senator Breaux and other Senators on July 9 and July 22, 1998, to be able to use prices received in arm's-length sales following multiple exchanges. As a result, under this proposal, MMS would allow lessees the option of using either their arm's-length gross proceeds regardless of the number of arm's-length exchanges preceding the arm's-length sale, or the provisions of § 206.103 (index prices or, in the Rocky Mountain Region, benchmarks). This process would preserve the integrity of the rule's underlying principle of applying arm's-length gross proceeds where appropriate, but still allow use of index/benchmark values that fairly represent market value where ''tracing'' would be too burdensome.

The chosen option would apply for at least 2 years. The lessee would have to use this method to value all of its crude oil that the lessee or its affiliate sells at arm's length following one or more exchanges.

The option to choose between index valuation and gross proceeds is not available for oil that is not sold at arm's length after the exchange or for oil subject to non-arm's-length exchanges regardless of whether an arm's-length sale follows such an exchange. The provisions of § 206.103 would apply to such dispositions. We included these qualifications to assure that lessees would not abuse the system by choosing case-specific options or time periods for the purpose of reducing royalty, or by using non-arm's-length exchange differentials to determine royalty value. We acknowledge that exchanges between affiliates are not at arm's length. Because there is potential for inflated differentials in such exchanges, production so transferred, even if followed by an arm's-length sale, would have to be valued at the appropriate index/benchmark value under this proposal.

Proposed paragraph (d)(2) of this proposal is new and results from comments received throughout the rulemaking process. Some commenters believe that where lessees sell or transfer production to an affiliate and the affiliate resells the oil at arm's length, they should be able to apply an alternative valuation method other than tracing the production to its final disposition. In this proposal, similar to the option for sales following arm's-length exchange agreements, we provide the option to use either the ultimate arm's-length gross proceeds or the appropriate index or benchmark value. Also, proposed paragraph (d)(2)(ii) states that whichever option you select, you must apply that same option for all of your production disposed of through affiliate resales at arm's length, and that you not change this election more often than once every 2 years. Again, we believe this achieves the best balance of valuing production based on arm's-length gross proceeds and limiting administrative burdens.

Proposed paragraph (e) would be essentially the same as paragraphs (b)(2) and (3) of § 206.102 in the January 1997 proposal and paragraphs (d)(2) and (3) of the February 1998 proposal and comes directly from existing § 206.102(b)(2) and (j). We would eliminate proposed paragraph (b)(1) of the January 1997 proposal (paragraph (d)(1) of the February 1998 proposal) in connection with the change to the definition of ''affiliate'' explained previously in this preamble.

Proposed section 206.102(e)(2) addresses circumstances in which a purchaser does not pay the full price obtainable by the seller under the contract between them. The proposed section, which is similar to the current section 206.102(j), establishes that if the seller takes reasonable efforts to obtain the highest price to which it is entitled under the contract, then the price it obtains will be the basis for determining value.

Industry commenters suggested rewriting the section now proposed at 206.102(e)(2) to make it virtually identical to the language in section 206.102(j) of the current rule. In other words, industry suggests using the term ''lessee'' instead of ''seller.'' This proposal generally requires arm's-length gross proceeds as royalty value regardless of whether the ultimate seller is the lessee, an affiliate, or another person to whom the lessee has sold or transferred production under a non-arm's-length contract. All of these persons would come within the term ''seller.'' MMS therefore would retain this term instead of using the term ''lessee.''

Section 206.103 How Do I Value Oil That Is Not Sold Under an Arm's-Length Contract?

In the February 1998 proposal, this section replaced paragraph 206.102(c) of the January 1997 proposal. This proposal includes a few changes in this section as explained below. This section would deal specifically with valuation of oil you could not value under § 206.102 because the oil is not ultimately sold at arm's length or is otherwise excepted under § 206.102. It

may also apply where you have elected one of the options available at § 206.102(d)(1) or (2).

Also, paragraph 206.102(c)(1) of the January 1997 proposal would have permitted you an option if you first transferred your oil production to an affiliate and that affiliate or another affiliate disposed of the oil under an arm's-length contract. The option was to value your oil at either the gross proceeds accruing to your affiliate under its arm's-length contract or the appropriate index price. For the reasons discussed earlier, we have reinserted that option in this proposal under paragraph 206.102(d)(2). MMS believes that where arm's-length transactions satisfying the provisions of § 206.102 occur, royalty value generally should be the arm's-length gross proceeds. However, providing this option should afford some administrative relief to lessees while assuring receipt of fair royalty values.

We received various comments about use of ANS spot prices. Most industry commenters said that because there are significant differences between ANS and California crudes in terms of quality, product yield, transportation modes and distances, and timing of production versus delivery, the ANS spot price is not a good value indicator for California crude oil production. The State of California and City of Long Beach, on the other hand, continue to endorse the use of ANS spot prices. They indicate that ANS spot prices are used in many arm's-length transactions and that ANS crude constitutes a large percentage of California refinery feedstock. MMS's own experience, including participation in the interagency task force investigating California oil undervaluation, shows that ANS crude frequently has been used by industry as a valuation benchmark for valuing California crudes. Also, because of the control of the pipeline transportation network in California by a few companies who also act as purchasers of a large portion of California crude oil production, the use of posted prices or contracts based on postings as a basis for valuing crude disposed of at other than arm's-length is questionable. We continue to believe that, with proper adjustments for location and quality differences, the ANS spot price is the best available measure of royalty value for Federal oil production in California that is not sold at arm's length.

Paragraph 206.103(b) would apply to production from leases in the Rocky Mountain Region, a defined term. As discussed above, production in the Rocky Mountain Region is controlled by relatively few companies, and the number of buyers is more limited than in the Texas, Gulf Coast, or Midcontinent areas. As a result, there is less spot market activity and trading in this area due to the control over production and refining. The majority of written comments we received, as well as oral comments in our public meetings, agreed that a separate valuation procedure is needed for the Rocky Mountain Region. For these reasons, we propose the following valuation hierarchy for the Rocky Mountain Region:

(1) As in the February 1998 proposal, if you have an MMS-approved tendering program (a defined term), the value of production from leases in the area the tendering program covers would be the highest price bid for tendered volumes. Under your tendering program you would have to offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area. You also would have to receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

MMS added the several qualifications stated above to ensure receipt of market value under tendering programs. First, as provided in the February 1998 proposal, royalty value would be the highest price bid rather than some other individual or average value. Several commenters said this is inappropriate because it is possible that a single bidder may only bid on some small portion of the tendered volumes at a high price, but this price would then apply to all tendered volumes. We continue to believe, however, that to assure receipt of market value, value must be based on the highest bid received.

Second, you would have to offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area. The rationale for this minimum percentage is to ensure that the lessee puts a sufficient volume of its own production share up for bid to minimize the possibility that it could abuse the system for Federal royalty or State tax payment purposes. MMS originally chose 33⅓ percent as the minimum because it exceeded the typical combined Federal royalty rate and effective composite State tax and royalty rates for onshore oil leases by roughly 10 percent. We received various comments that this figure was too high and that it was not appropriate to consider State royalties, since they would not be payable on Federal leases. MMS recognizes this fact but also notes that for the oil-producing states in the Rocky Mountain Region the combined Federal royalty rate and state composite effective tax rate on Federal oil production typically ranges from about 17 to 27 percent. These percentages do not include state royalty rates. In this proposal, we thus chose 30 percent, or just above the high end of the royalty and tax range, as the minimum percentage the lessee would have to tender for sale to assure that some of the lessee's equity share of production generally was involved. Likewise, the tendering program would be required to include non-Federal lease production volumes in the 30 percent determination to ensure that the program isn't aimed at limiting Federal royalty value.

Third, as in the February 1998 proposal, to ensure receipt of competitive bids, your tendering program would have to result in at least three bids from bidders who do not have their own tendering programs covering some or all of the same area. In response to the February 1998 proposal, we received several comments that requiring three bidders was too stringent and that in many cases there simply would not be that many qualified bidders. We have reviewed this criterion and continue to believe that a minimum number of bidders is essential to ensure receipt of market value. We believe that at least three bidders are needed to provide an adequate measure of market value and have retained this provision in this proposal. Further, MMS is concerned about the possibility of cross-bidding between companies at below-market prices, which could otherwise satisfy the minimum number of bidders requirement. That is why we have retained the stipulation that bids would have to come from bidders who do not also have their own tendering programs in the area.

(2) As in the February 1998 proposal, for the second method in the valuation hierarchy for the Rocky Mountain Region, value would be the volume-weighted average gross proceeds accruing to the seller under your and your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month. The total volume purchased or sold under those contracts would have to exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month.

Under the February 1998 proposal, MMS proposed this method as the next alternative if a qualified tendering program did not exist. It is an effort to establish value based on actual transactions by the lessee and its

affiliate(s). We received a number of comments during the rulemaking process that MMS should look not only to sales by the lessee, but also purchases a lessee and its affiliates make in the field or area. Just as for the tendering program, MMS believes a floor percentage of the lessee's and its affiliates' production should be set to prevent any abuse. Although we received several comments that the 50 percent minimum figure is too high, it is not intended to be a more stringent standard than the 30 percent floor associated with the tendering program. That is because the 50 percent floor would apply to the lessee's and its affiliates' sales *and* purchases in the field or area, rather than just sales as in the tendering program. For example, Company A produces 10,000 barrels of crude oil in a given field during the production month. Company A sells 1,000 barrels under an arm's-length contract. Company A also has a refining affiliate, Company B, that purchases the remaining 9,000 barrels of Company A's production and 5,000 barrels of oil under arm's-length purchase contracts with other producers in the same field. Together the arm's-length sales by Company A and the arm's-length purchases by its affiliate, Company B, are 6,000 barrels, or 60 percent of the lessee's production in the field that month. The volume-weighted arm's-length gross proceeds accruing to Company A and paid by Company B for these 6,000 barrels would represent royalty value for the 9,000 barrels of Company A's Federal lease production in the field that could not be valued under § 206.102.

This proposal would continue to require using the unadjusted volume-weighted average gross proceeds accruing to the seller in all of the lessee's and its affiliates' arm's-length sales or purchases, not just those that may be considered comparable by quality or volume. We received several comments that this would result in improper valuation of some oil that was significantly different in quality than that associated with the ''average'' oil. However, we believe that production in the same field or area generally would be similar in quality. Further, given that these sales and purchases would have to be greater than 50 percent of all of the lessee's production in the field or area, we believe that it is not necessary to distinguish comparable-volume contracts.

MMS received several industry comments that the proposed rule would cause hardships for producers who have marketing, but not refining, affiliates. The marketing affiliate takes the producing affiliate's production and also buys production from various other sources before reselling or otherwise disposing of the combined volumes. Section 206.102 of the February 1998 proposal would have required the producer to base royalty value on its marketing affiliate's various arm's-length sales and allocate the proper values back to the Federal lease production. Many commenters said this ''tracing'' would be difficult at best, but others wanted the opportunity to do so. One commenter suggested that as an alternative the lessee should be permitted to base the value of its production on the prices its marketing affiliate pays for crude oil it buys at arm's length in the same field or area.

We cannot agree with this proposal because an overriding general premise of this rulemaking is that where oil ultimately is sold at arm's length before refining, it should be valued based on the gross proceeds accruing to the seller under the arm's-length sale (with the option to use index or benchmark values under some circumstances as discussed earlier). This means the marketing affiliate's arm's-length resale should form the basis for valuing the producing affiliate's production. To do otherwise would be inconsistent with the way arm's-length resales are treated elsewhere in this proposal.

(3) As in the February 1998 proposal, if you could not apply either of the first two valuation criteria for the Rocky Mountain Region, value would be the average of the daily mean spot prices published in any MMS-approved publication for WTI crude at Cushing, Oklahoma, for deliveries during the production month.

This paragraph is very similar to paragraph 206.102(c)(2)(i) of the January 1997 proposal. The main difference is that rather than using NYMEX futures prices, we apply Cushing spot prices in this proposal, as in the February 1998 proposal. This was due to an industry comment that since Cushing spot and NYMEX futures prices track closely over time and that we propose to use spot prices in the other two valuation regions, using the spot price in the Rocky Mountain Region would lend consistency with no downside effects. MMS proposes to make this the third method, to be used only if the first two do not apply, because of distances between Rocky Mountain Region locations and Cushing, Oklahoma, and the additional difficulties in deriving location/quality differentials.

(4) If you should demonstrate to MMS's satisfaction that paragraphs (b)(1) through (b)(3) would result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.

This method is the last alternative and would be intended for use only in very limited and highly unusual circumstances. We believe there should be very few such alternative valuation methods, and each one should be subject to careful review.

We received several comments that this option should be offered nationwide. However, we believe this is inappropriate because valid spot prices for which reasonable location and quality adjustments may be made are available throughout the rest of the country. While the Cushing spot price likewise is valid, the remoteness of the Rocky Mountain Region may in some cases cause such severe difficulties in making reasonable location/quality adjustments that an alternative method may be warranted.

Paragraph 206.103(c) would apply to production from leases not located in California, Alaska, or the Rocky Mountain Region. MMS proposes that value be the average of the daily mean *spot* prices published in an MMS-approved publication:

(1) For the market center nearest your lease for crude oil similar in quality to that of your production. For example, at the St. James, Louisiana, market center, spot prices are published for both Light Louisiana Sweet and Eugene Island crude oils. Their quality specifications differ significantly, and you would have to use the spot price for the oil that is similar to your production; and

(2) For deliveries during the production month.

You would calculate the daily mean spot price by averaging the daily high and low prices for the month in the selected publication. You would use only the days and corresponding spot prices for which such prices are published. You would be *required* to adjust the value for applicable location and quality differentials, and you *could* adjust it for transportation costs, under § 206.112 of this subpart.

There may be cases where the nearest market center may not be the appropriate one for you to use because the quality of your production better matches that typically traded at another, more distant market center. In such cases, you could use this more distant market center to value your production.

MMS proposes changing the valuation procedure to use spot, rather than NYMEX, prices, for several reasons. First, we believe that when the NYMEX futures price, properly adjusted for location and quality differences, is

compared to spot prices, it nearly duplicates those spot prices. Second, application of spot prices would remove one portion of the necessary adjustments to the NYMEX price—the leg between Cushing, Oklahoma, and the market center location. Although industry continued to object to any form of valuation that begins with values away from the lease, we received several comments that using the spot price rather than NYMEX futures prices would improve administration of the rule with no apparent adverse effects.

MMS is not proposing any of the alternatives here (or for California and Alaska) that it did for the Rocky Mountain Region where oil cannot be valued under proposed § 206.102. That is because, unlike the Rocky Mountain Region, there are meaningful published spot prices applicable to production in the other regions (e.g., Cushing, Oklahoma; St. James, Louisiana; Empire, Louisiana; Midland, Texas; Los Angeles/San Francisco, California). In the United States, with the exception of the Rocky Mountain Region, spot and related index-type prices drive the manner in which crude oil is bought and traded. Spot prices play a significant role in crude oil marketing. They form a basis on which deals are negotiated and priced and are readily available to lessees via price reporting services. We believe spot prices are the best indicator of value for production from leases outside the Rocky Mountain Region. Therefore, it is not necessary to consider other, less accurate means of valuing production not sold at arm's length for regions outside the Rocky Mountains.

We received numerous comments about MMS inappropriately moving the value of production away from the lease without permitting deduction of marketing costs or the value added by the lessee and its affiliates. This proposal would not allow the costs of marketing production as a deduction from index prices or prices based on gross proceeds. The requirement to market production for the mutual benefit of the lessee and the lessor at no cost to the lessor is an implied covenant of the lease, and is not unique to Federal leases. See Section III for more detail. With respect to the costs of putting production into marketable condition, see, e.g., *Mesa Operating Limited Partnership* v. *Department of the Interior,* 931 F.2d 318 (5th Cir. 1991), cert. denied, 502 U.S. 1058 (1992); *Texaco, Inc.* v. *Quarterman,* Civil No. 96–CV–08–J (D. Wyo. 1997). It follows that any payments the lessee receives for performing such services are part of the value of the production and are royalty bearing. MMS is not altering this principle in this proposal. This proposal, in § 206.106 discussed below, simply would make express the longstanding implied covenant to market.

Proposed paragraph 206.103(d) is paragraph 206.102(c)(3) of the January 1997 proposal with minor clarifying word changes. It states that if MMS determines that any of the index (spot) prices are no longer available or no longer represent reasonable royalty value, then MMS would exercise the Secretary's authority to establish value based on other relevant matters. These could include, for example, well-established market basket formulas.

Proposed paragraph 206.103(e) addresses situations where you transport your oil directly to your or your affiliate's refinery and believe that use of a particular index price is unreasonable. In that event, you could apply to the MMS Director for approval to use a value representing the market at the refinery. Based on the lack of comments on this provision, which was included in the February 1998 proposal, we included it in this proposal with only minor clarifying changes.

Section 206.104 What Index Price Publications Are Acceptable to MMS?

Section 206.104 of this proposal is paragraphs (c)(4), (c)(5), and (c)(6) of § 206.102 from the January 1997 proposal with an added reference to spot prices for crude oil other than ANS. The few comments that MMS received on this section simply said that industry should have some input into which publications are accepted by MMS. We have included this section in this proposal unchanged. MMS would consult with industry groups as appropriate in deciding which publications should be used for index pricing.

Section 206.105 What Records Must I Keep To Support My Calculations of Value Under This Subpart?

Proposed section 206.105 specifies that you must be able to show how you calculated the value you reported, including all adjustments. This is important because if you were unable to demonstrate on audit how you calculated the value you reported to MMS, you could be subjected to sanctions for false reporting.

Section 206.106 What Are My Responsibilities To Place Production Into Marketable Condition and To Market Production?

Proposed section 206.106 is paragraph 206.102(e)(1) of the January 1997 proposal with minor clarifying word changes. It is unchanged from section 206.106 of in the February 1998 proposal. It says you must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. We received many comments from industry that MMS is inappropriately trying to force industry to bear all marketing costs and that MMS should share in these costs. Comments from States supported the ''duty to market'' concept. We discussed this issue previously. MMS is not altering the lessee's obligation to market production at no cost to the lessor in this proposal.

The January 1997 proposal also included, at paragraph 206.102(e)(2), a provision regarding the lessee's general responsibility to pay interest if the lessee reports value improperly and underpays royalties, or to take a credit for overpaid royalties. We deleted this provision in this proposal because these matters are already covered in other parts of MMS's regulations.

