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# Federal Register

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# Contents

**Federal Register**

Vol. 65, No. 7

Tuesday, January 11, 2000

**Agency for Toxic Substances and Disease Registry**
NOTICES
Hazardous substances releases and facilities:
Public health assessments and effects; list, 1637–1638

**Agricultural Marketing Service**
RULES
Federal Seed Act:
Noxious-weed seeds; prohibition of shipment of agricultural and vegetable seeds containing them, 1703–1710

**Agriculture Department**
*See* Agricultural Marketing Service
*See* Animal and Plant Health Inspection Service
*See* Farm Service Agency
*See* Federal Crop Insurance Corporation
*See* Food and Nutrition Service
*See* Rural Utilities Service

**Alcohol, Tobacco and Firearms Bureau**
RULES
Alcohol, tobacco, and other excise taxes:
Tobacco products—
Cigarette papers and tubes; tax increase; correction, 1676
NOTICES
Organization, functions, and authority delegations:
Subordinate ATF officers, 1673–1674

**Animal and Plant Health Inspection Service**
RULES
Exportation and importation of animals and animal products:
Pork and pork products
Imports from Sonora and Yucatan, Mexico, 1529–1537

**Centers for Disease Control and Prevention**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 1638–1640

**Children and Families Administration**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 1640

**Coast Guard**
RULES
Drawbridge operations:
Oregon, 1543–1544
Wisconsin, 1543
PROPOSED RULES
Anchorage regulations:
California, 1581–1582

**Commerce Department**
*See* Export Administration Bureau
*See* International Trade Administration
*See* National Institute of Standards and Technology
*See* National Oceanic and Atmospheric Administration

**Defense Department**
*See* Navy Department

**Education Department**
PROPOSED RULES
Postsecondary education:
Higher Education Act—
Negotiated rulemaking committees on issues under Title IV; intent to establish; correction, 1582–1583

**Energy Department**
*See* Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
Enron Power Marketing, Inc., et al., 1607–1608
Environmental statements; availability, etc.:
Surplus plutonium disposition; mixed oxide fuel, 1608–1620
Powerplant and industrial fuel use; new electric powerplant coal capability:
Self-certification filings—
Cleco Evangeline LLC et al., 1620–1621

**Environmental Protection Agency**
RULES
Air quality implementation plans; approval and promulgation; various States:
Kansas, 1545–1548
Toxic substances:
Preliminary assessment information and health and safety data reporting—
Nonylphenol ethoxylates added, etc., 1548–1554
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Kansas, 1583
Sewage sludge; use or disposal standards:
Dioxin and dioxin-like compounds; numeric concentration limits; correction, 1676
NOTICES
Grants and cooperative agreements; availability, etc.:
Environmental Justice Office Small Grants Program, 1630–1634

**Export Administration Bureau**
NOTICES
Meetings:
President's Export Council, 1587–1588

**Farm Credit Administration**
PROPOSED RULES
Farm credit system:
Federal Agricultural Mortgage Corporation; risk-based capital requirements; correction, 1676

**Farm Service Agency**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 1585

**Federal Aviation Administration**
RULES
Airworthiness directives:
Airbus, 1537–1538
Fairchild, 1540–1542
Raytheon, 1538–1540
NOTICES
Advisory circulars; availability, etc.:
Transport category airplanes—
Propulsion engine and auxiliary power unit installation; certification handbook; withdrawn, 1652–1653
Airport noise compatability program:
Tulsa International Airport, OK, 1653–1654
Civil penalty actions; Administrator's decisions and orders; index availability, 1654–1671

**Federal Crop Insurance Corporation**
NOTICES
Crop revenue coverage:
Canola/rapeseed, corn, feed barley, spring wheat, soybeans, and sunflowers, 1677–1702

**Federal Deposit Insurance Corporation**
NOTICES
Meetings; Sunshine Act, 1634

**Federal Emergency Management Agency**
RULES
Flood insurance; communities eligible for sale:
Various States, 1554–1557

**Federal Energy Regulatory Commission**
NOTICES
Electric rate and corporate regulation filings:
White River Electric Associates, Inc., et al., 1628–1630
*Applications, hearings, determinations, etc.:*
Associated Natural Gas Co., 1621
Atmos Energy Corp., 1621–1622
Central Vermont Public Service Corp., 1622
CNG Transmission Corp., 1622–1623
Columbia Gas Transmission Corp., 1623–1624
Eastern Shore Natural Gas Co., 1624
El Paso Natural Gas Co., 1624–1625
Jackson Center, OH, et al., 1625
Kern River Gas Transmission Co., 1625
MIGC, Inc., 1625
National Fuel Gas Supply Corp., 1626
Northern Natural Gas Co., 1626–1627
Southern Natural Gas Co., 1627
Texas Eastern Transmission Corp., 1627–1628
Williston Basin Interstate Pipeline Co., 1628