Section 206.107 How Do I Request a Value Determination?

This section of the February 1998 proposal provided that lessees may ask MMS for valuation guidance or propose a valuation method to MMS. It stated that MMS will promptly review the proposal and provide the requestor with a nonbinding determination.

During the workshops help in March and April 1999 and in their written comments, industry representatives proposed a provision under which MMS would provide binding valuation determinations on a case-by-case basis. Among other provisions, the determination would have no precedential value beyond the facts in the case. Under the industry proposal, the MMS would have 180 days from the date the lessee submitted the request to make a decision, otherwise the request would be deemed approved. An MMS decision on a request would be subject to the existing appeals process.

Industry commenters cited the need for obtaining timely valuation determinations that can be relied on for satisfying royalty obligations. Industry commenters referred MMS to procedures used by other Federal agencies to provide advance guidance on how to comply with their regulations.

State commenters expressed general opposition to or concerns with binding determinations, stating that information could be inaccurate, incomplete, or dated and that MMS should have discretion over issuing any binding

determinations. A public interest group indicated it would support a binding determination as long as all of the information submitted is correct and verifiable and that the determination only applies to the requestor. A congressional commenter stated that this issue remains of concern and needs to be developed further.

We disagree with the industry comment to make issuing a determination mandatory. In the vast majority of cases, the lessee will receive a value determination either from the Assistant Secretary, Land and Minerals Management, or from MMS staff. However, there are some situations in which a value determination is not appropriate. In proposed section 206.107(b)(3), we identify some situations in which MMS typically will not issue a value determination. These include: (1) Requests based on hypothetical situations; (2) matters that are inherently factual in nature; and (3) matters that are the subject of pending litigation or administrative appeals.

We also disagree with the industry comment that there should be a time limit for MMS responses to requests for value determinations. None of the other Federal agency processes identified by the industry commenters includes a time limitation.

We agree with the industry proposal to allow for lessees to propose a valuation method. We also agree that lessees should be able to rely on valuation methods they propose unless and until MMS modifies or rejects the proposal. However, industry commenters proposed that the lessee's proposed method would be automatically adopted if MMS failed to timely issue a determination.

We disagree with this comment. First, we did not find a similar approach in any of the other Federal agency procedures identified by the industry commenters. Second, such a system would be open to abuse. A lessee could propose an unreasonable valuation method and rely upon it until MMS had time to evaluate it and reject it. Further, if MMS were unable to respond within the stated time frame, it would be unable to correct an improper valuation method and the consequent undervaluation of oil.

The industry commenters proposed that lessees could appeal determinations with which they disagreed. A State representative commented that only bills (*i.e.,* orders to pay) should be appealable.

We agree with the State commenter. Under the proposed rule, value determinations issued by the Assistant Secretary would be the final action of the Department and subject to judicial review under the Administrative Procedure Act, 5 U.S.C. 701–706. Additionally, we propose in section 206.107(d)(2) that value determinations by MMS staff would not be subject to administrative appeal. A lessee that disagrees with a value determination by MMS staff may either request reconsideration or choose not to follow the determination, since it would not be binding on the lessee. However, if a lessee, either simultaneously or later, receives an order to pay on the same legal basis as the MMS staff value determination, the lessee may appeal the order under 30 CFR part 290 subpart B. Lessees should not be able to invoke the administrative appeal process until they receive actual orders to pay.

Industry commenters suggested that the Department should only change a value determination prospectively. A public interest group recommended that MMS should be able to audit the value determination requests, and if MMS finds the information provided by the lessee to be incomplete or incorrect, could change the determination and penalize the lessee.

We agree that as a general matter, value determinations may be changed only prospectively. The proposed rule expressly states that a value determination issued by the Assistant Secretary ''is binding on both you and MMS until the Assistant Secretary modifies or rescinds it.''

The proposed rule also provides that a value determination by MMS staff is binding on MMS and delegated States with respect to the specific situation addressed in the determination unless the MMS Director or the Assistant Secretary modifies or rescinds it. This contrasts with value determinations signed by the Assistant Secretary, because MMS staff value determinations are not binding on the lessee. This means that MMS will not issue an order inconsistent with a value determination by MMS staff, but if a lessee does not follow that value determination, it may receive an order requiring it to pay royalties on the same basis as the value determination.

Under proposed paragraph (e), a change in applicable statutes or regulations on which a value determination is based would supersede the value determination, regardless of whether the MMS Director or the Assistant Secretary modifies or rescinds the value determination. This would apply to all value determinations, including those signed by the Assistant Secretary, and would apply to all periods to which the change in statute or regulation applies.

Under proposed paragraph (f), the MMS Director or the Assistant Secretary generally would not modify or rescind a value determination retroactively (regardless of whether the Assistant Secretary or MMS staff issued it), unless (1) there was a misstatement or omission of material facts; or (2) the facts subsequently developed are materially different from the facts on which the guidance was based. This reflects the principle that a value determination should not stand if it was obtained through fraud or knowing submission of false information, or if the underlying factual premises on which a value determination is based are not correct. Lessees cannot bind the government through fraudulent means or through determinations that are not based on the actual facts. If it were not possible to retroactively modify or withdraw a value determination in such situations, the government and the public would be open to serious abuse. (MMS generally would not audit the facts presented in a value determination request at the time of the request, but instead would audit these facts as appropriate when auditing payments made under the determination.)

Proposed section 206.107(g) provides that MMS may make requests and replies available to the public subject to the confidentiality requirements of proposed section 206.108.

Section 206.108 Does MMS Protect Information I Provide?

As noted in the February 1998 proposal, Section 206.108 is paragraph 206.102(h) of the January 1997 proposal, but with minor wording changes for clarity.

Section 206.109 When May I Take a Transportation Allowance in Determining Value?

Proposed Section 206.109 includes the substance of § 206.104 of the January 1997 proposal with only minor wording changes. However, in this proposal, we removed the last two sentences of paragraph (a) regarding transportation of oil that MMS takes as royalty in kind. These provisions were unnecessary because this issue is addressed in the royalty-in-kind regulations in § 208.8.

This section also includes the provision that you may not take a transportation allowance greater than 50 percent of the value of the oil determined under this subpart. We received several comments that MMS should relax this limitation. However, paragraph 206.109(c)(2) would continue the existing practice that you may ask MMS to approve a larger transportation allowance by demonstrating that your

reasonable, actual, and necessary costs exceed the 50 percent limitation.

Sections 206.110 and 206.111 How Do I Determine a Transportation Allowance Under an Arm's-Length Transportation Contract, and How Do I Determine a Transportation Allowance Under a Non-Arm's-Length Transportation Contract?

Proposed sections 206.110 and 206.111 are paragraphs 206.105(a) and (b), respectively, of the existing rule, rewritten to reflect plain English.

Based on several comments received during the most recent workshops, we are proposing two changes to the calculation of actual transportation costs under § 206.111(g). First, under the current regulations, a change in ownership does not alter the depreciation schedule. That is, a transportation system cannot be depreciated more than once by one or more owners. Proposed paragraph § 206.111(g)(2) would state that an arm's-length change in ownership of a transportation system would result in a new depreciation schedule for purposes of the allowance calculation. If you or your affiliate purchase an existing transportation system at arm's length, your initial capital investment is equal to your purchase price of the transportation system.

Second, proposed paragraph § 206.111(g)(3) would provide that even after a transportation system has been, depreciated below a value equal to ten percent of your original capital investment, you may continue to include in the allowance calculation a cost equal to ten percent of your initial capital investment in the transportation system multiplied by a rate of return under paragraph (h) of this section. Under the current regulations a lessee is not allowed to claim any depreciation or return on capital once a pipeline is fully depreciated. We are proposing under paragraph § 206.111(g)(3) to allow lessees to continue to claim a return on a portion of their capital investment regardless of the pipeline's depreciation status.

Paragraph § 206.111(g)(4) (existing paragraph § 206.105(b)(2)(B) of the current regulations), provides an alternative for transportation facilities first placed in service after March 1, 1988. We are not proposing any change to this paragraph, but we specifically request comments on whether this paragraph should be retained in the final rule. We are asking whether this paragraph is necessary in light of the changes we are proposing to the calculation of actual transportation costs and because it is our understanding that this paragraph has been used in few, if any, situations.

The existing rule uses the Standard and Poor's Industrial BBB bond rate as an allowable rate of return on capital investment for producers who transport oil through their own pipelines (see 30 CFR 206.157(b)(2)(v)). Two commenters from affiliated companies said the use of the BBB bond rate as an allowable return within the calculation of actual costs of transportation is arbitrary and would be considered unacceptable by any court. They said the actual rate should be much higher, reflecting the real rates of return seen in the Gulf of Mexico, and particularly in deep waters to recognize additional risk. They assert that the current rate of return based on one times BBB is too low to accurately reflect a company's cost of capital. At the public workshops held in March and April 1999 and in their written comments, industry commenters stated that the current rate does not adequately account for the cost of equity or the inherent risks of transportation systems. Industry commenters suggested that the rate should be two times the Standard and Poor's BBB bond rate.

While MMS is not proposing specific changes to the rate of return used in calculating the return on investment under § 206.111(h), we specifically request comments on whether we should modify the rate of return and, if so, what that rate should be. MMS specifically requests comment on modifying the rate of return based on multiples of the Standard and Poor's BBB bond rate, such as 1.5 times or 2 times the BBB bond rate.

A member of Congress commented that the rate of return should be based on a company's weighted average cost of capital, taking into account both a company's return on debt and return on equity similar to the method used in formal rate making for electric utilities. We request comments on using either a company-specific or industry-wide weighted cost of capital to determine the rate of return. Your comments should address the administrative burden of verifying an individual company's or industry-wide annual weighted average cost of capital.

We also request comments on any other method of determining the appropriate rate of return applicable to transportation systems for oil production from Federal lands. Consistent with MMS's goals in this rulemaking, any proposed methods should provide certainty and simplicity while assuring that the public receives market value for its royalty interest in Federal lease oil production.

In the most recent round of comments, industry commenters proposed that transportation allowances in non-arm's-length situations should be based principally on the value of the service. That is, the allowance should be based on what companies pay under arm's-length contracts. Under industry's proposal, where more than 20 percent of the pipeline volume is transported at arm's length, an annualized volume-weighted average of the arm's-length rates would be used. Where less than 20 percent of the volume is arm's-length, the current MMS actual-cost method would apply; however, the rate of return would increase from the current level to twice the Standard and Poor's BBB bond rate. Undepreciated capital investment would never be less than 10 percent of the original capital cost.

Industry commenters asserted that they only agreed to the MMS actual-cost method under the 1988 rules because of the provision to use FERC tariffs. They oppose MMS proposing to revoke use of tariffs without allowing an adequate transportation allowance rate to be deducted from the value of production at the market centers.

Comments supporting industry's position that FERC tariffs still should be permitted in lieu of actual costs include: (1) FERC's decisions regarding its jurisdiction were flawed; (2) it was unfair for pipeline owners' transportation allowances to be based on their actual costs while non-owners could use the tariff; (3) the producing affiliate does not have the records needed to calculate actual costs; (4) audit costs for industry and MMS would increase; and (5) FERC's interpretation on jurisdiction applied only to offshore pipelines.

State commenters agreed with MMS's position under the latest proposed rule. One congressional commenter stated that MMS should confer with FERC and develop a proposal that is more consistent with accepted public rate setting practices.

MMS did not adopt the industry value-of-service proposal in this proposal because we continue to believe that the cost of service is most appropriate in determining deductions for royalty purposes. This is consistent with longstanding valuation and allowance principles. However, in response to industry comments and as noted above, we propose to modify the way depreciation is claimed when a transportation facility is sold. We also propose to permit a rate of return against a minimum of ten percent of the original capital investment even after the remaining depreciable amount falls below that level. We also are asking for

comments on the appropriate rate of return to be used in transportation allowance calculations. We believe these proposed changes and requests for comments respond in a fair and balanced way to the comments received.

This supplementary proposed rule continues MMS's position that FERC tariffs should not be permitted as a substitute for actual costs in non-arm's-length situations. We continue to believe that FERC tariffs often exceed the transporter's actual costs. Further, we cannot presume FERC's reasoning to be flawed where it has determined that it does not have jurisdiction over offshore pipelines.

MMS continues to maintain that it is fair to allow a lessee with an arm's-length transportation contract to use the amount it pays to the pipeline while limiting a producer transporting over its own pipeline to its actual costs. In both cases the amount allowed represents the actual costs incurred to transport the oil.

MMS also maintains that where producing and transporting affiliates are involved, the entity claiming the allowance should be able to acquire any needed records from its affiliate. It may be true that audit costs could be somewhat higher without the FERC tariff option. However, we believe that the principle of permitting only actual costs, including a reasonable rate of return, is consistent with longstanding royalty valuation and allowance principles and fairly and reasonably protects the public interest.

We also note that even if FERC's non-jurisdictional determinations are exclusive to offshore pipelines, those pipelines involve the great majority of transportation allowance deductions for Federal royalty purposes.

Section 206.112 What Adjustments and Transportation Allowances Apply When I Value Oil Using Index Pricing?

Proposed section 206.112 describes how to adjust the index price for location differentials, quality differentials, and transportation allowances depending on how you dispose of your oil.

In the February 1998 proposal, § 206.112 contained a ''menu'' of possible adjustments that could apply in different circumstances, and § 206.113 prescribed which of the adjustments from the ''menu'' applied to specific circumstances. In this proposal, we have eliminated the ''menu'' and instead combined proposed §§ 206.112 and 206.113 into one section that describes what adjustments apply when using index pricing. The ''menu'' of options would no longer be necessary with the elimination of aggregation points and MMS-published differentials, as discussed below. This new paragraph would cover all situations regardless of lease location, so there would be no need for geographical breakdown of adjustments and allowances.

This proposal eliminates the previously-proposed location differential between the index pricing point and the market center. This is because under the valuation procedures proposed under the February 1998 proposal and continued in this proposal, the index pricing point and market center are synonymous.

Under section 206.112(b)(1) of the February 1998 proposal, MMS would have specified location/quality differentials between aggregation points and market centers. Section 206.118 of the February 1998 proposal would have required lessees to submit a Form MMS–4415, from which MMS would have calculated these differentials. In this further supplementary proposed rule, in response to the various comments received throughout the rulemaking, we have eliminated MMS-published differentials. MMS believes that lessees using index pricing generally would have sufficient information to accurately determine location/quality differentials, with relatively rare exceptions.

If a lessee disposes of its oil through one or more exchange agreements, it ordinarily should have the information necessary to determine adjustments to the index price. If the oil is not disposed of through exchange agreements, then the lessee is physically transporting the oil either to a market center or to an alternate disposal point (such as a refinery.) In that event, the lessee would have the necessary information regarding actual transportation costs to claim the appropriate transportation allowance.

As a result of eliminating MMS-published differentials, the proposed Form MMS–4415 is eliminated from this proposal. Therefore, it is not necessary to address the extensive comments MMS received regarding the content and timing of the form.

Paragraph 206.112(a) of this supplementary proposed rule would cover situations where you dispose of your production under one or more arm's-length exchange agreements. In this case, you would adjust the index price for any location/quality differentials that reflect the difference in value of crude oil between the point(s) where your production is given in exchange and the point(s) where oil is received in exchange. You could also adjust the index price to reflect any actual transportation costs between the lease and the first point where you give your oil in exchange, and between any intermediate point where you receive oil in exchange to another point where you give the oil in exchange again, and between the last point you receive oil in exchange and a market center or refinery that is not at a market center. These costs would be determined under §§ 206.110 or 206.111, depending on whether your transportation arrangement is at arm's length or not. (Note again, that if the transportation costs from the lease to the market center or alternate disposal point are already reflected in the location differential between the lease and the market center, you could not claim duplicate transportation costs.) A third adjustment discussed below (paragraph (d)) could be warranted if the quality of your lease production differs from that of the oil you exchanged at any intermediate point (for example, due to commingling at intermediate locations). This last adjustment would be based on pipeline quality bank premia or penalties, but only if such quality banks exist at intermediate commingling points before your oil reaches the market center or alternate disposal point.

For example, Company A transports its production from a platform in the Gulf of Mexico to an intermediate point under an arm's-length transportation contract for $0.50 per barrel. Company A then enters into an arm's-length exchange agreement between the intermediate point and the market center at St. James, Louisiana. Company A then refines the oil it receives at the market center, so it would have to determine value using an index price under § 206.103. The arm's-length exchange agreement between the intermediate point and St. James contains a location/quality differential of $0.10 per barrel. The average of the daily mean spot prices for St. James (the market center nearest the lease with crude oil most similar in quality to Company A's oil) is $20.00 per barrel for deliveries during the production month. The value of Company A's production at the lease would be $19.40 ($20.00—$0.10—$0.50) per barrel.

Under paragraph 206.112(a), you would have to determine the differentials from each of your arm's-length exchange agreements applicable to the exchanged oil. Therefore, for example, if you exchange 100 barrels of production under two separate arm's-length exchange agreements for 60 barrels and 40 barrels respectively, you would separately determine the location/quality differential under each of those exchange agreements, and

apply each differential to the corresponding index price.

As another example, if you produce 100 barrels and exchange that 100 barrels three successive times under arm's-length agreements to obtain oil at a final destination, you would total the three adjustments from those exchanges to determine the adjustment under this subparagraph. (If one of the three exchanges were not at arm's length, you would have to request MMS approval under paragraph (b) for the location/quality adjustment for that exchange to determine the total location/quality adjustment for the three exchanges.) You also could have a combination of these examples.

Proposed paragraph 206.112(b) addresses cases where your exchange agreement is not at arm's-length. In that case, you must request approval from MMS for any location/quality adjustment.

Paragraph 206.112(c) would address cases where you transport your production directly to a market center or to an alternate disposal point (for example, your refinery), and establish value based on index prices under § 206.103.

In the case of transportation directly to a refinery, you would deduct from the index price your actual costs of transporting production from the lease to the refinery with the costs determined under §§ 206.110 or 206.111 and any quality adjustments determined by pipeline quality banks under paragraph 206.112(d). The index pricing point would be the one nearest the lease.

For example, a lessee or its affiliate in the Gulf of Mexico might transport its production directly to a refinery on the eastern coast of Texas and not to an index pricing point. Because that production is not sold at arm's length, the lessee would have to base value on the average of the daily mean spot prices for St. James, less actual costs of transporting the oil to the refinery and any quality adjustments from the lease to the refinery.

Likewise, if a lessee or its affiliate transports Wyoming sour crude oil directly to its refinery in Salt Lake City, Utah, and values the oil based on paragraph 206.103(b)(3), the lessee would have to base value on the average of the daily Cushing spot prices, less the actual cost of transporting the oil to Salt Lake City and any quality adjustments between the lease and the refinery.

When production is moved directly to a refinery and value must be established using an index, issues arise because the refinery generally is not located at an index pricing point. Consequently, the lessee does not incur actual costs to transport production to an index pricing point, and in any event, the production is not sold at arm's length at that point. The principle underlying the rules and cases granting allowances for transportation costs is that the lessee is not required to transport production to a market remote from the lease or field at its own expense. When the lessee sells production at a remote market, the costs of transporting to that market are deductible from value at that market to determine the value of the production at or near the lease. Where sales occur only at or near the lease, the question of a transportation allowance, as that term always has been understood, does not arise. However, because the lease and the index pricing point may be distant from one another, there is a difference in the value of the production between the index pricing point and the lease location. The question becomes how to determine or how best to approximate that difference in value.

In theory, one solution would be for MMS to try to derive what it would cost a lessee to move production from the lease to the index pricing point. There are, in MMS's view, several problems with such an approach. First, it would require a burdensome information collection from industry and impose substantial information collection costs on many parties to whom the resulting calculation may never be relevant. Second, in many cases it may well not be possible to obtain information on which to base such a calculation. In many instances, it is likely that no production from the lease or field is transported to the index pricing point that applies under § 206.103. Consequently, in such cases there would be no useful data on which such a cost derivation could be based.

Another possible solution, in theory, would be for MMS to derive a location adjustment between the index pricing point and the refinery. This might be possible if, for example, there are arm's-length exchanges of significant volumes of oil between the index pricing point and the refinery, and if the exchange agreements provide for location adjustments that can be separated from quality adjustments. But establishing such location adjustments on any scale again would require a burdensome information collection effort. MMS also anticipates that in many cases there would be no useful data from which to derive a location adjustment.

MMS therefore believes that the best and most practical proxy method for determining the difference in value between the lease and the index pricing point is to use the index price as value at the refinery, and then allow the lessee to deduct the actual costs of moving the production from the lease to the refinery. This is not a ''transportation allowance'' as that term is commonly understood, but rather is part of the methodology for determining the difference in value due to the location difference between the lease and the index pricing point. Nevertheless, it is appropriate to include this deduction for situations in which index pricing is used.

MMS included this same method in the January 1997 proposal and did not receive any suggestions for alternative methods. We received few comments on this issue in response to the February 1998 proposal. However, one State commented that this method could result in calculation of inappropriate differentials. Absent better alternatives, MMS believes this method is the best and most reasonable way to calculate the differences in value due to location when production is not actually moved from the lease to an index pricing point.

However, if a lessee believes that applying the index price nearest the lease to production moved directly to a refinery results in an unreasonable value based on circumstances of the lessee's production, paragraph 206.103(e) would allow MMS to approve an alternative method if the lessee could demonstrate the market value at the refinery. Although we received a few comments that MMS should not allow such requests, MMS believes it should leave this opportunity open for those limited cases where the procedure discussed above may be shown to be inappropriate. MMS would do a thorough review and analysis of any such requests and would only approve them where the proper alternative value or procedure has been clearly demonstrated.

It would be the lessee's burden to provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence could include, but not be limited to: (1) Costs of acquiring other crude oil at or for the refinery; (2) how adjustments for quality, location, and transportation were factored into the price paid for the other oil; (3) the volumes acquired for the refinery; and (4) other appropriate evidence or documentation that MMS would require. If MMS approved an alternative value representing market value at the refinery, there would be no deduction for the costs of transporting the oil to the refinery unless specifically identified in the Director's approval. Whether any quality adjustment is available would depend on whether the oil passes through a pipeline quality

bank or if an arm's-length exchange agreement used to get oil to the refinery contains a separately-identifiable quality adjustment.

Paragraph 206.112(c) would also cover situations where you transport your oil directly to an MMS-identified market center. To arrive at the royalty value, you would adjust the index price by your actual costs of transportation under §§ 206.110 and 206.111. A second adjustment discussed below (paragraph (d)) may be warranted if the quality of your lease production differs from the quality of the oil at the market center. This adjustment would be based on pipeline quality bank premia or penalties, but only if such quality banks exist at intermediate commingling points before your oil reaches the market center.

For example, Company A transports its production from a platform in the Gulf of Mexico to St. James, Louisiana, under a non-arm's-length transportation contract with its affiliate. The actual cost of transporting production under § 206.111 is $0.50 per barrel. The average of the daily spot prices at St. James is $20.00 per barrel for deliveries during the production month. The value of Company A's production at the lease would be $19.50 ($20.00—$0.50) per barrel.

In the February 1998 proposal at paragraph 206.112(e), and in this proposal at paragraph 206.112(d), MMS added a separate adjustment to reflect quality differences based on quality banks between your lease and an alternate disposal point or market center applicable to your lease. You would make these quality adjustments according to the pipeline quality bank specifications and related premia or penalties that may apply in your specific situation. If no pipeline quality bank applies to your production, then you would not take this quality adjustment. Likewise, if a quality adjustment is already contained in an arm's-length exchange agreement from the lease to the market center, you could not also claim a pipeline quality bank adjustment from the lease to an intermediate point or the market center. MMS believes this additional adjustment would more accurately reflect actual quality adjustments made by buyers and sellers.

Also, in the absence of a quality bank, the proposal does not provide for any adjustments for quality differences between the indexed crude oil and the oil produced at the lease. MMS intentionally limited such adjustments only to those cases where a quality bank applies to the lessee's production. MMS does not want to be in a position of permitting quality adjustments where they may not be warranted. Further, quality adjustments would be reflected in the location differentials applied by lessees from their arm's-length exchange agreements.

In this proposal, paragraph 206.112(e) contains language from proposed paragraph 206.112(f) of the February 1998 proposal. It states that the term ''market center'' means Cushing, Oklahoma, when determining location/quality differentials and transportation allowances for production from leases in the Rocky Mountain Region.

Paragraph 206.112(f) of this proposal addresses situations where you may not have access to differentials between the lease and the alternate disposal point or market center, or you may not have access to the actual transportation costs from the lease to the alternate disposal point or market center. In such cases, which should be infrequent, MMS would permit you to request approval for a transportation allowance or quality adjustment. In determining the allowance for transportation from the lease to the alternate disposal point or market center, MMS would look to transportation costs and quality adjustments reported for other oil production in the same field or area, or to available information for similar transportation situations. Under paragraph 206.112(b), you also would have to request approval from MMS for any location/quality adjustments when you have a non-arm's-length exchange agreement.

In this proposal, we added a new paragraph (g) to § 206.112 to clarify that regardless of how you dispose of your production and which adjustments might otherwise apply, you would not be able to use any transportation or quality adjustment that duplicates all or part of any other adjustment that you use under § 206.112. Moreover, the structure of the proposal is not susceptible to the problem of ''double dipping'' quality adjustments as described by one commenter. Under this proposal, for example, if you disposed of your production under an arm's-length exchange agreement, but transported the oil away from the lease to an intermediate point before giving it in exchange, you would not be able to claim a transportation allowance between the point where you gave the oil in exchange and the point you received oil back in exchange if you used a location differential for the segment between those two points.

This same principle would apply for all adjustments addressed in § 206.112. That is, any time a lessee took one of the listed adjustments, it could not duplicate any portion of that adjustment as part or all of any other adjustment that otherwise would be allowable.

Section 206.113 How Will MMS Identify Market Centers?

Proposed section 206.113 is paragraph 206.105(c)(8) of the January 1997 proposal and Section 206.115 of the February 1998 proposal except that we have eliminated the identification of aggregation points and made minor wording changes. MMS proposes to eliminate the list of aggregation points identified in the January 1997 proposal in conjunction with the elimination of Form MMS–4415.

In the preamble to the January 1997 proposal, MMS listed market centers for purposes of the rule. That list included Guernsey, Wyoming. MMS proposes to eliminate Guernsey as a market center for the reasons given earlier. Also, we received comments that simply using Los Angeles and San Francisco as market centers for ANS pricing purposes was too broad and that multiple, local delivery points in and near these two cities should be included in the market center definition. So, for purposes of this rulemaking, the Los Angeles market center would includes Hines Station, GATX Terminal, and any of the refineries located in Los Angeles County. The San Francisco market center would include Avon, or any of the refineries located in Contra Costa or Solano Counties.

Section 206.114 What Are My Reporting Requirements Under an Arm's-Length Transportation Contract?

Proposed Section 206.114 is paragraph 206.105(c)(1) of the existing rule rewritten in plain English, and is the same as Section 206.116 in the February 1998 proposal.

Section 206.115 What Are My Reporting Requirements Under a Non-Arm's-Length Transportation Contract?

Proposed Section 206.115 is paragraph 206.105(c)(2) of the existing rule rewritten in plain English, except paragraph 206.105(c)(2)(iv) is deleted as described in the preamble to the January 1997 proposal. This also corresponds to Section 206.117 in the February 1998 proposal.

Section 206.116 What Interest and Assessments Apply If I Improperly Report a Transportation Allowance?

Section 206.116 of this proposal is paragraph 206.105(d) of the existing rule rewritten in plain English, and also corresponds to Section 206.119 of the February 1998 proposal.

Section 206.117 What Reporting Adjustments Must I Make for Transportation Allowances?

Section 206.117 of this proposal is paragraph 206.105(e) of the existing rule rewritten in plain English, and corresponds to Section 206.120 of the February 1998 proposal.

Section 206.118 Are Costs Allowed for Actual or Theoretical Losses?

Section 206.118 of this proposal is paragraph 206.105(f) of the existing rule rewritten in plain English, and corresponds to Section 206.121 of the February 1998 proposal. Reference to the FERC- or State regulatory agency-approved tariffs was deleted in the January 1997 proposal, as it is in this proposal. Although we received a comment that actual or theoretical losses are real costs of transportation, this section would simply continue longstanding policy.

Section 206.119 How Are the Royalty Quantity and Quality Determined?

Section 206.119 of this proposal is § 206.103 of the existing rule rewritten in plain English, and corresponds to Section 206.122 of the February 1998 proposal.

Section 206.120 How Are Operating Allowances Determined?

Section 206.120 of this proposal is § 206.106 of the existing rule rewritten in plain English, and corresponds to Section 206.123 of the February 1998 proposal.

V. Procedural Matters

Public Comment Policy

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours and on our Internet site at www.rmp.mms.gov. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

You may also comment via the Internet to www.rmp.mms.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Further Supplementary Proposed Rulemaking Establishing Oil Value for Royalty Due on Federal Leases, 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 David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at www.rmp.mms.gov. You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385.

Executive Order 12866

In accordance with the criteria in Executive Order 12866, this further supplementary proposed rule is not an economically significant regulatory action. The Office of Management and Budget (OMB) has made the determination under Executive Order 12866 to review this further supplementary proposed rule because it raises novel legal or policy issues.

This further supplementary proposed rule would not have an annual effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of Government. We estimate that the economic impact of this further supplementary proposed rule would be about $63.5 million. This estimate represents the net impact of the proposal accounting for both estimated costs and benefits. This proposal would not create inconsistencies with other agencies' actions and would not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

The Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a Small Entity Compliance Guide is not required. This proposed rule would not affect a substantial number of small businesses. Approximately 800 businesses pay royalties to MMS on oil produced from Federal leases. MMS believes only 45 of the 800 total payors would pay additional royalties under this proposed rule. We further believe that only nine of those 45 payors are small businesses as defined by the U.S. Small Business Administration. MMS further estimates that 97 percent of the remaining 755 payors, or 732, would be considered small businesses. The nine payors that we consider small businesses that would be affected by the rule make up less than 1.15 percent of all the payors reporting to MMS on oil produced from Federal leases and less than 1.25 percent of all the small businesses reporting to MMS on oil produced from Federal leases. A Regulatory Analysis is available upon request.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This further supplementary proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Would not have an annual effect on the economy of $100 million or more;

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(c) Would 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.

Unfunded Mandates Reform Act of 1995

This rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule would not change the relationship between MMS, and State, local, or tribal governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Executive Order 12630

MMS received a comment on the February 1998 proposal that the proposed rule deprives lessees of their constitutionally protected property rights when royalties are paid based on a higher than actual lease sales price. This is a price that the lessee would find impossible to actually realize because it includes returns on investments and on downstream marketing profits. The commenter asserted that because such a taking would occur if the rule is approved, MMS must prepare a Takings Implication Assessment pursuant to Executive Order 12630.

The guidelines under Executive Order 12630 require a Federal agency to justly compensate a private property owner if private property is taken for public use. Disagreements over methods of valuing production for royalty purposes do not change the property relationship

between a lessee and the Federal lessor, and do not operate to deprive the lessee of any property interest. Even if a particular valuation method is held to be unlawful or unauthorized, the remedy is to overturn the unauthorized agency action. This does not have constitutional takings implications.

In accordance with Executive Order 12630, the rule would not have significant takings implications. This rule would not impose conditions or limitations on the use of any private property; consequently, a takings implication assessment is not required.

Executive Order 13132 (Federalism)

In accordance with Executive Order 13132, this further supplementary proposed rule does not have Federalism implications. The management of Federal leases is the responsibility of the Secretary of the Interior. Royalties collected from Federal leases are shared with State governments on a percentage basis as prescribed by law. This further supplementary proposed rule would not alter any lease management or royalty sharing provisions. It would determine the value of production for royalty computation purposes only. This further supplementary proposed rule would not impose costs on States or localities. Costs associated with the management, collection and distribution of royalties to States and localities are currently shared on a revenue receipt basis. This further supplementary proposed rule would not alter that relationship.

Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, we are soliciting comments on information collections which are associated with this further supplementary proposed rulemaking establishing oil value for royalty due on federal leases. Written comments should be received on or before January 31, 2000.

If you wish to comment, please send your comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (OMB Control Number 1010–NEW), 725 17th Street, NW, Washington, D.C. 20503.

You should also send copies of these comments to us. You may mail comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, CO 80225–0165. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

Section 3506(c)(2)(A) of the Paperwork Reduction 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.

For all of the following information collections, we estimate that there will be 45 respondents who will submit 85 responses. The frequency of response varies by rulemaking section. We estimate the annual proposed burden to be 17,711.5 hours. Based on $50 per hour, the total cost would be $885,575. For estimating the burden on industry, we divided the information collection requirements of the further supplementary proposed rule into five areas. A table for each of the areas and specific details follow:

a. Proper Valuation of Oil Not Sold at Arm's-Length

30 CFR 206, subpart D	Reporting & recordkeeping requirements	Frequency	Number of respondents	Burden	Annual burden hours
206.103	Calculate value of oil not sold at arm's-length.	Monthly	45	Category 1—222.5 hours; Category 2—116 hours; Category 3—31.25 hours.	4,231.5

For the reporting requirements associated with Section 206.103, we estimate that there are 45 respondents (lessees of Federal oil leases) that will be required to perform certain calculations and adjustments monthly. We estimate that the total initial burden for all lessees without arm's-length transactions is 4,231.5 hours at a cost of $211,575.

We anticipate that companies would have to sort through their exchange agreement contracts before the relevant ones can be compiled and the required information extracted and used in their royalty computations. We believe the further supplementary proposed rule would impact approximately 45 Federal oil lessees that would be required to use index pricing. For purposes of estimating the burden impact of this further supplementary proposed rule, we have categorized these lessees into three categories:

Category 1 lessees are companies with over 30 million barrels of annual production (this included 13 Federal lessees from our impact analysis).

Category 2 lessees are companies with annual domestic production between 10 and 30 million barrels (this included four Federal lessees from our impact analysis).

Category 3 lessees are companies with less than 10 million barrels of annual domestic production (this included 28 Federal lessees from our impact analysis).

We estimate that Category 1 lessees each would have approximately 1,000 exchange agreement contracts to review to identify the relevant contracts needed for proper valuation under this further supplementary proposed rule. Of those contracts, we estimate that each company would have to use 250 exchange agreements in its royalty reporting. We estimate that the reporting burden for a Category 1 company is 222.5 hours, including 80 hours to aggregate the exchange agreement contracts to a central location, 80 hours to sort and identify the relevant ones, and 62.5 additional hours to extract the relevant information and apply it in reporting royalties. We estimate the total reporting burden for the 13 Category 1 companies would be 2,892.5 hours (222.5 hours x 13 companies), including recordkeeping; using a per-hour cost of $50, the total cost would be $144,625.

We estimate that Category 2 lessees each would have approximately 250

exchange agreement contracts to review to identify the relevant contracts needed for valuation under this further supplementary proposed rule. Of those contracts, we estimate that each Category 2 company would have to use 63 exchange agreements. We estimate that the reporting burden for a Category 2 company would be 116 hours, including 60 hours to aggregate the exchange agreement contracts to a central location, 40 hours to sort them, and 16 additional hours to extract the relevant information and apply it in reporting royalties. For the 4 Category 2 companies, we estimate the total burden would be 464 hours (116 hours x 4 companies), including recordkeeping; using a per-hour cost of $50, the total cost would be $23,200.

We estimate that Category 3 lessees each would have approximately 50 exchange agreements to review to identify the relevant contracts needed for valuation under this further supplementary proposed rule. Of those contracts, we estimate that each Category 3 company would have to use 13 exchange agreements. We estimate that the burden for each Category 3 company would be 31.25 hours, including 20 hours to aggregate the exchange agreement contracts to a central location, 8 hours to sort them, and 3.25 additional hours to extract the relevant information and apply it in reporting royalties. For the 28 Category 3 companies, we estimate that the burden would be 875 hours (31.25 hours x 28 companies), including recordkeeping; using a per-hour cost of $50, the total cost would be $43,750.

We expect the annual burden to decline somewhat as industry becomes more familiar with the proposed valuation requirements.

b. Approval of Benchmarks in the Rocky Mountain Region

30 CFR 206, subpart D	Reporting & recordkeeping requirements	Frequency	Number of responses	Burden (hours)	Annual burden hours
206.103(b)(1)	Obtain MMS approval for tendering program	1–2 annually	2	400	800
206.103(b)(4)	Obtain MMS approval for alternative valuation methodology.	1–2 annually	2	400	800

For the reporting requirements related to MMS approval of using the benchmarks, we estimate that there will be two responses for each of the two reporting requirements. On occasion, they will be required to submit requests to us in writing.