**Federal Mediation and Conciliation Service**
NOTICES
Grants and cooperative agreements; availability, etc.:
Labor-Management Cooperation Program, 1634–1637

**Federal Reserve System**
NOTICES
Meetings; Sunshine Act, 1637

**Federal Transit Administration**
NOTICES
Transfer of federally assisted land or facility:
Bloomington Public Transportation Corp.; municipal transit facility on East Miller Drive, Bloomington, IN, 1671–1672

**Fish and Wildlife Service**
PROPOSED RULES
Endangered and threatened species:
Alabama sturgeon, 1583–1584

**Food and Nutrition Service**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 1585–1587

**Health and Human Services Department**
*See* Agency for Toxic Substances and Disease Registry
*See* Centers for Disease Control and Prevention
*See* Children and Families Administration
*See* Health Resources and Services Administration
*See* National Institutes of Health
*See* Substance Abuse and Mental Health Services Administration

**Health Resources and Services Administration**
NOTICES
Competitive comprehensive grants preview (1999 FY); availability; correction, 1640
Privacy Act:
Systems of records, 1640–1641

**Housing and Urban Development Department**
RULES
Public and Indian housing:
Public Housing Assessment System; amendments, 1711–1754

**Interior Department**
*See* Fish and Wildlife Service
*See* Land Management Bureau
*See* Minerals Management Service
*See* National Park Service

**Internal Revenue Service**
PROPOSED RULES
Income taxes:
Partnership mergers and divisions; hearing, 1572–1580

**International Trade Administration**
NOTICES
Antidumping:
Citric acid and sodium citrate from—
China, 1588–1590
Compact ductile iron waterworks fittings and glands from—
China, 1590–1591
Cut-to-length carbon steel plate from—
Mexico, 1591–1592
Gray portland cement and clinker from—
Mexico, 1592–1593
Oil country tubular goods from—
Japan, 1596
Mexico, 1593–1596
Silicomanganese from—
China, 1597
Stainless steel wire rod from—
India, 1597–1601
Tapered roller bearings and parts, finished and unfinished, from—
Japan, 1601
Meetings:
Exporters' Textile Advisory Committee, 1601

**International Trade Commission**
NOTICES
Meetings; Sunshine Act, 1647

**Land Management Bureau**
NOTICES
Environmental statements; availability, etc.:
North Bank Habitat Management Area, OR, 1645–1646
Meetings:
Wyoming wild horse management; helicopters and motor vehicles use; public hearing, 1646

**Minerals Management Service**
RULES
Royalty management:
Natural gas from Indian leases; valuation; correction, 1542–1543
PROPOSED RULES
Royalty management:
Oil value for royalty due on Federal leases; establishment Workshops, 1580–1581

**National Credit Union Administration**
NOTICES
Meetings; Sunshine Act, 1647

**National Institute of Standards and Technology**
PROPOSED RULES
Fastener Quality Act; implementation, 1572

**National Institutes of Health**
NOTICES
Meetings:
National Eye Institute, 1641–1642
National Heart, Lung, and Blood Institute, 1642
National Institute of Dental and Craniofacial Research, 1643
National Institute of Environmental Health Sciences, 1644
National Institute of Neurological Disorders and Stroke, 1642–1644
National Library of Medicine, 1644
Scientific Review Center, 1644–1645

**National Oceanic and Atmospheric Administration**
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Spiny dogfish, 1557–1571
PROPOSED RULES
Endangered and threatened species:
Critical habitat designation—
Johnson's seagrass, 1584
NOTICES
Meetings:
Mid-Atlantic Fishery Management Council, 1601–1602

**National Park Service**
NOTICES
National Register of Historic Places:
Pending nominations, 1646

**National Science Foundation**
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 1647–1648
Antarctic Conservation Act of 1978; permit applications, etc., 1648