We anticipate that a lessee will undertake the following four steps in the formulation of specifics surrounding a tendering program or alternate valuation strategy: (1) formulation of valuation methodology: 100 hours, (2) economic evaluation of methodology: 100 hours, (3) legal review of methodology: 150 hours, and (4) presentation to MMS: 50 hours, for a total of 400 hours.

We anticipate four requests a year for an annual burden of 1,600 hours, including recordkeeping. Based on a per-hour cost of $50, we estimate that the cost to industry is $80,000.

c. Requirements Related to Requested Valuation Determinations and Approval of Location/Quality Adjustments From MMS

30 CFR 206, subpart D	Reporting & recordkeeping requirements	Frequency	Number of responses	Burden (hours)	Annual burden hours
206.107(a)(1)–(6)	Request a value determination from MMS	1–2 monthly	8	330	2,640
206.112(b)	Request MMS approval for location/quality adjustment under non-arm's-length exchange agreements.	1–2 monthly	8	330	2,640
206.112(f)	Request MMS for location/quality adjustment when information is not available.	1–2 monthly	8	330	2,640

We anticipate that the companies may request guidance on how royalty statutes, regulations, administrative decisions, and policies apply to a specific set of facts. Their requests would have to: (1) be in writing; (2) identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases; (3) completely explain all relevant facts. They must inform MMS of any changes to relevant facts that occur before MMS responds to their request; (4) include copies of all relevant documents; (5) provide their analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and (6) suggest their proposed valuation method.

For the above written requests, we estimate that there will be eight responses annually for each of the reporting requirements. We estimate the annual burden for each of these is 2,640 hours, including recordkeeping. Based on a per-hour cost of $50, we estimate the cost to industry is $132,000. The total burden is estimated at 7,920 hours and $396,000.

d. Requirements Related to Special Requests Due to Unique Circumstances

30 CFR 206, subpart D	Reporting & recordkeeping requirements	Frequency	Number of responses	Burden (hours)	Annual burden hours
206.103(e)(1) and (2)(i)–(iv).	Obtain MMS approval to use value determined at refinery.	1–2 annually	2	330	660
206.110(b)(2)	Propose transportation cost allocation method to MMS when transporting more than one liquid product under an arm's-length contract.	1–2 annually	2	330	660

30 CFR 206, subpart D	Reporting & recordkeeping requirements	Frequency	Number of responses	Burden (hours)	Annual burden hours
206.110(c)(1) and (3)	Propose transportation cost allocation method to MMS when transporting gaseous and liquid products under an arm's-length contract.	1–2 annually	2	330	660
206.111(g) and (g)(1)	Elect actual transportation cost method and depreciation method for non-arm's-length transportation allowances.	1–2 annually	2	330	660
206.111(i)(2)	Propose transportation cost allocation method to MMS when transporting more than one liquid product under a non-arm's-length contract.	1–2 annually	2	330	660
206.111(j)(1) and (3)	Propose transportation cost allocation method to MMS when transporting gaseous and liquid product under a non-arm's-length contract..	1–2 annually	2	330	660

There are several provisions in the further supplementary proposed rule that allow the lessee to propose some special consideration because the existing provisions of the rule may not precisely fit their situation. Like the written requests outlined above, their requests would have to: (1) be in writing; (2) identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases; (3) completely explain all relevant facts. They must inform MMS of any changes to relevant facts that occur before MMS responds to their request; (4) include copies of all relevant documents; (5) provide their analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and (6) suggest their proposed valuation method.

For the reporting requirements related to special requests because of unique circumstances, we estimate that there will be two responses for each of the six situations above. We estimate the annual burden for each of these is 660 hours, including recordkeeping. Based on a per-hour cost of $50, we estimate the cost to industry is $33,000. The total burden is estimated to be 3,960 hours and $198,000.

e. Currently Approved Information Collections

30 CFR 206, subpart D	Reporting & recordkeeping requirements	Frequency	Number of responses	Burden (hours)	Annual burden hours
206.105	Retain all records showing how value was determined.	Burden covered under OMB Control No. 1010–0061.			
206.109(c)(2)	Request to exceed regulatory limit—Form MMS–4393.	Burden covered under OMB Control No. 1010–0095.			
206.114 and 115(a)	Report a separate line for transportation allowances—Form MMS–2014.	Burden covered under OMB Control No. 1010–0022.			
206.114 and 115(c)	Submit transportation documents upon MMS request.	Burden covered under OMB Control No. 1010–0061.			

National Environmental Policy Act of 1969

This rule would not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

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 rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with this clarity? (3) Does the format of the 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 ''§'' and a numbered heading; for example § 206.100.) (5) Is the description of the rule in the ''Supplementary Information'' section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of 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: Exsec@ios.doi.gov.

List of Subjects 30 CFR Part 206

Coal, Continental shelf, Geothermal energy, Government contracts, Indians—lands, Mineral royalties, Natural gas, Petroleum, Pubic lands—mineral resources, Reporting and recordkeeping requirements.

Dated December 22, 1999.

Sylvia V. Baca,

Assistant Secretary for Land and Minerals Management.

For the reasons given in the preamble, 30 CFR Part 206 is proposed to be amended as set forth below:

PART 206—PRODUCT VALUATION

1. The authority citation for Part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*; 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. Subpart C—Federal Oil is revised to read as follows:

Subpart C—Federal Oil

Sec.

206.100 What is the purpose of this subpart?
206.101 Definitions.

206.102 How do I calculate royalty value for oil that I or my affiliate sell(s) under an arm's-length contract?
206.103 How do I value oil that is not sold under an arm's-length contract?
206.104 What index price publications are acceptable to MMS?
206.105 What records must I keep to support my calculations of value under this subpart?
206.106 What are my responsibilities to place production into marketable condition and to market production?
206.107 How do I request a value determination?
206.108 Does MMS protect information I provide?
206.109 When may I take a transportation allowance in determining value?
206.110 How do I determine a transportation allowance under an arm's-length transportation contract?
206.111 How do I determine a transportation allowance under a non-arm's-length transportation arrangement?
206.112 What adjustments and transportation allowances apply when I value oil using index pricing?
206.113 How will MMS identify market centers?
206.114 What are my reporting requirements under an arm's-length transportation contract?
206.115 What are my reporting requirements under a non-arm's-length transportation contract?
206.116 What interest and assessments apply if I improperly report a transportation allowance?
206.117 What reporting adjustments must I make for transportation allowances?
206.118 Are costs allowed for actual or theoretical losses?
206.119 How are the royalty quantity and quality determined?
206.120 How are operating allowances determined?

Subpart C—Federal Oil

§ 206.100 What is the purpose of this subpart?

(a) This subpart applies to all oil produced from Federal oil and gas leases onshore and on the Outer Continental Shelf (OCS). It explains how you as a lessee must calculate the value of production for royalty purposes consistent with the mineral leasing laws, other applicable laws, and lease terms. If you are a designee and if you dispose of production on behalf of a lessee, the terms ''you'' and ''your'' in this subpart refer to you. If you are a designee and only report for a lessee, and do not dispose of the lessee's production, references to ''you'' and ''your'' in this subpart refer to the lessee and not the designee. Accordingly, you as a designee must determine and report royalty value for the lessee's oil by applying the rules in this subpart to the lessee's disposition of its oil.

(b) If the regulations in this subpart are inconsistent with:

(1) A Federal statute;

(2) A settlement agreement between the United States and a lessee resulting from administrative or judicial litigation; or

(3) An express provision of an oil and gas lease subject to this subpart, then the statute, settlement agreement, or lease provision will govern to the extent of the inconsistency.

(c) MMS may audit and adjust all royalty payments.

§ 206.101 Definitions.

The following definitions apply to this subpart:

Affiliate means a person who controls, is controlled by, or is under common control with another person. For purposes of this subpart:

(1) Ownership or common ownership of more than 50 percent of the voting securities, or instruments of ownership, or other forms of ownership, of another person constitutes control. Ownership of less than 10 percent constitutes a presumption of noncontrol that MMS may rebut.

(2) If there is ownership or common ownership of between 10 and 50 percent of the voting securities or instruments of ownership, or other forms of ownership, of another person, MMS will consider the following factors in determining whether there is control under the circumstances of a particular case:

(i) The extent to which there are common officers or directors;

(ii) With respect to the voting securities, or instruments of ownership, or other forms of ownership,

(A) The percentage of ownership or common ownership;

(B) The relative percentage of ownership or common ownership compared to the percentage(s) of ownership by other persons;

(C) Whether a person is the greatest single owner; and

(D) Whether there is an opposing voting bloc of greater ownership;

(iii) Operation of a lease, plant, or other facility;

(iv) The extent of participation by other owners in operations and day-to-day management of a lease, plant, or other facility; and

(v) Other evidence of power to exercise control over or common control with another person.

(3) Regardless of any percentage of ownership or common ownership, relatives, either by blood or marriage, are affiliates.

ANS means Alaska North Slope (ANS).

Area means a geographic region at least as large as the limits of an oil field, in which oil has similar quality, economic, and legal characteristics.

Arm's-length contract means a contract or agreement between independent persons who are not affiliates and who have opposing economic interests regarding that contract. To be considered arm's length for any production month, a contract must satisfy this definition for that month, as well as when the contract was executed.

Audit means a review, conducted under generally accepted accounting and auditing standards, of royalty payment compliance activities of lessees, designees or other persons who pay royalties, rents, or bonuses on Federal leases.

BLM means the Bureau of Land Management of the Department of the Interior.

Condensate means liquid hydrocarbons (normally exceeding 40 degrees of API gravity) recovered at the surface without processing. Condensate is the mixture of liquid hydrocarbons resulting from condensation of petroleum hydrocarbons existing initially in a gaseous phase in an underground reservoir.

Contract means any oral or written agreement, including amendments or revisions, between two or more persons, that is enforceable by law and that with due consideration creates an obligation.

Designee means the person the lessee designates to report and pay the lessee's royalties for a lease.

Exchange agreement means an agreement where one person agrees to deliver oil to another person at a specified location in exchange for oil deliveries at another location. Exchange agreements may or may not specify prices for the oil involved. They frequently specify dollar amounts reflecting location, quality, or other differentials. Exchange agreements include buy/sell agreements, which specify prices to be paid at each exchange point and may appear to be two separate sales within the same agreement. Examples of other types of exchange agreements include, but are not limited to, exchanges of produced oil for specific types of crude oil (e.g., West Texas Intermediate); exchanges of produced oil for other crude oil at other locations (Location Trades); exchanges of produced oil for futures contracts (Exchanges for Physical, or EFP); exchanges of produced oil for similar oil produced in different months (Time Trades); exchanges of produced oil for other grades of oil (Grade Trades); and multi-party exchanges.

Field means a geographic region situated over one or more subsurface oil

and gas reservoirs and encompassing at least the outermost boundaries of all oil and gas accumulations known within those reservoirs, vertically projected to the land surface. State oil and gas regulatory agencies usually name onshore fields and designate their official boundaries. MMS names and designates boundaries of OCS fields.

Gathering means the movement of lease production to a central accumulation or treatment point on the lease, unit, or communitized area, or to a central accumulation or treatment point off the lease, unit, or communitized area that BLM or MMS approves for onshore and offshore leases, respectively.

Gross proceeds means the total monies and other consideration accruing for the disposition of oil produced. Gross proceeds also include, but are not limited to, the following examples:

(1) Payments for services such as dehydration, marketing, measurement, or gathering which the lessee must perform at no cost to the Federal Government;

(2) The value of services, such as salt water disposal, that the producer normally performs but that the buyer performs on the producer's behalf;

(3) Reimbursements for harboring or terminaling fees;

(4) Tax reimbursements, even though the Federal royalty interest may be exempt from taxation;

(5) Payments made to reduce or buy down the purchase price of oil to be produced in later periods, by allocating such payments over the production whose price the payment reduces and including the allocated amounts as proceeds for the production as it occurs; and

(6) Monies and all other consideration to which a seller is contractually or legally entitled, but does not seek to collect through reasonable efforts.

Index pricing means using ANS crude oil spot prices, West Texas Intermediate (WTI) crude oil spot prices at Cushing, Oklahoma, or other appropriate crude oil spot prices for royalty valuation.

Index pricing point means the physical location where an index price is established in an MMS-approved publication.

Lease means any contract, profit-share arrangement, joint venture, or other agreement issued or approved by the United States under a mineral leasing law that authorizes exploration for, development or extraction of, or removal of oil or gas—or the land area covered by that authorization, whichever the context requires.

Lessee means any person to whom the United States issues an oil and gas lease, an assignee of all or a part of the record title interest, or any person to whom operating rights in a lease have been assigned.

Location differential means an amount paid or received under an exchange agreement that results from differences in location between oil delivered in exchange and oil received in the exchange. A location differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell exchange agreement.

Market center means a major point MMS recognizes for oil sales, refining, or transshipment. Market centers generally are locations where MMS-approved publications publish oil spot prices.

Marketable condition means oil sufficiently free from impurities and otherwise in a condition a purchaser will accept under a sales contract typical for the field or area.

MMS-approved publication means a publication MMS approves for determining ANS spot prices, other spot prices, or location differentials.

Netting means reducing the reported sales value to account for transportation instead of reporting a transportation allowance as a separate line on Form MMS–2014.

Oil means a mixture of hydrocarbons that existed in the liquid phase in natural underground reservoirs, remains liquid at atmospheric pressure after passing through surface separating facilities, and is marketed or used as a liquid. Condensate recovered in lease separators or field facilities is considered oil.

Outer Continental Shelf (OCS) means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in Section 2 of the Submerged Lands Act (43 U.S.C. 1301) and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture (when established as a separate entity).

Quality differential means an amount paid or received under an exchange agreement that results from differences in API gravity, sulfur content, viscosity, metals content, and other quality factors between oil delivered and oil received in the exchange. A quality differential may represent all or part of the difference between the price received for oil delivered and the price paid for oil received under a buy/sell agreement.

Rocky Mountain Region means the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Sale means a contract between two persons where:

(1) The seller unconditionally transfers title to the oil to the buyer and does not retain any related rights such as the right to buy back similar quantities of oil from the buyer elsewhere;

(2) The buyer pays money or other consideration for the oil; and

(3) The parties' intent is for a sale of the oil to occur.

Spot price means the price under a spot sales contract where:

(1) A seller agrees to sell to a buyer a specified amount of oil at a specified price over a specified period of short duration;

(2) No cancellation notice is required to terminate the sales agreement; and

(3) There is no obligation or implied intent to continue to sell in subsequent periods.

Tendering program means a company offer of a portion of its crude oil produced from a field or area for competitive bidding, regardless of whether the production is offered or sold at or near the lease or unit or away from the lease or unit.

Transportation allowance means a deduction in determining royalty value for the reasonable, actual costs of moving oil to a point of sale or delivery off the lease, unit area, or communitized area. The transportation allowance does not include gathering costs.

§ 206.102 How do I calculate royalty value for oil that I or my affiliate sell(s) under an arm's-length contract?

(a) The value of oil under paragraphs (a)(1) and (a)(2) of this section is the gross proceeds accruing to the seller under the arm's-length contract, less applicable allowances determined under this subpart, unless you exercise an option provided in paragraph (d)(1) or (d)(2) of this section. See paragraph (c) of this section for exceptions. Use this paragraph (a) to value oil that:

(1) You sell under an arm's-length sales contract; or

(2) You sell or transfer to your affiliate or another person under a non-arm's-length contract and that affiliate or person, or another affiliate of either of them, then sells the oil under an arm's-length contract.

(b) If you sell under multiple arm's-length contracts oil produced from a lease that is valued under paragraph (a) of this section, the value of the oil is the

volume-weighted average of the values established under this section for each contract for the sale of oil produced from that lease.

(c) This paragraph contains exceptions to the valuation rule in paragraph (a) of this section. Apply these exceptions on an individual contract basis.

(1) In conducting reviews and audits, if MMS determines that any arm's-length sales contract does not reflect the total consideration actually transferred either directly or indirectly from the buyer to the seller, MMS may require that you value the oil sold under that contract either under § 206.103 or at the total consideration received.

(2) You must value the oil under § 206.103 if MMS determines that the value under paragraph (a) of this section does not reflect the reasonable value of the production due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor.

(A) MMS will not use this provision to simply substitute its judgment of the market value of the oil for the proceeds received by the seller under an arm's-length sales contract.

(B) The fact that the price received by the seller in an arm's length transaction is less than other measures of market price, such as index prices, is insufficient to establish breach of the duty to market unless MMS finds additional evidence that the seller acted unreasonably or in bad faith in the sale of oil from the lease.

(d)(1) If you enter into an arm's-length exchange agreement, or multiple sequential arm's-length exchange agreements, and following the exchange(s) you or your affiliate sell(s) the oil received in the exchange(s) under an arm's-length contract, then you may use either § 206.102(a) or § 206.103 to value your production for royalty purposes.

(i) If you use § 206.102(a), your gross proceeds are the gross proceeds under your or your affiliate's arm's-length sales contract after the exchange(s) occur(s). You must adjust your gross proceeds for any location or quality differential, or other adjustments, you received or paid under the arm's-length exchange agreement(s). If MMS determines that any arm's-length exchange agreement does not reflect reasonable location or quality differentials, MMS may require you to value the oil under § 206.103. You may not otherwise use the price or differential specified in an arm's-length exchange agreement to value your production.

(ii) When you elect under § 206.102(d)(1) to use § 206.102(a) or § 206.103, you must make the same election for all of your production sold under arm's-length contracts following arm's-length exchange agreements, and you may not change your election more often than once every two years.

(2)(i) If you sell or transfer your oil production to your affiliate and that affiliate or another affiliate then sells the oil under an arm's-length contract, you may use either § 206.102(a) or § 206.103 to value your production for royalty purposes.

(ii) When you elect under § 206.102(d)(2) to use § 206.102(a) or § 206.103, you must make the same election for all of your production that your affiliates resell at arm's length, and you may not change your election more often than once every two years.

(e) If you value oil under paragraph (a) of this section:

(1) MMS may require you to certify that your or your affiliate's arm's-length contract provisions include all of the consideration the buyer must pay, either directly or indirectly, for the oil.

(2) You must base value on the highest price the seller can receive through legally enforceable claims under the contract.

(i) If the seller fails to take proper or timely action to receive prices or benefits it is entitled to, you must pay royalty at a value based upon that obtainable price or benefit. But you will owe no additional royalties unless or until the seller receives monies or consideration resulting from the price increase or additional benefits, if:

(A) The seller makes timely application for a price increase or benefit allowed under the contract;

(B) The purchaser refuses to comply; and

(C) The seller takes reasonable documented measures to force purchaser compliance.

(ii) Paragraph (e)(2)(i) of this section will not permit you to avoid your royalty payment obligation where a purchaser fails to pay, pays only in part, or pays late. Any contract revisions or amendments that reduce prices or benefits to which the seller is entitled must be in writing and signed by all parties to the arm's-length contract.

§ 206.103 How do I value oil that is not sold under an arm's-length contract?

This section explains how to value oil that you may not value under § 206.102.

(a) *Production from leases in California or Alaska.* Value is the average of the daily mean ANS spot prices published in any MMS-approved publication during the calendar month preceding the production month.

(1) To calculate the daily mean spot price, average the daily high and low prices for the month in the selected publication.

(2) Use only the days and corresponding spot prices for which such prices are published.

(3) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(b) *Production from leases in the Rocky Mountain Region* Value your oil under the first applicable of the following paragraphs:

(1) If you have an MMS-approved tendering program, the value of production from leases in the area the tendering program covers is the highest price bid for tendered volumes.

(i) You must offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area under your tendering program.

(ii) You also must receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

(iii) MMS will provide additional criteria for approval of a tendering program in its ''Oil and Gas Payor Handbook.''

(2) Value is the volume-weighted average gross proceeds accruing to the seller under your and your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month. The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month.

(3) Value is the average of the daily mean spot prices published in any MMS-approved publication for WTI crude at Cushing, Oklahoma, for deliveries during the production month.

(i) Calculate the daily mean spot price by averaging the daily high and low prices for the month in the selected publication.

(ii) Use only the days and corresponding spot prices for which such prices are published.

(iii) You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(4) If you demonstrate to MMS's satisfaction that paragraphs (b)(1) through (b)(3) of this section result in an unreasonable value for your production as a result of circumstances regarding

that production, the MMS Director may establish an alternative valuation method.

(c) *Production from leases not located in California, Alaska, or the Rocky Mountain Region.* Value is the average of the daily mean spot prices published in an MMS-approved publication:

(1) For the market center nearest your lease for crude oil similar in quality to that of your production (for example, at the St. James, Louisiana, market center, spot prices are published for both Light Louisiana Sweet and Eugene Island crude oils—their quality specifications differ significantly); and

(2) For deliveries during the production month. Calculate the daily mean spot price by averaging the daily high and low prices for the month in the selected publication. Use only the days and corresponding spot prices for which such prices are published. You must adjust the value for applicable location and quality differentials, and you may adjust it for transportation costs, under § 206.112.

(d) If MMS determines that any of the index prices referenced in paragraphs (a), (b), and (c) of this section are unavailable or no longer represent reasonable royalty value, in any particular case, MMS may establish reasonable royalty value based on other relevant matters.

(e) *What if I transport my oil to my refinery and believe that use of a particular index price is unreasonable?*

(1) You may apply to the MMS Director for approval to use a value representing the market at the refinery if:

(i) You transport your oil directly to your or your affiliate's refinery, or exchange your oil for oil delivered to your or your affiliate's refinery; and

(ii) You must value your oil under this section at an index price; and

(iii) You believe that use of the index price is unreasonable.

(2) You must provide adequate documentation and evidence demonstrating the market value at the refinery. That evidence may include, but is not limited to:

(i) Costs of acquiring other crude oil at or for the refinery;

(ii) How adjustments for quality, location, and transportation were factored into the price paid for other oil;

(iii) Volumes acquired for and refined at the refinery; and

(iv) Any other appropriate evidence or documentation that MMS requires.

(3) If the MMS Director approves a value representing market value at the refinery, you may not take an allowance against that value under § 206.112(b) unless it is included in the Director's approval.

§ 206.104 What index price publications are acceptable to MMS?

(a) MMS periodically will publish in the **Federal Register** a list of acceptable publications based on certain criteria, including but not limited to:

(1) Publications buyers and sellers frequently use;

(2) Publications frequently mentioned in purchase or sales contracts;

(3) Publications that use adequate survey techniques, including development of spot price estimates based on daily surveys of buyers and sellers of ANS and other crude oil; and

(4) Publications independent from MMS, other lessors, and lessees.

(b) Any publication may petition MMS to be added to the list of acceptable publications.

(c) MMS will reference the tables you must use in the publications to determine the associated index prices.

§ 206.105 What records must I keep to support my calculations of value under this subpart?

If you determine the value of your oil under this subpart, you must retain all data relevant to the determination of royalty value. You must be able to show how you calculated the value you reported, including all adjustments for location, quality, and transportation, and how you complied with these rules. Recordkeeping requirements are found at part 207 of this title. MMS may review and audit your data, and MMS will direct you to use a different value if it determines that the reported value is inconsistent with the requirements of this subpart.

§ 206.106 What are my responsibilities to place production into marketable condition and to market production?

You must place oil in marketable condition and market the oil for the mutual benefit of the lessee and the lessor at no cost to the Federal Government. If you use gross proceeds under an arm's-length contract in determining value, you must increase those gross proceeds to the extent that the purchaser, or any other person, provides certain services that the seller normally would be responsible to perform to place the oil in marketable condition or to market the oil.

§ 206.107 How do I request a value determination?

(a) You may request a value determination from MMS regarding any Federal lease oil production. Your request must:

(1) Be in writing;

(2) Identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases;

(3) Completely explain all relevant facts. You must inform MMS of any changes to relevant facts that occur before we respond to your request;

(4) Include copies of all relevant documents;

(5) Provide your analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and

(6) Suggest your proposed valuation method.

(b) MMS will reply to requests expeditiously. MMS may either:

(1) Issue a value determination signed by the Assistant Secretary, Land and Minerals Management; or

(2) Issue a value determination by MMS staff; or

(3) Inform you in writing that MMS will not provide a value determination. Situations in which MMS typically will not provide any value determination include, but are not limited to:

(i) Requests for guidance on hypothetical situations;

(ii) Matters that are inherently factual in nature; and

(iii) Matters that are the subject of pending litigation or administrative appeals.

(c)(1) A value determination signed by the Assistant Secretary, Land and Minerals Management, is binding on both you and MMS until the Assistant Secretary modifies or rescinds it.

(2) After the Assistant Secretary issues a value determination, you must make any adjustments in royalty payments that follow from the determination and, if you owe additional royalties, pay late payment interest under 30 CFR 218.54.

(3) A value determination signed by the Assistant Secretary is the final action of the Department and is subject to judicial review under 5 U.S.C. 701–706.

(d)(1) A value determination issued by MMS staff is binding on MMS and delegated States with respect to the specific situation addressed in the determination unless the MMS Director or the Assistant Secretary modifies or rescinds it.

(2) A value determination by MMS staff is not an appealable decision or order under 30 CFR part 290 subpart B. If you receive an order requiring you to pay royalty on the same basis as the value determination, you may appeal that order under 30 CFR part 290 subpart B.

(e) A change in applicable statute or regulation on which any value determination is based takes precedence

over the value determination, regardless of whether the MMS Director or the Assistant Secretary modifies or rescinds the value determination.

(f) The MMS Director or the Assistant Secretary generally will not modify or rescind a value determination retroactively, unless:

(1) There was a misstatement or omission of material facts; or

(2) The facts subsequently developed are materially different from the facts on which the guidance was based.

(g) MMS may make requests and replies under this section available to the public, subject to the confidentiality requirements under § 206.108.

§ 206.108 Does MMS protect information I provide?

Certain information you submit to MMS regarding valuation of oil, including transportation allowances, may be exempt from disclosure. To the extent applicable laws and regulations permit, MMS will keep confidential any data you submit that is privileged, confidential, or otherwise exempt from disclosure. All requests for information must be submitted under the Freedom of Information Act regulations of the Department of the Interior at 43 CFR part 2.

§ 206.109 When may I take a transportation allowance in determining value?

(a) *What transportation allowances are permitted when I value production based on gross proceeds?* This paragraph applies when you value oil under § 206.102 based on gross proceeds from a sale at a point off the lease, unit, or communitized area where the oil is produced, and the movement to the sales point is not gathering. MMS will allow a deduction for the reasonable, actual costs to transport oil from the lease to the point off the lease under § 206.110 or § 206.111, as applicable. If MMS takes it royalty in kind, see § 208.8.

(b) *What transportation allowances and other adjustments apply when I value production based on index pricing?* If you value oil using an index price under § 206.103, MMS will allow a deduction for certain location/quality adjustments and certain costs associated with transporting oil as provided under § 206.112.

(c) *Are there limits on my transportation allowance?*

(1) Except as provided in paragraph (c)(2) of this section, your transportation allowance may not exceed 50 percent of the value of the oil as determined under this subpart. You may not use transportation costs incurred to move a particular volume of production to reduce royalties owed on production for which those costs were not incurred.

(2) You may ask MMS to approve a transportation allowance in excess of the limitation in paragraph (c)(1) of this section. You must demonstrate that the transportation costs incurred were reasonable, actual, and necessary. Your application for exception (using Form MMS–4393, Request to Exceed Regulatory Allowance Limitation) must contain all relevant and supporting documentation necessary for MMS to make a determination. You may never reduce the royalty value of any production to zero.

(d) *Must I allocate transportation costs?* You must allocate transportation costs among all products produced and transported as provided in §§ 206.110 and 206.111. You must express transportation allowances for oil as dollars per barrel.

(e) *What additional payments may I be liable for?* If MMS determines that you took an excessive transportation allowance, then you must pay any additional royalties due, plus interest under 30 CFR 218.54. You also could be entitled to a credit with interest under applicable rules if you understated your transportation allowance. If you take a deduction for transportation on Form MMS–2014 by improperly netting the allowance against the sales value of the oil instead of reporting the allowance as a separate line item, MMS may assess you an amount under § 206.116.

§ 206.110 How do I determine a transportation allowance under an arm's-length transportation contract?

(a) If you or your affiliate incur transportation costs under an arm's-length transportation contract, you may claim a transportation allowance for the reasonable, actual costs incurred for transporting oil under that contract, except as provided in paragraphs (a)(1) and (a)(2) of this section and subject to the limitation in § 206.109(c). You must be able to demonstrate that your contract is arm's length. You do not need MMS approval before reporting a transportation allowance for costs incurred under an arm's-length contract.

(1) If MMS determines that the contract reflects more than the consideration actually transferred either directly or indirectly from you or your affiliate to the transporter for the transportation, MMS may require that you calculate the transportation allowance under § 206.111.

(2) If MMS determines that the consideration paid under an arm's-length transportation contract does not reflect the reasonable value of the transportation due to either:

(i) Misconduct by or between the parties to the arm's-length contract; or

(ii) Breach of your duty to market the oil for the mutual benefit of yourself and the lessor, then you must calculate the transportation allowance under § 206.111.

(A) MMS will not use this provision to simply substitute its judgment of the reasonable oil transportation costs incurred by you or your affiliate under an arm's-length transportation contract.

(B) The fact that the cost you or your affiliate incur in an arm's length transaction is higher than other measures of transportation costs, such as rates paid by others in the field or area, is insufficient to establish breach of the duty to market unless MMS finds additional evidence that you or your affiliate acted unreasonably or in bad faith in transporting oil from the lease.

(b)(1)(i) If your arm's-length transportation contract includes more than one liquid product, and the transportation costs attributable to each product cannot be determined from the contract, then you must allocate the total transportation costs to each of the liquid products transported.

(ii) Your allocation must use the same proportion as the ratio of the volume of each product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(iii) You may not claim an allowance for the costs of transporting lease production that is not royalty-bearing.

(2) You may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method unless it is not consistent with the purposes of the regulations in this subpart.

(c)(1) If your arm's-length transportation contract includes both gaseous and liquid products, and the transportation costs attributable to each product cannot be determined from the contract, then you must propose an allocation procedure to MMS.

(2) You may use your proposed procedure to calculate a transportation allowance until MMS accepts your cost allocation.

(3) You must submit your initial proposal, including all available data, within three months after the last day of the month for which you propose an allocation procedure.

(d) If your payments for transportation under an arm's-length contract are not on a dollar-per-unit basis, you must convert whatever consideration is paid to a dollar-value equivalent.

(e) If your arm's-length sales contract includes a provision reducing the contract price by a transportation factor, MMS will not consider the transportation factor to be a transportation allowance.

(1) You may use the transportation factor in determining your gross proceeds for the sale of the product.

(2) You must obtain MMS approval before claiming a transportation factor in excess of 50 percent of the base price of the product.

§ 206.111 How do I determine a transportation allowance under a non-arm's-length transportation arrangement?

(a) If you or your affiliate have a non-arm's-length transportation contract or no contract, including those situations where you or your affiliate perform your own transportation services, calculate your transportation allowance based on the reasonable, actual costs provided in this section.

(b) Base your transportation allowance for non-arm's-length or no-contract situations on your or your affiliate's actual costs for transportation during the reporting period, including operating and maintenance expenses, overhead, and either:

(1) Depreciation and a return on undepreciated capital investment under paragraphs (g)(1) and (h) of this section, or

(2) A cost equal to the initial capital investment in the transportation system multiplied by a rate of return under paragraph (g)(2) of this section.

(c) Allowable capital costs are generally those for depreciable fixed assets (including costs of delivery and installation of capital equipment) which are an integral part of the transportation system.

(d) Allowable operating expenses include:

(1) Operations supervision and engineering;

(2) Operations labor;

(3) Fuel;

(4) Utilities;

(5) Materials;

(6) Ad valorem property taxes;

(7) Rent;

(8) Supplies; and

(9) Any other directly allocable and attributable operating expense which you can document.

(e) Allowable maintenance expenses include:

(1) Maintenance of the transportation system;

(2) Maintenance of equipment;

(3) Maintenance labor; and

(4) Other directly allocable and attributable maintenance expenses which you can document.

(f) Overhead directly attributable and allocable to the operation and maintenance of the transportation system is an allowable expense. State and Federal income taxes and severance taxes and other fees, including royalties, are not allowable expenses.

(g) You may use either depreciation and a return on remaining undepreciated capital investment or a return on depreciable capital investment as described in paragraph (b) of this section. After you have elected to use either method for a transportation system, you may not later elect to change to the other alternative without MMS approval.

(1) To compute depreciation, you may elect to use either a straight-line depreciation method based on the life of equipment or on the life of the reserves which the transportation system services, or a unit-of-production method. After you make an election, you may not change methods without MMS approval. You may not depreciate equipment below a reasonable salvage value.

(2) An arm's-length change in ownership of a transportation system will result in a new depreciation schedule for purposes of the allowance calculation. If you or your affiliate purchase an existing transportation system at arm's length, your initial capital investment is equal to your purchase price of the transportation system.

(3) Even after a transportation system, has been depreciated below a value equal to ten percent of your original capital investment, you may continue to include in the allowance calculation a cost equal to ten percent of your initial capital investment in the transportation system multiplied by a rate of return under paragraph (h) of this section.

(4) For transportation facilities first placed in service after March 1, 1988, you may use as a cost an amount equal to your initial capital investment in the transportation system multiplied by the rate of return under paragraph (h) of this section. You may not claim an allowance for depreciation.

(h) The rate of return is the industrial bond yield index for Standard and Poor's BBB rating. Use the monthly average rate published in ''Standard and Poor's Bond Guide'' for the first month of the reporting period for which the allowance applies. Calculate the rate at the beginning of each subsequent transportation allowance reporting period.

(i) Calculate the deduction for transportation costs based on your or your affiliate's cost of transporting each product through each individual transportation system. Where more than one liquid product is transported, allocate costs consistently and equitably to each of the liquid products transported. Your allocation must use the same proportion as the ratio of the volume of each liquid product (excluding waste products with no value) to the volume of all liquid products (excluding waste products with no value).

(1) You may not take an allowance for transporting lease production that is not royalty-bearing.

(2) You may propose to MMS a cost allocation method on the basis of the values of the products transported. MMS will approve the method if it is consistent with the purposes of the regulations in this subpart.

(j)(1) Where both gaseous and liquid products are transported through the same transportation system, you must propose a cost allocation procedure to MMS.

(2) You may use your proposed procedure to calculate a transportation allowance until MMS accepts your cost allocation.

(3) You must submit your initial proposal, including all available data, within three months after the last day of the month for which you request a transportation allowance.

§ 206.112 What adjustments and transportation allowances apply when I value oil using index pricing?

When you use index pricing to calculate the value of production under § 206.103, you must adjust the index price for location and quality differentials and you may adjust it for certain transportation costs, as follows:

(a) If you dispose of your production under one or more arm's-length exchange agreements, then

(1)(i) You must adjust the index price for location/quality differentials. You must determine those differentials from each of your arm's-length exchange agreements applicable to the exchanged oil.

(ii) Therefore, for example, if you exchange 100 barrels of production from a given lease under two separate arm's-length exchange agreements for 60 barrels and 40 barrels respectively, separately determine the location/quality differential under each of those exchange agreements, and apply each differential to the corresponding index price.

(iii) As another example, if you produce 100 barrels and exchange that 100 barrels three successive times under arm's-length agreements to obtain oil at a final destination, total the three adjustments from those exchanges to

determine the adjustment under this paragraph (a)(1)(iii). (If one of the three exchanges was not at arm's length, you must request MMS approval under paragraph (b) of this section for the location/quality adjustment for that exchange to determine the total location/quality adjustment for the three exchanges.) You also could have a combination of these examples.

(2) You may adjust the index price for actual transportation costs, determined under § 206.110 or § 206.111

(i) From the lease to the first point where you give your oil in exchange; and

(ii) From any intermediate point where you receive oil in exchange to another intermediate point where you give the oil in exchange again; and

(iii) From the point where you receive oil in exchange and transport it without further exchange to a market center, or to a refinery that is not at a market center.

(b) For non-arm's-length exchange agreements, you must request approval from MMS for any location/quality adjustment.