**Navy Department**
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Naval Hospital Philadelphia, PA, 1602–1607

**Nuclear Regulatory Commission**
NOTICES
Environmental statements; availability, etc.:
Vermont Yankee Nuclear Power Corp., 1648–1649
Meetings:
Reactor Safeguards Advisory Committee, 1649–1651

**Public Health Service**
*See* Agency for Toxic Substances and Disease Registry
*See* Centers for Disease Control and Prevention
*See* Health Resources and Services Administration
*See* National Institutes of Health
*See* Substance Abuse and Mental Health Services Administration

**Rural Utilities Service**
NOTICES
Agency information collection activities:
Proposed collection; comment request, 1587

**Securities and Exchange Commission**
NOTICES
Meetings; Sunshine Act, 1651

**State Department**
NOTICES
Meetings:
Shipping Coordinating Committee, 1651

**Substance Abuse and Mental Health Services Administration**
NOTICES
Senior Executive Service:
Performance Review Board; membership, 1645

**Surface Transportation Board**
NOTICES
Railroad operation, acquisition, construction, etc.:
Union Pacific Railroad Co., 1672
Railroad services abandonment:
Soo Line Railroad Co., 1673

**Toxic Substances and Disease Registry Agency**
*See* Agency for Toxic Substances and Disease Registry

**Transportation Department**
*See* Coast Guard
*See* Federal Aviation Administration
*See* Federal Transit Administration
*See* Surface Transportation Board
NOTICES
Meetings:
Amtrak Reform Council, 1651–1652

**Treasury Department**
*See* Alcohol, Tobacco and Firearms Bureau
*See* Internal Revenue Service

**United States Institute of Peace**
NOTICES
Meetings; Sunshine Act, 1674–1675

**Veterans Affairs Department**
**RULES**
Organization, functions, and authority delegations:
Board of Veterans Appeals; Office of Counsel to Chairman title change to Office of Senior Deputy Vice Chairman, 1544–1545
**NOTICES**
Agency information collection activities:
Submission for OMB review; comment request, 1675

**Separate Parts In This Issue**

**Part II**
Department of Agriculture, Federal Crop Insurance Corporation, 1677–1702

**Part III**
Department of Agriculture, Agricultural Marketing Service, 1703–1710

**Part IV**
Department of Housing and Urban Development, 1711–1754

**Reader Aids**

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

## CFR PARTS AFFECTED IN THIS ISSUE

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

**7 CFR**
201.....1724

**9 CFR**
94.....1529

**12 CFR**

**Proposed Rules:**
650.....1676

**14 CFR**
39 (3 documents) .....1537, 1538, 1540

**15 CFR**

**Proposed Rules:**
280.....1572

**24 CFR**
902.....1712

**26 CFR**

**Proposed Rules:**
1.....1572

**27 CFR**
270.....1676

**30 CFR**
202.....1542
206.....1542

**Proposed Rules:**
206.....1580

**33 CFR**
117 (2 documents) .....1543

**Proposed Rules:**
110.....1582

**34 CFR**

**Proposed Rules:**
Ch. VI.....1582

**38 CFR**
Ch. 1 .....1544

**40 CFR**
52.....1545
712.....1548
716.....1554

**Proposed Rules:**
52.....1583
503.....1676

**44 CFR**
64 (2 documents) .....1554, 1555

**50 CFR**
648.....1557, 1568

**Proposed Rules:**
17.....1583
226.....1584

# Rules and Regulations

Federal Register
Vol. 65, No. 7
Tuesday, January 11, 2000

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

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 94

**[Docket No. 97–079–2]**

**RIN 0579–AA91**

### Importation of Pork and Pork Products From Yucatan and Sonora, Mexico

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the regulations concerning the importation of animal products to relieve certain restrictions on the importation of pork and pork products from the Mexican State of Yucatan. Because of the existence of hog cholera in Mexico, we have required pork and pork products from Yucatan to be heated or cured and dried to certain specifications to be eligible for entry into the United States. This rule establishes new conditions for the importation of fresh and processed pork and pork products from Yucatan into the United States and also provides for the movement of pork and pork products from Yucatan through areas where hog cholera may exist in transit to the United States. We are also amending the regulations that provide for the importation of fresh pork from the Mexican State of Sonora to also allow the importation of pork products from Sonora and to modify the import conditions for Sonoran pork and pork products so that those conditions parallel the import conditions for pork and pork products from Yucatan. These amendments provide for the importation of pork products from Sonora and for the in-transit movement of Sonoran pork and pork products through areas where hog cholera may exist and make it clear that pork and pork products from Sonora must be derived from swine slaughtered at federally inspected slaughter plants.