(c) If you transport lease production directly to a market center or to an alternate disposal point (for example, your refinery), you may adjust the index price for your actual transportation costs, determined under § 206.110 or § 206.111.

(d) If you adjust for location/quality or transportation costs under paragraph (a), (b), or (c) of this section, also adjust the index price for quality based on premia or penalties determined by pipeline quality bank specifications at intermediate commingling points or at the market center. Make this adjustment only if and to the extent that such adjustments were not already included in the location/quality differentials determined from your arm's-length exchange agreements.

(e) For leases in the Rocky Mountain Region, for purposes of this section, the term ''market center'' means Cushing, Oklahoma, unless MMS specifies otherwise through a document published in the **Federal Register**.

(f) If you cannot determine your location/quality adjustment under paragraph (a) or (c) of this section, you must request approval from MMS for any location/quality adjustment.

(g) You may not use any transportation or quality adjustment that duplicates all or part of any other adjustment that you use under this section.

§ 206.113 How will MMS identify market centers?

MMS periodically will publish in the **Federal Register** a list of market centers. MMS will monitor market activity and, if necessary, add to or modify the list of market centers and will publish such modifications in the **Federal Register**. MMS will consider the following factors and conditions in specifying market centers:

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

(b) Markets served;

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

(d) Simplification; and

(e) Other relevant matters.

§ 206.114 What are my reporting requirements under an arm's-length transportation contract?

You or your affiliate must use a separate line entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur. MMS may require you or your affiliate to submit arm's-length transportation contracts, production agreements, operating agreements, and related documents. Recordkeeping requirements are found at part 207 of this title.

§ 206.115 What are my reporting requirements under a non-arm's-length transportation contract?

(a) You or your affiliate must use a separate line entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur.

(b) For new transportation facilities or arrangements, base your initial deduction on estimates of allowable oil transportation costs for the applicable period. Use the most recently available operations data for the transportation system or, if such data are not available, use estimates based on data for similar transportation systems.

(c) MMS may require you or your affiliate to submit all data used to calculate the allowance deduction. Recordkeeping requirements are found at part 207 of this title.

§ 206.116 What interest and assessments apply if I improperly report a transportation allowance?

(a) If you or your affiliate net a transportation allowance against the royalty value on Form MMS–2014, you will be assessed an amount up to 10 percent of the netted allowance, not to exceed $250 per lease selling arrangement per sales period.

(b) If you or your affiliate deduct a transportation allowance on Form MMS–2014 that exceeds 50 percent of the value of the oil transported without obtaining MMS's prior approval under § 206.109, you must pay interest on the excess allowance amount taken from the date that amount is taken to the date you or your affiliate file an exception request MMS approves.

(c) If you or your affiliate report an erroneous or excessive transportation allowance resulting in an underpayment of royalties, you must pay the additional royalties plus interest under 30 CFR 218.54.

§ 206.117 What reporting adjustments must I make for transportation allowances?

(a) If your or your affiliate's actual transportation allowance is less than the amount you claimed on Form MMS–2014 for each month during the allowance reporting period, you must pay additional royalties plus interest computed under 30 CFR 218.54 from the beginning of the allowance reporting period when you took the deduction to the date you repay the difference.

(b) If the actual transportation allowance is greater than the amount you claimed on Form MMS–2014 for each month during the allowance form reporting period, you are entitled to a credit plus interest under applicable rules.

§ 206.118 Are costs allowed for actual or theoretical losses?

You are allowed a deduction for oil transportation which results from payments (either volumetric or for value) for actual or theoretical losses only under an arm's-length contract. You may not take such a deduction under a non-arm's-length contract.

§ 206.119 How are royalty quantity and quality determined?

(a) Compute royalties based on the quantity and quality of oil as measured at the point of settlement approved by BLM for onshore leases or MMS for offshore leases.

(b) If the value of oil determined under this subpart is based upon a quantity or quality different from the quantity or quality at the point of royalty settlement approved by the BLM for onshore leases or MMS for offshore leases, adjust the value for those differences in quantity or quality.

(c) You may not claim a deduction from the royalty volume or royalty value for actual or theoretical losses. Any actual loss that you may incur before the royalty settlement metering or measurement point is not subject to royalty if BLM or MMS, as appropriate, determines that the loss is unavoidable.

(d) Except as provided in paragraph (b) of this section, royalties are due on 100 percent of the volume measured at the approved point of royalty settlement. You may not claim a reduction in that measured volume for actual losses beyond the approved point of royalty settlement or for theoretical losses that are claimed to have taken place either before or after the approved point of royalty settlement.

§ 206.120 How are operating allowances determined?

MMS may use an operating allowance for the purpose of computing payment obligations when specified in the notice of sale and the lease. MMS will specify the allowance amount or formula in the notice of sale and in the lease agreement.

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Part V

Department of Labor

Office of the Secretary

5 CFR Part 5201
29 CFR Part 0
Supplemental Standards of Ethical Conduct for Employees of the Department of Labor; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

5 CFR Part 5201

29 CFR Part 0

RINs 1290–AA15, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Labor

AGENCY: Office of the Secretary of Labor.
ACTION: Final rule.

SUMMARY: The Department of Labor (Department), with the concurrence of the Office of Government Ethics (OGE), is issuing a final rule for employees of the Department that supplements the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by OGE. The regulations established by the final rule adopt the prior interim regulations as final, with additional technical amendments to the Department's residual agency conduct regulations that reflect changes in underlying law and OGE regulations. The regulations are a necessary supplement to the Standards of Ethical Conduct because they address requirements that are unique to the Department.

EFFECTIVE DATE: This final rule is effective January 31, 2000.

FOR FURTHER INFORMATION CONTACT: David Apol, Office of the Solicitor, Department of Labor, telephone 202–219–8065, FAX 202–219–6896.

SUPPLEMENTARY INFORMATION:

I. Rulemaking History

On August 7, 1992, the Office of Government Ethics published a final rule entitled ''Standards of Ethical Conduct for Employees of the Executive Branch'' (Standards). The Standards, codified as corrected and amended at 5 CFR part 2635 and effective February 3, 1993, establish uniform standards of ethical conduct that apply to all executive branch personnel.

On June 23, 1994, the Department issued a final rule which removed all of the provisions of its Ethics and Conduct Regulations at 29 CFR Part 0 that had been superseded by 5 CFR part 2635 or by OGE's executive branch financial disclosure regulations at 5 CFR part 2634. See 59 FR 32611. The Department preserved those provisions of its Ethics and Conduct Regulations containing regulatory waivers issued under the prior version of 18 U.S.C. 208(b)(2) (1988), and provisions restricting the acquisition or holding of certain financial interests and requiring prior approval of outside employment or activities. These provisions were permitted to continue in effect until superseded, as provided respectively in 5 CFR 2635.402(d)(1) and the notes following 5 CFR 2635.403(a) and 2635.803, as extended by 59 FR 4779–4780, 60 FR 6390–6391, 60 FR 66857–66858, and 61 FR 40950–40952.

Pursuant to E.O. 12674 (54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306) and 5 CFR 2635.105, executive branch agencies, with the concurrence of OGE, were permitted to issue agency-specific supplemental regulations necessary to implement their ethics programs. On November 6, 1996, the Department, with OGE concurrence, issued the interim rule with request for comments, setting forth Supplemental Standards of Ethical Conduct for Employees of the Department of Labor. See 61 FR 57281. The interim rule designated certain components of the Department as separate agencies for the purposes of provisions in the executive branch-wide Standards regarding gifts from outside sources, the receipt of compensation for teaching, speaking or writing, and fundraising in a personal capacity; restricted the outside employment and the holding of certain financial interests by employees of the Mine Safety and Health Administration and by their spouses and minor children; and required employees in the Department's Office of the Inspector General to obtain prior approval for outside employment. The supplemental standards are now codified at 5 CFR part 5201.

The interim rule also repealed 29 CFR 0.735–13, one of the remaining provisions of the Department's Ethics and Conduct Regulations. This provision required prior approval of outside employment or activities. Pursuant to the OGE Standards, this provision was superseded upon issuance of the interim rule. The interim rule also redesignated 29 CFR 0.735–12, the Department's regulatory waiver provision, as § 0.735–2 and inserted a new 29 CFR 0.735–1 cross-referencing the executive branch-wide Standards, the financial disclosure regulations, and the interim rule.

On December 18, 1996, the Office of Government Ethics issued a financial interests final rule, 61 FR 66830–66851 (Part III), as corrected at 62 FR 1361 (January 9, 1997) and further corrected at 62 FR 23127–23128 (April 29, 1997), and which became effective on January 17, 1997. This final rule as codified at 5 CFR part 2640, includes interpretations, and exemption and waiver guidance concerning 18 U.S.C. 208, dealing with official acts affecting a personal financial interest. The rule superseded the regulatory waivers issued by the Department of Labor under the prior 18 U.S.C. 208(b)(2) (1988). See 29 CFR 0.735–2, as redesignated by the Department's prior interim rule.

Amendments to 18 U.S.C. 207 effective January 1, 1991 substantially revised the post-employment restrictions applicable to executive branch employees. As a result, employees terminating Government service on or after that date were no longer subject to the old 18 U.S.C. 207(i) (1988) provision for administrative disciplinary proceedings for possible 18 U.S.C. 207 violations. The Office of Government Ethics issued partial regulations reflecting this change on February 1, 1991 with a retroactive effective date of January 1, 1991. See 5 CFR part 2641.

II. Comments and Amendments to Interim Rule

The Department has received no comments in response to its requests for comments on the interim rule. This final rule, nevertheless, makes a couple of needed further changes in the Department's agency conduct regulations at 29 CFR part 0, as revised in the prior interim rule.

This final rule revokes the regulatory waiver contained in 29 CFR 0.735–2 which has been superseded by the OGE regulations at subpart B of 5 CFR part 2641. The authority citation for part 0 is also being revised to remove reference to the Ethics in Government Act and 18 U.S.C. 207 (1988) and add reference to 18 U.S.C. 208 and 5 CFR part 2640. Moreover, the final rule adds a cross-reference to the conflict of interest regulations at 5 CFR part 2640 in § 0.735–1, and removes an outdated appendix of related statutory authorities which has been superseded by the list of such authorities at 5 CFR 2635.902.

This rule also corrects the applicability provision of the post-employment conflict of interest rule, at 29 CFR 0.737–1, to conform with both the amended 18 U.S.C. 207 (1988) and Office of Government Ethics regulations at 5 CFR part 2641. The final rule will now accurately define the executive branch employees subject to the administrative proceedings section of the previous version of 18 U.S.C. 207 (1988) as those employees terminating Government service on or after July 1, 1979 and prior to January 1, 1991.

III. Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C.

553(b)(3)(B), that good cause exists for waiving public comments on the minor changes being made in this rule. Publication of a proposed rule and solicitation of comments would be neither necessary nor fruitful. This final rule adopts and makes final, with certain revisions, interim regulations that affect only Department of Labor employees or former employees. These additional minor technical amendments bring the Department of Labor's supplemental regulations up-to-date in order to conform with 18 U.S.C. 207 and 208 and Office of Government Ethics regulations.

IV. Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

As Secretary of Labor, I have determined that this regulation is not a ''regulatory action'' under section 3 of Executive Order 12866. Because the rule is limited to agency organization, management and personnel, it falls within the exclusion set forth in section 3(d)(3) of the Executive order. In promulgating this rule, the Department has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of the Executive Order.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not classified as a ''rule'' under the Small Business Regulatory Enforcement Fairness Act of 1996, because it is a rule pertaining to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3)(C).

Regulatory Flexibility Act

As Secretary of Labor, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities because it imposes ethics standards only on Federal employees or former employees and their immediate families. The Secretary of Labor has provided this certification to the Chief Counsel for Advocacy of the Small Business Administration.

Paperwork Reduction Act

As Secretary of Labor, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget thereunder.

List of Subjects in 5 CFR Part 5201 and 29 CFR Part 0:

Conflict of interests, Government employees.

Dated: December 23, 1999.

Alexis M. Herman,

Secretary of Labor.

Approved: December 23, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, the Department of Labor, with the concurrence of the Office of Government Ethics, is adopting the interim rule amending title 5 and amending title 29, subtitle A, of the Code of Federal Regulations, which was published at 61 FR 57281–57287 on November 6, 1996, as a final rule with the following changes:

TITLE 29—LABOR

Subtitle A—Office of the Secretary of Labor

Part 0—[Amended]

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 207 (1988); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR part 2634, part 2635, part 2640.

2. Section 0.735–1 is revised to read as follows:

§ 0.735–1 Cross-references to employee ethical conduct standards, financial disclosure regulations and other ethics regulations.

Employees of the Department of Labor (Department) are subject to the executive branch-wide standards of ethical conduct at 5 CFR part 2635, the Department's regulations at 5 CFR part 5201 which supplement the executive branch-wide standards, the executive branch financial disclosure regulations at 5 CFR part 2634, the conflicts of interest regulations at 5 CFR part 2640, and the post employment regulations at 5 CFR part 2641.

§ 0.735–2 [Removed]

3. Section 0.735–2 is removed.

4. Section 0.737–1 is revised to read as follows:

§ 0.737–1 Applicability.

This subpart is applicable to any former employee of the Department of Labor leaving Government service on or after July 1, 1979 and prior to January 1, 1991.

Appendix A to Part 0—is [Removed]

5. Appendix A to part 0 removed.

[FR Doc. 99–33960 Filed 12–29–99; 8:45 am]

BILLING CODE 4510–23–P

Federal Register

Thursday
December 30, 1999

Part VI

Reader Aids

Cumulative List of Public Laws
106th Congress, First Session

CUMULATIVE LIST OF PUBLIC LAWS

This is a cumulative list of public laws for the 106th Congress, First Session. Other cumulative lists (1993-1998) are available online at http://www.nara.gov/fedreg. Comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408 or send e-mail to info@nara.fedreg.gov.

The List of Public Laws will resume when bills are enacted into public law during the first second session of the One Hundred Sixth Congress, which convenes at noon on Monday, January 24, 2000. The text of laws may be ordered in individual pamphlet form (referred to as ''slip laws'') from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs. Some laws are not yet available online or for purchase.

Public Law	Title	Approved	113 Stat.
106–1	District of Columbia Management Restoration Act of 1999	Mar. 5, 1999	3
106–2	To nullify any reservation of funds during fiscal year 1999 for guaranteed loans under the Consolidated Farm and Rural Development Act for qualified beginning farmers or ranchers, and for other purposes.	Mar. 15, 1999	5
106–3	To deem as timely filed, and process for payment, the applications submitted by the Dodson School Districts for certain Impact Aid payments for fiscal year 1999.	Mar. 23, 1999	6
106–4	Nursing Home Resident Protection Amendments of 1999	Mar. 25, 1999	7
106–5	To extend for 6 additional months the period for which chapter 12 of title 11, United States Code, is reenacted.	Mar. 30, 1999	9
106–6	Interim Federal Aviation Administration Authorization Act	Mar. 31, 1999	10
106–7	To protect producers of agricultural commodities who applied for a Crop Revenue Coverage PLUS supplemental endorsement for the 1999 crop year.	Apr. 1, 1999	12
106–8	Small Business Year 2000 Readiness Act	Apr. 2, 1999	13
106–9	Small Business Investment Improvement Act of 1999	Apr. 5, 1999	17
106–10	To designate the Federal building and United States courthouse located at 251 North Main Street in Winston-Salem, North Carolina, as the ''Hiram H. Ward Federal Building and United States Courthouse''.	Apr. 5, 1999	20
106–11	To designate the United States courthouse located at 316 North 26th Street in Billings, Montana, as the ''James F. Battin United States Courthouse''.	Apr. 5, 1999	21
106–12	To designate the Federal building located at 700 East San Antonio Street in El Paso, Texas, as the ''Richard C. White Federal Building''.	Apr. 5, 1999	22
106–13	To designate the Federal building located at 1301 Clay Street in Oakland, California, as the ''Ronald V. Dellums Federal Building''.	Apr. 5, 1999	23
106–14	Providing for the reappointment of Barber B. Conable, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution.	Apr. 6, 1999	24
106–15	Providing for the reappointment of Dr. Hanna H. Gray as a citizen regent of the Board of Regents of the Smithsonian Institution.	Apr. 6, 1999	25
106–16	Providing for the reappointment of Wesley S. Williams, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution.	Apr. 6, 1999	26
106–17	Women's Business Center Amendments Act of 1999	Apr. 6, 1999	27
106–18	To authorize appropriations for the Coastal Heritage Trail Route in New Jersey, and for other purposes.	Apr. 8, 1999	28
106–19	To make technical corrections with respect to the monthly reports submitted by the Postmaster General on official mail of the House of Representatives.	Apr. 8, 1999	29
106–20	Sudbury, Assabet, and Concord Wild and Scenic River Act	Apr. 9, 1999	30
106–21	To extend the tax benefits available with respect to services performed in a combat zone to services performed in the Federal Republic of Yugoslavia (Serbia/Montenegro) and certain other areas, and for other purposes.	Apr. 19, 1999	34
106–22	Microloan Program Technical Corrections Act of 1999	Apr. 27, 1999	36
106–23	To designate the Federal building located at 310 New Bern Avenue in Raleigh, North Carolina, as the ''Terry Sanford Federal Building''.	Apr. 27, 1999	38
106–24	To authorize the establishment of a disaster mitigation pilot program in the Small Business Administration.	Apr. 27, 1999	39
106–25	Education Flexibility Partnership Act of 1999	Apr. 29, 1999	41
106–26	To authorize the President to award a gold medal on behalf of the Congress to Rosa Parks in recognition of her contributions to the Nation.	May 4, 1999	50
106–27	To designate the Federal building located at 709 West 9th Street in Juneau, Alaska, as the ''Hurff A. Saunders Federal Building''.	May 13, 1999	52
106–28	To designate the United States courthouse located at 401 South Michigan Street in South Bend, Indiana, as the ''Robert K. Rodibaugh United States Bankruptcy Courthouse''.	May 13, 1999	53
106–29	To designate the North/South Center as the Dante B. Fascell North-South Center	May 21, 1999	54
106–30	To amend the Peace Corps Act to authorize appropriations for fiscal years 2000 through 2003 to carry out that Act, and for other purposes.	May 21, 1999	55
106–31	1999 Emergency Supplemental Appropriations Act	May 21, 1999	57
106–32	To declare a portion of the James River and Kanawha Canal in Richmond, Virginia, to be nonnavigable waters of the United States for purposes of title 46, United States Code, and the other maritime laws of the United States.	June 1, 1999	115
106–33	To designate the Federal building and United States courthouse located at 18 Greenville Street in Newnan, Georgia, as the ''Lewis R. Morgan Federal Building and United States Courthouse''.	June 7, 1999	117
106–34	Fastener Quality Act Amendments Act of 1999	June 8, 1999	118
106–35	Western Hemisphere Drug Elimination Technical Corrections Act	June 15, 1999	126
106–36	Miscellaneous Trade and Technical Corrections Act of 1999	June 25, 1999	127
106–37	Y2K Act	July 20, 1999	185
106–38	National Missile Defense Act of 1999	July 22, 1999	205
106–39	To correct errors in the authorizations of certain programs administered by the National Highway Traffic Safety Administration.	July 28, 1999	206
106–40	Chemical Safety Information, Site Security and Fuels Regulatory Relief Act	Aug. 5, 1999	207