**EFFECTIVE DATE:** February 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. John Cougill, Senior Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3399; or e-mail: john.w.cougill@usda.gov.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR), title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

The regulations in 9 CFR part 94 pertain to, among other things, the importation of meat and other animal products into the United States. Until the effective date of this rule, § 94.20 allows fresh (chilled or frozen) pork from Sonora, Mexico, to be imported if: The pork is meat from swine that were born, raised, and slaughtered in Sonora; the pork has not been in contact with pork from regions other than those listed in § 94.9(a) as regions where hog cholera is not known to exist; and an authorized official of Mexico has certified on the foreign meat inspection certificate (required by 9 CFR 327.4) that the above conditions have been met.

On February 23, 1999, we published in the **Federal Register** (64 FR 8755–8761, Docket No. 97–079–1) a proposal to amend § 94.20 to (1) expand the importation of fresh pork to include any type of pork or pork products from Sonora; (2) allow the importation, under certain conditions, of pork and pork products from Yucatan, Mexico; and (3) amend some of the provisions pertaining to pork from Sonora so that the same import requirements apply to pork and pork products from both Sonora and Yucatan, Mexico. We based our proposed rule on information presented to APHIS by the Mexican Government in 1995 in a request to recognize the Mexican State of Yucatan as free of hog cholera and on a site visit that APHIS officials made to Yucatan in 1996 to verify that Yucatan had the veterinary infrastructure, disease control programs, diagnostic capabilities, and surveillance programs necessary to diagnose and prevent an introduction of hog cholera. Following the site visit, we performed a qualitative risk assessment on the importation of pork and pork products from federally inspected slaughtering plants in Yucatan. The qualitative risk assessment indicated that such importations would present a negligible risk of introducing hog cholera into the United States.

Based on the finding of negligible risk, we proposed to allow the importation of pork and pork products from Yucatan, Mexico. However, we proposed to allow these importations to occur only under certain conditions (set forth below) to help prevent the possibility that pork or pork products from swine raised in regions of Mexico other than Yucatan or Sonora could be exported to the United States via Yucatan. As stated above, we proposed to amend the import conditions for pork from Sonora at § 94.20 to provide the same import conditions for pork and pork products from both Sonora and Yucatan. We wanted to prevent the following possibilities: That swine from regions of Mexico other than Sonora or Yucatan could be moved to Yucatan or Sonora for slaughter, processing, and export to the United States; that pork or pork products from other regions could be moved to Yucatan or Sonora for export to the United States; or that, once leaving Yucatan or Sonora, pork and pork products from Yucatan or Sonora could be commingled with pork or pork products from other regions of Mexico in transit to the United States. We stated our belief that the proposed import conditions would provide a higher degree of safety against the occurrence of any of these scenarios than the requirements then listed in § 94.20.

In the proposed rule, we set forth (1) our reasons for believing that the importation, under certain conditions, of pork and pork products from Yucatan can be accomplished safely; (2) our reasons for proposing to amend the import conditions for pork from Sonora and to allow the importation of pork products from Sonora; (3) the proposed import conditions for pork and pork products from Yucatan and Sonora; and

(4) our basis for the proposed import conditions. The proposed import conditions follow:

1. The pork or pork product must be from swine that were born and raised in Sonora or Yucatan and slaughtered in Sonora or Yucatan at a federally inspected slaughter plant under the direct supervision of a full-time salaried veterinarian of the Government of Mexico, and the slaughter plant must be approved to export pork and pork products to the United States in accordance with 9 CFR 327.2.

2. If processed in any manner, the pork or pork product must be processed at a federally inspected processing plant located in either Sonora or Yucatan under the direct supervision of a full-time salaried veterinarian of the Government of Mexico.

3. The pork or pork product must not have been in contact with pork or pork products from any State in Mexico other than Sonora or Yucatan or from any other region not listed in § 94.9(a) as a region where hog cholera is not known to exist.

4. The foreign meat inspection certificate for the pork or pork product (required by 9 CFR 327.4) must be signed by a full-time salaried veterinarian of the Government of Mexico. The certificate must include statements that certify the above conditions have been met. The certificate must also show the seal number on the shipping container if a seal is required (see below).

5. In addition, if the pork or pork product is going to transit any State in Mexico other than Sonora or Yucatan or any other region not listed in § 94.9(a) as a region where hog cholera is not known to exist, a full-time salaried veterinarian of the Government of Mexico must apply serially numbered seals to the containers carrying the pork or pork products at the federally inspected slaughter or processing plant located in Sonora or Yucatan, and the seal numbers must be recorded on the foreign meat inspection certificate.

6. Prior to its arrival in the United States, the shipment of pork or pork products must not have been in any State in Mexico other than Sonora or Yucatan or in any other region not listed in § 94.9(a) unless the pork or pork products have remained under seal until arrival at the U.S. port and either (1) the numbers on the seals match the numbers on the foreign meat inspection certificate or (2) if the numbers on the seals do not match the numbers on the foreign meat inspection certificate, an APHIS representative at the port of arrival is satisfied that the pork or pork products were not contaminated during movement to the United States.

We solicited comments concerning our proposal for 60 days ending April 26, 1999. We received four comments by that date. They were from a State government, an association representing veterinarians, and associations representing the U.S. swine industry and the Yucatan swine industry. Two commenters supported the proposed rule; one commenter asked numerous questions about many aspects of the proposed rule but expressed support for the proposed import conditions; and one commenter expressed many concerns about the information in the background section of the proposed rule without specifically expressing support or opposition to the proposed rulemaking action. Some of the comments were outside the scope of this rulemaking action. Our responses to the comments pertinent to the proposed rule are discussed below by topic.

**Veterinary Infrastructure**

Two commenters asked general questions about the veterinary infrastructure in Yucatan, including whether Mexican and Yucatan laws, regulations, and policies support the maintenance of surveillance for hog cholera and whether Mexican animal health officials have the necessary resources to restrict movements of swine and swine products from Mexican States where hog cholera may exist. One commenter asked about Yucatan producer awareness of hog cholera, producer and practitioner reporting responsibilities with regard to suspect cases, and the continued level of suspect hog cholera investigations in Yucatan. The commenter further asked about the testing requirements administered by Yucatan animal health officials for new breeding stock introduced from other Mexican States. Finally, the commenter asked whether a feral swine population exists in Yucatan and, if so, whether it has been tested for hog cholera.

We believe that the Mexican veterinary infrastructure has the ability and resources to restrict movements into Yucatan of swine and swine products from areas of greater risk for hog cholera. When we conducted the 1996 site visit, we thoroughly studied Yucatan's veterinary infrastructure. In addition to learning about the individual responsibilities of and relationship between the various levels of government overseeing animal health activities in Mexico, we reviewed activities to prevent the introduction of hog cholera into Yucatan. Mexican animal health officials exercise tight movement controls on all land, air, and maritime traffic in Yucatan. Detailed descriptions of the veterinary infrastructure in Mexico, particularly in Yucatan, and these movement controls may be found in the site visit report as well as in the qualitative risk assessment. For copies of these documents, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Through APHIS employees stationed in Mexico and at our headquarters in Riverdale, MD, we remain in constant contact with Mexican animal health officials. We continue to have confidence in their abilities to prevent the introduction of hog cholera into the Yucatan swine population and, in the unlikely event an outbreak would occur, to identify and contain it appropriately. In regard to producer awareness of hog cholera, Yucatan swine producers could have greater awareness of hog cholera than some U.S. swine producers because of more recent experience with the disease. While the last case of hog cholera in Yucatan occurred in 1982, hog cholera was eradicated from the United States in the 1970's. In addition, Mexican animal health officials have erected signs on major roadways in Yucatan proclaiming the State as free of hog cholera and stating restrictions on the movement into Yucatan of commodities that could reintroduce hog cholera into the State. Suspect cases of hog cholera infection are reported and investigated in Yucatan in a similar manner as in the United States.

The Yucatan swine industry imports breeding stock from the United States, Canada, and Sonora. Swine movements into Yucatan are not allowed from any other area in Mexico. We are unaware of the existence of any feral swine population in Yucatan.