Public Law	Title	Approved	113 Stat.
106–41	Lake Oconee Land Exchange Act	Aug. 5, 1999	215
106–42	Patent Fee Integrity and Innovation Protection Act of 1999	Aug. 5, 1999	217
106–43	Trademark Amendments Act of 1999	Aug. 5, 1999	218
106–44	To make technical corrections in title 17, United States Code, and other laws	Aug. 5, 1999	221
106–45	To preserve the cultural resources of the Route 66 corridor and to authorize the Secretary of the Interior to provide assistance.	Aug. 10, 1999	224
106–46	To clarify the quorum requirement for the Board of Directors of the Export-Import Bank of the United States.	Aug. 11, 1999	227
106–47	To amend the Agricultural Adjustment Act of 1938 to release and protect the release of tobacco production and marketing information.	Aug. 13, 1999	228
106–48	To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the ''Thomas S. Foley United States Courthouse'', and the plaza at the south entrance of such building and courthouse as the ''Walter F. Horan Plaza''.	Aug. 17, 1999	230
106–49	Construction Industry Payment Protection Act of 1999	Aug. 17, 1999	231
106–50	Veterans Entrepreneurship and Small Business Development Act of 1999	Aug. 17, 1999	233
106–51	Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999	Aug. 17, 1999	252
106–52	Military Construction Appropriations Act, 2000	Aug. 17, 1999	259
106–53	Water Resources Development Act of 1999	Aug. 17, 1999	269
106–54	For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes.	Aug. 17, 1999	398
106–55	To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes.	Aug. 17, 1999	401
106–56	Organ Donor Leave Act	Sept. 24, 1999	407
106–57	Legislative Branch Appropriations Act, 2000	Sept. 29, 1999	408
106–58	Treasury and General Government Appropriations Act, 2000	Sept. 29, 1999	430
106–59	To extend through the end of the current fiscal year certain expiring Federal Aviation Administration authorizations.	Sept. 29, 1999	482
106–60	Energy and Water Development Appropriations Act, 2000	Sept. 29, 1999	483
106–61	Congratulating and commending the Veterans of Foreign Wars	Sept. 29, 1999	504
106–62	Making continuing appropriations for the fiscal year 2000, and for other purposes	Sept. 30, 1999	505
106–63	To reauthorize the Congressional Award Act	Oct. 1, 1999	510
106–64	To extend energy conservation programs under the Energy Policy and Conservation Act through March 31, 2000.	Oct. 5, 1999	511
106–65	National Defense Authorization Act for Fiscal Year 2000	Oct. 5, 1999	512
106–66	To direct the Secretaries of Agriculture and Interior to convey certain lands in San Juan County, New Mexico, to San Juan College.	Oct. 6, 1999	977
106–67	To amend Public Law 105-188 to provide for the mineral leasing of certain Indian lands in Oklahoma.	Oct. 6, 1999	979
106–68	To make certain technical and other corrections relating to the Centennial of Flight Commemoration Act (36 U.S.C. 143 note; 112 Stat. 3486 et seq.).	Oct. 6, 1999	981
106–69	Department of Transportation and Related Agencies Appropriations Act, 2000	Oct. 9, 1999	986
106–70	To extend for 9 additional months the period for which chapter 12 of title 11, United States Code, is reenacted.	Oct. 9, 1999	1031
106–71	Missing, Exploited, and Runaway Children Protection Act	Oct. 12, 1999	1032
106–72	To designate the Federal building located at 300 East 8th Street in Austin, Texas as the ''J.J. 'Jake' Pickle Federal Building''.	Oct. 19, 1999	1045
106–73	To restore motor carrier safety enforcement authority to the Department of Transportation	Oct. 19, 1999	1046
106–74	Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000.	Oct. 20, 1999	1047
106–75	Making further continuing appropriations for the fiscal year 2000, and for other purposes	Oct. 21, 1999	1125
106–76	Black Canyon of the Gunnison National Park and Gunnison Gorge National Conservation Area Act of 1999.	Oct. 21, 1999	1126
106–77	To designate the Federal building and United States courthouse located at the intersection of Comercio and San Justo Streets, in San Juan, Puerto Rico, as the ''Jose V. Toledo Federal Building and United States Courthouse''.	Oct. 22, 1999	1134
106–78	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000.	Oct. 22, 1999	1135
106–79	Department of Defense Appropriations Act, 2000	Oct. 25, 1999	1212
106–80	To amend title 4, United States Code, to add the Martin Luther King Jr. holiday to the list of days on which the flag should especially be displayed.	Oct. 25, 1999	1285
106–81	Wireless Communications and Public Safety Act of 1999	Oct. 26, 1999	1286
106–82	To provide for the conveyance of certain property from the United States to Stanislaus County, California.	Oct. 27, 1999	1291
106–83	National Medal of Honor Memorial Act	Oct. 28, 1999	1293
106–84	To amend the Revised Organic Act of the Virgin Islands to provide for greater fiscal autonomy consistent with other United States jurisdictions, and for other purposes.	Oct. 28, 1999	1295
106–85	Making further continuing appropriations for the fiscal year 2000, and for other purposes	Oct. 29, 1999	1297
106–86	Pennsylvania Battlefields Protection Act of 1999	Oct. 31, 1999	1298
106–87	Torture Victims Relief Reauthorization Act of 1999	Nov. 3, 1999	1301
106–88	Making further continuing appropriations for the fiscal year 2000, and for other purposes	Nov. 5, 1999	1304
106–89	To locate and secure the return of Zachary Baumel, a United States citizen, and other Israeli soldiers missing in action.	Nov. 8, 1999	1305
106–90	To grant the consent of Congress to the boundary change between Georgia and South Carolina	Nov. 8, 1999	1307
106–91	To designate the United States courthouse under construction at 333 Las Vegas Boulevard South in Las Vegas, Nevada, as the ''Lloyd D. George United States Courthouse.''.	Nov. 9, 1999	1308
106–92	To designate the Old Executive Office Building located at 17th Street and Pennsylvania Avenue, NW, in Washington, District of Columbia, as the ''Dwight D. Eisenhower Executive Office Building.''.	Nov. 9, 1999	1309

Public Law	Title	Approved	113 Stat.
106–93	Waiving certain enrollment requirements for the remainder of the first session of the One Hundred Sixth Congress with respect to any bill or joint resolution making general appropriations or continuing appropriations for fiscal year 2000.	Nov. 10, 1999	1310
106–94	Making further continuing appropriations for the fiscal year 2000, and for other purposes	Nov. 10, 1999	1311
106–95	Nursing Relief for Disadvantaged Areas Act of 1999	Nov. 12, 1999	1312
106–96	To amend the Export Apple and Pear Act to limit the applicability of the Act to apples	Nov. 12, 1999	1321
106–97	To authorize a cost of living adjustment in the pay of administrative law judges	Nov. 12, 1999	1322
106–98	District of Columbia College Access Act of 1999	Nov. 12, 1999	1323
106–99	History of the House Awareness and Preservation Act	Nov. 12, 1999	1330
106–100	To permit the enrollment in the House of Representatives Child Care Center of children of Federal employees who are not employees of the legislative branch.	Nov. 12, 1999	1332
106–101	Granting the consent of Congress to the Missouri-Nebraska Boundary Compact	Nov. 12, 1999	1333
106–102	Gramm-Leach-Bliley Act	Nov. 12, 1999	1338
106–103	To authorize the construction of a monument to honor those who have served the Nation's civil defense and emergency management programs.	Nov. 13, 1999	1482
106–104	To amend the Immigration and Nationality Act to extend for an additional 2 years the period for admission of an alien as a nonimmigrant under section 101(a)(15)(S) of such Act, and to authorize appropriations for the refugee assistance program under chapter 2 of title IV of the Immigration and Nationality Act.	Nov. 13, 1999	1483
106–105	Making further continuing appropriations for the fiscal year 2000, and for other purposes	Nov. 18, 1999	1484
106–106	Making further continuing appropriations for the fiscal year 2000, and for other purposes	Nov. 19, 1999	1485
106–107	Federal Financial Assistance Management Improvement Act of 1999	Nov. 20, 1999	1486
106–108	Arctic Tundra Habitat Emergency Conservation Act	Nov. 24, 1999	1491
106–109	To make technical corrections to the Water Resources Development Act of 1999	Nov. 24, 1999	1494
106–110	To amend part G of title I of the Omnibus Crime Control and Safe Streets Act of 1968 to allow railroad police officers to attend the Federal Bureau of Investigation National Academy for law enforcement training.	Nov. 24, 1999	1497
106–111	To establish designations for United States Postal Service buildings in Philadelphia, Pennsylvania.	Nov. 29, 1999	1499
106–112	To designate the facility of the United States Postal Service at 410 North 6th Street in Garden City, Kansas, as the ''Clifford R. Hope Post Office''.	Nov. 29, 1999	1500
106–113	Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes.	Nov. 29, 1999	1501
106–114	To direct the Secretary of the Interior to convey certain lands to the county of Rio Arriba, New Mexico.	Nov. 29, 1999	1538
106–115	Minuteman Missile National Historic Site Establishment Act of 1999	Nov. 29, 1999	1540
106–116	To clarify certain boundaries on maps relating to the Coastal Barrier Resources System	Nov. 29, 1999	1544
106–117	Veterans Millennium Health Care and Benefits Act	Nov. 30, 1999	1545
106–118	Veterans' Compensation Cost-of-Living Adjustment Act of 1999	Nov. 30, 1999	1601
106–119	Upper Delaware Scenic and Recreational River Mongaup Visitor Center Act of 1999	Dec. 3, 1999	1604
106–120	Intelligence Authorization Act for Fiscal Year 2000	Dec. 3, 1999	1606
106–121	To extend the deadline under the Federal Power Act for FERC Project No. 9401, the Mt. Hope Waterpower Project.	Dec. 6, 1999	1637
106–122	To amend the Federal Reserve Act to broaden the range of discount window loans which may be used as collateral for Federal reserve notes.	Dec. 6, 1999	1638
106–123	To designate certain facilities of the United States Postal Service in Chicago, Illinois	Dec. 6, 1999	1639
106–124	To designate the United States Postal Service building located at 8850 South 700 East, Sandy, Utah, as the ''Noal Cushing Bateman Post Office Building''.	Dec. 6, 1999	1641
106–125	To designate the United States Postal Service building located at 34480 Highway 101 South in Cloverdale, Oregon, as the ''Maurine B. Neuberger United States Post Office''.	Dec. 6, 1999	1642
106–126	To require the Secretary of the Treasury to mint coins in conjunction with the minting of coins by the Republic of Iceland in commemoration of the millennium of the discovery of the New World by Leif Ericson.	Dec. 6, 1999	1643
106–127	Appointing the day for the convening of the second session of the One Hundred Sixth Congress.	Dec. 6, 1999	1651
106–128	To direct the Secretary of the Interior to make corrections to a map relating to the Coastal Barrier Resources System.	Dec. 6, 1999	1652
106–129	Healthcare Research and Quality Act of 1999	Dec. 6, 1999	1653
106–130	To provide for the holding of court at Natchez, Mississippi, in the same manner as court is held at Vicksburg, Mississippi, and for other purposes.	Dec. 6, 1999	1677
106–131	Gateway Visitor Center Authorization Act of 1999	Dec. 7, 1999	1678
106–132	To designate a portion of Gateway National Recreation Area as ''World War Veterans Park at Miller Field''.	Dec. 7, 1999	1681
106–133	Arizona Statehood and Enabling Act Amendments of 1999	Dec. 7, 1999	1682
106–134	To amend the Act that established the Keweenaw National Historical Park to require the Secretary of the Interior to consider nominees of various local interests in appointing members of the Keweenaw National Historical Park Advisory Commission.	Dec. 7, 1999	1684
106–135	Star-Spangled Banner National Historic Trail Study Act of 1999	Dec. 7, 1999	1685
106–136	Perkins County Rural Water System Act of 1999	Dec. 7, 1999	1688
106–137	Concerning the participation of Taiwan in the World Health Organization (WHO)	Dec. 7, 1999	1691
106–138	Terry Peak Land Transfer Act of 1999	Dec. 7, 1999	1693
106–139	To amend the Immigration and Nationality Act to provide that an adopted alien who is less than 18 years of age may be considered a child under such Act if adopted with or after a sibling who is a child under such Act.	Dec. 7, 1999	1696
106–140	To amend the Central Utah Project Completion Act to provide for acquisition of water and water rights for Central Utah Project purposes, completion of Central Utah project facilities, and implementation of water conservation measures.	Dec. 7, 1999	1698
106–141	State Flexibility Clarification Act	Dec. 7, 1999	1699
106–142	Commending the World War II veterans who fought in the Battle of the Bulge, and for other purposes.	Dec. 7, 1999	1701
106–143	Four Corners Interpretive Center Act	Dec. 7, 1999	1703

Public Law	Title	Approved	113 Stat.
106–144	To direct the Secretary of Agriculture to convey to the city of Sisters, Oregon, a certain parcel of land for use in connection with a sewage treatment facility.	Dec. 7, 1999	1708
106–145	Otay Mountain Wilderness Act of 1999	Dec. 9, 1999	1711
106–146	Thomas Cole National Historic Site Act	Dec. 9, 1999	1714
106–147	To authorize the Secretary of the Interior to transfer administrative jurisdiction over land within the boundaries of the Home of Franklin D. Roosevelt National Historic Site to the Archivist of the United States for the construction of a visitor center.	Dec. 9, 1999	1717
106–148	National Geologic Mapping Reauthorization Act of 1999	Dec. 9, 1999	1719
106–149	Quinebaug and Shetucket Rivers Valley National Heritage Corridor Reauthorization Act of 1999.	Dec. 9, 1999	1726
106–150	To allow the National Park Service to acquire certain land for addition to the Wilderness Battlefield in Virginia, as previously authorized by law, by purchase or exchange as well as by donation.	Dec. 9, 1999	1730
106–151	To amend the Fair Labor Standards Act of 1938 to clarify the overtime exemption for employees engaged in fire protection activities.	Dec. 9, 1999	1731
106–152	To amend title 18, United States Code, to punish the depiction of animal cruelty	Dec. 9, 1999	1732
106–153	Father Theodore M. Hesburgh Congressional Gold Medal Act	Dec. 9, 1999	1733
106–154	To improve protection and management of the Chattahoochee River National Recreation Area in the State of Georgia.	Dec. 9, 1999	1736
106–155	U.S. Holocaust Assets Commission Extension Act of 1999	Dec. 9, 1999	1740
106–156	Dugger Mountain Wilderness Act of 1999	Dec. 9, 1999	1741
106–157	To authorize the Secretary of the Interior to convey to the State of Illinois certain Federal land associated with the Lewis and Clark National Historic Trail to be used as an historic and interpretive site along the trail.	Dec. 9, 1999	1743
106–158	Export Enhancement Act of 1999	Dec. 9, 1999	1745
106–159	Motor Carrier Safety Improvement Act of 1999	Dec. 9, 1999	1748
106–160	To amend statutory damages provisions of title 17, United States Code	Dec. 9, 1999	1774
106–161	Conferring status as an honorary veteran of the United States Armed Forces on Zachary Fisher	Dec. 9, 1999	1775
106–162	To designate the headquarters building of the Department of Housing and Urban Development in Washington, District of Columbia, as the ''Robert C. Weaver Federal Building''.	Dec. 9, 1999	1777
106–163	Chippewa Cree Tribe of The Rocky Boy's Reservation Indian Reserved Water Rights Settlement and Water Supply Enhancement Act of 1999.	Dec. 9, 1999	1778
106–164	Fallen Timbers Battlefield and Fort Miamis National Historic Site Act of 1999	Dec. 9, 1999	1792
106–165	Women's Business Centers Sustainability Act of 1999	Dec. 9, 1999	1795
106–166	To designate the United States courthouse at 401 West Washington Street in Phoenix, Arizona, as the ''Sandra Day O'Connor United States Courthouse''.	Dec. 9, 1999	1802
106–167	John H. Chafee Coastal Barrier Resources System Act	Dec. 9, 1999	1803
106–168	To amend chapter 30 of title 39, United States Code, to provide for the nonmailability of certain deceptive matter relating to sweepstakes, skill contests, facsimile checks, administrative procedures, orders, and civil penalties relating to such matter, and for other purposes.	Dec. 12, 1999	1806
106–169	Foster Care Independence Act of 1999	Dec. 14, 1999	1822
106–170	Ticket to Work and Work Incentives Improvement Act of 1999	Dec. 17, 1999	1860

Federal Register

Thursday
December 30, 1999

Part VII

Department of Education

Bilingual Education: Teachers and Personnel Grants; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.195A]

Bilingual Education: Teachers and Personnel Grants

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2000.

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program. The statutory authorization for this program, and the application requirements that apply to this competition, are set out in sections 7143 and 7146–7149 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act)(20 U.S.C. 7473 and 7476–7479)).

Purpose of Program: This program provides grants for preservice and inservice professional development for bilingual education teachers, administrators, pupil services personnel, and other educational personnel who are either involved in, or preparing to be involved in, the provision of educational services for children and youth of limited English proficiency.

Eligible Applicants: (1) One or more institutions of higher education (IHEs) which have entered into consortia arrangements with local educational agencies (LEAs) or State educational agencies (SEAs), to achieve the purposes of this section. (2) SEAs and LEAs for inservice professional development programs.

Applications Available: December 30, 1999.

Deadline for Transmittal of Applications: February 18, 2000.

Deadline for Intergovernmental Review: April 18, 2000.

Available Funds: $8 million.

Estimated Range of Awards: $150,000–$250,000.

Estimated Average Size of Awards: $200,000.

Estimated Number of Awards: 40.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: 60 months.

Applicable Regulations:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

(b) 34 CFR part 299.

Description of Program

Funds under this program are to provide for preservice and inservice professional development for bilingual/ESL teachers and other educational personnel. Activities shall assist educational personnel in meeting State and local certification requirements for bilingual education and, wherever possible, shall lead to the awarding of college or university credit.

Priorities

Competitive Priority 1

The Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 299.3(b) gives preference to applications that meet the following competitive priority. The Secretary awards up to 3 points for an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Projects that will contribute to a systemic educational reform in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture, and are made an integral part of the Zone's or Community's comprehensive community revitalization strategies.

Note: For a list of areas that have been designated as Empowerment Zones and Enterprise Communities go to:

http://www.ezec.gov/ezec/mainmap.html and

http://www.hud.gov/pressrel/ezec/urban.html

Competitive Priority 2

Under 34 CFR 75.105 (c)(2)(ii) and section 7143(b) of the Act, the Secretary gives a competitive preference to applications that meet the following priority:

Institutions of higher education, in consortia with local or State educational agencies, that offer degree programs that prepare new bilingual education teachers in order to increase the availability of educators to provide high-quality education to limited English proficient students.

The Secretary selects applications that meet this priority over applications of comparable merit which do not meet the priority.

Invitational Priorities

The Secretary is particularly interested in applications that meet one of the following invitational priorities in the next paragraphs. However, an application that meets these invitational priorities receives no competitive or absolute preference over other applications.

(Authority: 34 CFR.105(c)(1)(1)).

Applications which propose to utilize school-based professional development approaches by linking beginning teachers of LEP students, pre-service teachers, and expert bilingual teachers in professional practice schools, teacher learning communities, or mentorship programs.

Applications proposing partnerships that link institutions of higher education experienced in preparing bilingual teachers with institutions of higher education proposing to develop new bilingual/ESL education teacher training preparation programs.

Selection Criteria

The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (10 points) (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project the Secretary considers the following factors:

(i) The magnitude or severity of the problem to be addressed by the proposed project.

(ii) The extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and the magnitude of those gaps or weaknesses.

(Authority: 34 CFR 75.210(a)(2)(i) and (v))

(b) *Quality of the project design.* (55 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(iv) The extent to which the design of the proposed project reflects up-to-date knowledge from research and effective practice.

(v) The extent to which the proposed activities constitute a coherent, sustained program of training in the field.

(vi) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(vii) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(viii) The extent to which fellowship recipients or other project participants are to be selected on the basis of academic excellence.

(Authority: 34 CFR 75.210(c)(2)(i)–(ii), (v), (xii)–(xiii), (xvi), (xviii), and (xxiii))

(c) *Quality of project services.* (10 points) (1) The Secretary considers the quality of the services to be provided by the proposed project.

(2) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been under represented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor: The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services.

(Authority: 34 CFR 75.210(d)(2) and (3)(v))

(d) *Quality of project personnel.* (5 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor: The qualifications, including relevant training and experience, of key project personnel.

(Authority: 34 CFR 75.210(e)(2) and (3)(ii))

(e) *Quality of the management plan.* (5 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factor: The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(34 CFR 75.210(g)(2)(i))

(f) *Quality of the project evaluation.* (15 points) (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(ii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

(Authority: 34 CFR 75.210(h)(2)(iii), (iv), and (vi))

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order.

If you want to know the name and address of any State Single Point of Contact (SPOC) see the list published in the **Federal Register** on April 28, 1999 (64 FR 22963) or; you may view the latest SPOC list on the OMB website at: http://www.whitehouse.gov/omb/grants

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.195A, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.195A), Washington, DC 20202–4725; or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.195A), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number and suffix letter, if any, of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with Section 427 of the General Education Provisions Act, questions and answers, and various assurances, certifications, and required documentation. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

Part III: Application Narrative.

Additional Materials

a. Estimated Public Reporting Burden

b. Group Application Certification

c. Participant Data

d. Project Documentation

e. Program Assurances

f. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

g. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

h. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (**Note:** This form is intended for the use of grantees and should not be transmitted to the Department.)

i. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit one original signed application and two copies of the application. Please mark each application as original or copy. No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Sue Kenworthy by email: sue__kenworthy@ed.gov or (202) 205–5539 or Franklin Reid by email: franklin__reid@ed.gov or (202) 205–9803 U.S. Department of Education, Switzer Bldg. Room 5090, 400 Maryland Avenue, SW., Washington, D.C. 20202–6510. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternate format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to this Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498 or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Program Authority 20 USC 7473.

Dated: December 21, 1999.

Art Love,

Acting Director, Office of Bilingual Education and Minority Languages Affairs.

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0536, Exp. Date: 12/31/00. The time required to complete this information collection is estimated to average 120 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have any comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202–6510.

The following forms and other items must be included in the application:

1. Application for Federal Assistance (SF 424)
2. Group Application Certification (Use this form to document participation of consortia members)
3. Budget Information (ED Form No. 524)
4. Itemized Budget for each year (Attached to Form No. 524)
5. Participant Data-approximate number of participants to be served each year.
6. Project Documentation
   Transmittal Letter to SEA
   Documentation of Empowerment Zone or Enterprise Community (if applicable)
7. Program Assurances
8. Non-Construction Programs (SF 424B)
9. Certifications Regarding Lobbying; Debarment Suspension and Other Responsibility Matters; and Drug-

Free Workplace Requirements (ED 80–0013)
10. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions (ED 80-0014)
11. Disclosure of Lobbying Activities (SF-LLL)
12. Notice to All Applicants (See form provided below)
13. Table of Contents
14. One-page abstract (single-spaced)
15. Application Narrative (double-spaced not to exceed 30 pages, see instructions below)
16. One original and two copies of the application for transmittal to the Department's Application Control Center.

Mandatory Page Limits for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 30 pages, using the following standards:

1. A page is 8.5″ x 11″, on one side only with 1″ margins at the top, bottom, and both sides.

2. You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font. If you use a non-proportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; or the one-page abstract and table of contents. The page limit applies only to item 15 in the checklist for Applicants provided above.

IF, IN ORDER TO MEET THE PAGE LIMIT, YOU USE PRINT SIZE, SPACING, OR MARGINS SMALLER THAN THE STANDARDS SPECIFICED IN THIS NOTICE, YOUR APPLICATION WILL NOT BE CONSIDERED FOR FUNDING.

Application Narrative and Abstract

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. *Do not simply paraphrase the criteria.* Provide position descriptions for key personnel. This package includes questions and answers to assist you in preparing the narrative portion of the application. Prepare a one-page single-spaced abstract that summarizes the proposed project activities, the expected outcomes, and how the application addresses the announced invitational priorities, if applicable.

Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components. Prepare an itemized budget for each year of requested funding. Indirect costs for institutions of higher education which are the fiscal agents for Teachers and Personnel Grants are limited to the lower of either 8% of the modified total direct cost base or the institution's indirect cost agreement. A modified direct cost is defined as total direct costs less stipends, tuition and related fees and capital expenditures of $5,000 or more. In describing student support costs distinguish costs for tuition and fees from costs for stipends.

Final Application Preparation

Use the above checklist to verify that all items are addressed. Prepare one original with an original signature, and include three additional copies. Do not use elaborate bindings or covers. The application package must be mailed to the Application Control Center (ACC) and postmarked by the deadline date of February 23, l999.

Submission of Application to State Educational Agency

Section 7146(a)(4) of the Act (Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382) requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment (20 U.S.C. 7476(a) (4)). Section 75.156 of the Education Department General Administrative Regulations (EDGAR) requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). Applicants that do not submit a copy of their application to their SEA will not be considered for funding.

Questions and Answers

Does the Teachers and Personnel Grants Program have specific evaluation requirements?

Yes, the evaluation requirements are described in section 7149 of Title VII of ESEA, 20 U.S.C. 7479

What requirements must grantees meet related to teacher certification?

The Title VII statute requires grantees to assist educational personnel in meeting State and local certification requirements. However, because certification requirements vary among States, applicants are given flexibility in designing activities that lead to meeting State and local certification requirements.

What activities are authorized under Teachers and Personnel Grants?

Authorized activities are those which support professional development of teachers and other educational personnel who are either involved with, or preparing to be involved with, serving students with limited English proficient proficiency. Such activities may include, but are not limited to, the development of program curricula; collaboration with local school districts in designing new teacher training activities; and reforming and improving teacher training programs to reflect high standards of professionalism. Only institutions of higher education, applying in consortia arrangements with one or more local educational agencies or State educational agencies, are eligible to apply for preservice programs. This means the institution of higher education would be the lead agency and the fiscal agent for the grant. State educational agencies and local educational agencies may, however apply for inservice training programs.

May program budgets include costs for items other than student tuition and fees?

Project budgets should reflect the proposed program activities. In addition to student support costs, budget items may include costs for personnel, supplies or equipment, and other costs to support proposed professional developmental activities.

What information may be helpful in preparing a narrative for the Teachers and Personnel Grant?

In responding to the selection criteria, applicants may wish to consider the following questions as a guide for preparing application narrative.

- What are the specific responsibilities of districts, schools, institutions of higher education, and other partnership organizations in

planning, implementing, and evaluating the proposed program? What resources and support will be provided by each of the contributing partners?

- How does the training curricula reflect high standards for pedagogy, content, and proficiency in English and a second language to ensure that participants are effectively prepared to provide instruction and support to LEP students?
- How will the program assist in systemically reforming policies and practices in the target schools and in the IHE related to the preparation of new teachers, the induction of new bilingual/ESL teachers, clinical experiences for new bilingual/ESL teachers and other educational personnel, or professional development opportunities for all teachers?
- What selection criteria will the applicant adopt to ensure that individuals selected to participate in the program hold promise for successfully completing program requirements?
- What support will be provided to new bilingual/ESL teachers by experienced bilingual/ESL teachers, higher education faculty, and school administrators to guide them during their period of induction?
- How will the instructional responsibilities of new teachers be balanced with appropriate professional development, support and planning time?
- How will clinical experiences for preservice participants be structured to ensure that they are well-supervised, of sufficient duration and in a setting which provides opportunities for participants to experience a variety of effective bilingual education instructional methods and approaches?
- How is the training curriculum based on current research related to effective teaching and learning? What evidence of effectiveness supports the training model?
- What are the expected outcomes for participant learning, effectiveness in the instructional setting, reform and improvement in the school or the university? What measures will the proposed program use to collect data on the effectiveness of the program in meeting its objectives, such as: field practice assessments, National or State benchmark tests, surveys of graduates, mentor teachers, school administrators, rates of transfer from 2-year to 4-year institutions, graduation rates, placement rates? How are needs, objectives, activities and measures linked?
- How will the program evaluation incorporate strategies for assessing progress and performance of participants; communicating meaningful, regular and timely feedback to participants; improving the quality of the training program; identifying exemplary program features; and reporting on specific data related to the number of participants completing the program and the number of graduates placed in the instructional setting?
- How will the proposed program improve teacher preparation curricula, clinical experiences and the skills and knowledge of higher education faculty to better prepare ALL teachers in content and pedagogy related to the needs of LEP students.

In addition, applicants may wish to consider the Department of Education Professional Development Principles in planning a Teachers and Personnel Grant.

The following are the professional development principles:

- Focuses on teachers as central to student learning, yet includes all other members of the school community;
- Focuses on individual, collegial and organizational improvement; Respects and nurtures the intellectual and leadership capacity of teachers, principals, and others in the school community;
- Reflects best available research and practice in teaching, learning, and leadership;
- Enables teachers to develop further expertise in subject content, teaching strategies, uses of technologies, and other essential elements in teaching to high standards;
- Promotes continuous inquiry and improvement embedded in the daily life of schools;
- Is planned collaboratively by those who will participate in and facilitate that development;
- Requires substantial time and other resources; is driven by a coherent long-term plan; is evaluated ultimately on the basis of its impact on teacher effectiveness and student learning; and
- Uses this assessment to guide subsequent professional development efforts.

What other information may be helpful in applying for a Teachers and Personnel grant?

Applicants are reminded that they must submit a copy of their application to the SEA for review and comment. In addition, applicants must submit a copy of their application to the State Single Point of Contact to satisfy the requirements of Executive Order 12372. The SEA review requirement and the requirements for Executive Order 12372 is two distinct requirements.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name:_____

Address:_____

City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number

3. Applicant's T-I-N

4. Catalog of Federal Domestic Assistance #: 84.195A ➡ Title: Teachers and Personnel Grants

5. Project Director:_____

Address:_____

City _____ State _____ ZIP Code + 4 _____

Tel. #: ( ) _____ Fax #: ( ) _____

E-Mail Address:_____

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

(If "Yes," attach an explanation.)

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State
B County
C Municipal
D Township
E Interstate
F Intermunicipal
G Special District
H Independent School District
I Public College or University
J Private, Non-Profit College or University
K Indian Tribe
L Individual
M Private, Profit-Making Organization
N Other *(Specify)*:_____

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* __/__/__

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

11. Proposed Project Dates:

Start Date:	End Date:
__/__/__	__/__/__

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #:

OR

b. Assurance of Compliance #:

c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ Fax #: ( ) _____

d. E-Mail Address:

e. Signature of Authorized Representative

Date:__/__/__

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are not planned at any time during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If all the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If some or all of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

GROUP APPLICATION CERTIFICATION

NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant. (34 CFR 75.128(b)-(c)).

To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application.

Authorized Representative

Typed Name	Title	Signature	Date Signed	Telephone Number (including Area Code)	Name of Institution/ Organization

BILLING CODE 4000–01–C

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time 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 this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and the Office of Management and Budget, Paperwork Reduction Project 1875–0102, Washington DC 20503.

Instructions for ED Form 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A—Budget Summary

U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1–11.

Lines 1–11, columns (a)–(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1–11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)–(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B—Budget Summary

Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1–11 of Section B.

Lines 1–11, columns (a)–(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1–11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)–(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C—Other Budget Information

Pay Attention to Applicable Program Specific Instructions, if Attached

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

BILLING CODE 4000–01–U

U.S. DEPARTMENT OF EDUCATION BUDGET INFORMATION NON-CONSTRUCTION PROGRAMS	OMB Control Number *Draft* Expiration Date: *Pending OMB Clearance*
Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

BILLING CODE 4000-01-C

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

PARTICIPANT DATA

Note: This form must be completed by applicants under the following programs:

- Teachers and Personnel Grants
- Career Ladder Program
- Training for all Teachers

Number of proposed participants in each of the following categories to be served each year of the grant.

Preservice Teachers (who are not paraprofessionals) _____
Preservice Teachers (who are currently paraprofessionals) _____
Inservice Teachers _____
Other Educational Personnel (Specify type of personnel below) _____
Degree level(s) to be attained (if applicable) _____
Certification Type(s) to be attained _____
Language(s) of Participants (other than English) _____

PROJECT DOCUMENTATION

Note: Submit the appropriate documents and information as specified below for the following programs.

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Section A

A copy of the applicant's transmittal letter requesting the appropriate State educational agency to comment on the application.

Section B

If applicable, identify on the line below the Empowerment Zone, Supplemental Empowerment Zone, or Enterprise Community that the proposed project will serve. (See the competitive priority and the list of designated Empowerment Zones in previous sections of this application package.)

PROGRAM ASSURANCES

Note: The authorizing statute requires applicants under certain programs to provide assurances. These assurances are specified below under the relevant programs. If your application pertains to any of these programs, this form must be completed.

As the duly authorized representative of the applicant, I certify that the applicant, in regard to the program relevant to this application:

- Teachers and Personnel Grants
- Career Ladder Program
- Training for All Teachers

Will include, if applicable, as part of the project implementing a master's or doctoral-level program, a training practicum in a local school program serving children and youth of limited English proficiency.

(Authority: 20 U.S.C. 7426(g)(3))

Authorized Representative

Name: _____
Signature: _____
Typed Name: _____
Date: _____
Applicant Organization: _____

ASSURANCES—NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to

all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of land-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1966 and OMB Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

_____

Signature of Authorized Certifying Official

_____

Title

_____

Applicant Organization

_____

Date Submitted

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR part 82, ''New Restrictions on Lobbying,'' and 34 CFR Part 85, ''Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).'' The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the marking of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form—LLL, ''Disclosure form to Report Lobbying,'' in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period proceeding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public

(Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at CFR Part 85, Sections 85.605 and 85.610—

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202–4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program, approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610—

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202–4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Name Of Applicant

_____

PR/Award Number and/or Project Name

_____

Printed Name and Title of Authorized Representative

_____

Signature

_____

Date

_____

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms ''covered transaction,'' ''debarred,'' ''suspended,'' ''ineligible,'' ''lower tier covered transaction,'' ''participant,'' ''person,'' ''primary covered transaction,'' ''principal,'' ''proposed,'' and ''voluntarily excluded,'' as used in this clause, have

the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled ''Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____

Name of Applicant

_____

PR/Award Number and/or Project Name

_____

Printed Name and Title of Authorized Representative

_____

Signature

_____

Date

BILLING CODE 4000–01–U

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4000–01–C

INSTRUCTIONS FOR COMPLETION OF SF–LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subswardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity, include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks ''Subawardee,'' then enter the full name, address, city, State and zip code of the prime federal recipient. Include Congressional District, if known

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known enter the full Catalog of Federal Domestic assistance (CFDA) number of grants, cooperative agreements, loans and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (i.g., Request for Proposal (RFP) number, Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, *e.g.*, ''RFP–DE–90–001.''

9. For covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the lobbying Disclosure Aid of 1995 engaged by the reporting entity identified in item 4 to influence of the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average to minutes per response, Including time for reviewing instructions, searching existing data sources, gathering and maintaining the data estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully

participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct ''outreach'' efforts to girls, to encourage their environment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

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Note: The List of Public Laws for the first session of the 106th Congress has been completed and will resume when bills are enacted into law during the second session of the 106th Congress, which convenes on January 24, 2000.

A Cumulative List of Public Laws for the first session of the 106th Congress will be published in the **Federal Register** on December 30, 1999.

Last List December 21, 1999.