**Laboratory Capabilities**

A commenter asked whether positive controls or periodic check tests are used in Mexican animal health laboratories to confirm the quality of their testing. Two commenters asked whether Mexican laboratory officials had acted upon recommendations from the site visit report regarding check-testing by the APHIS National Veterinary Services Laboratories (NVSL) in Ames, IA, of the diagnostic results obtained for blood samples tested for hog cholera at Mexican animal health laboratories.

We have confidence in the diagnostic capabilities of Mexican animal health laboratories. As stated in the proposed rule, these laboratories meet the standards of the Office International des Epizooties. In addition, in 1997 we sent ''blind'' samples twice to the regional

laboratory in Merida, Yucatan, and the central laboratory in Mexico City. These laboratories administered the diagnostic tests with the proper controls, and the results reported agreed with the findings reached by NVSL.

**Traceback Capabilities**

A commenter asked about procedures in place by APHIS and the Mexican Government to trace shipments of pork or pork products that might be contaminated as a result of the identification of an animal or herd in Yucatan as suspect or positive for hog cholera.

If Mexican animal health officials were to find an animal that was positive for hog cholera, they would report the case immediately to APHIS officials. We would immediately prohibit the importation of pork and pork products from Yucatan. As in any other similar situation in which a foreign region reports an outbreak of an animal disease of concern to us, we would work with USDA's Food Safety and Inspection Service to try to trace any potentially contaminated products that had been imported from that region.

**Commercial Production**

A commenter expressed concern regarding the biosecurity measures practiced by communal production facilities in Yucatan (small, shared herds of 15 to 40 sows). The commenter was concerned that these facilities are considered part of the commercial production system in Yucatan. (As such, according to the proposed rule, pork and pork products from swine from these facilities could be eligible for export to the United States if the swine were slaughtered in a federally inspected slaughter plant.) The commenter further asked how Yucatan producers know if their herds are ''export-eligible'' and how the federally inspected plants know upon the arrival of hogs whether they are from export-eligible herds.

The commenter supported the proposed change to the import conditions for pork from Sonora that would require pork and pork products from Sonora to be derived from swine slaughtered at federally inspected slaughter plants. The commenter asked whether there has been any cause for concern about the exportation to the United States of Sonoran pork from Sonoran slaughter plants that are not federally inspected.

The commercial swine industry in both Sonora and Yucatan is concentrated among relatively few producers. In Yucatan, as of 1996, 3 producers owned 65 percent of the 65,000 sows in the commercial production facilities. As a good business practice, the federally inspected slaughtering facilities in Yucatan and Sonora accept swine only from the large, commercial production facilities in those States. By doing so, the slaughtering facilities have assurance regarding the health status of the swine they accept for slaughter. The biosecurity measures practiced at communal swine production facilities in Yucatan do not meet the level of biosecurity measures practiced in the large, integrated commercial production facilities in Yucatan. Mexican animal health officials have confirmed that the federally inspected slaughtering establishments in Yucatan do not accept swine from communal production facilities; swine from these facilities are processed in municipal plants for local use only. Moreover, under Mexican federal regulations, only commercially raised swine may be slaughtered for export to the United States. For that reason, we do not believe that pork has been exported to the United States from other than federally inspected slaughtering plants in Sonora.

**Surveillance Procedures**

We received numerous comments regarding activities by Mexican animal health officials to determine whether hog cholera exists in the Yucatan swine population. We have divided these comments into three groups, which are discussed in separate sections below as follows: Comments pertaining to procedures for determining the extent of the Yucatan swine population are under the heading Census Results; comments pertaining to blood sampling of the Yucatan swine population for hog cholera are under the heading Serologic Surveys; and comments pertaining to the methodology used to determine the number of blood samples that must be taken from the Yucatan swine population to obtain a reasonable degree of confidence that, if hog cholera existed in the population, it would be detected are under the heading Sampling Methodology. Following a description of all of these comments is our discussion of them.

*Census Results*

A commenter asked how the 1993 census of Yucatan swine herds was taken, especially in regard to ''backyard'' farms. The commenter further asked how many backyard farms were in existence when serologic surveys of commercial and backyard farms were performed in 1995. Another commenter asked about the results of the 1996 census of backyard swine and whether the serologic surveillance of the backyard swine population was modified as a result of that census.

*Serologic Surveys*

A commenter expressed the opinion that a surveillance survey conducted for a period of 3 months might not truly reflect the disease status of any region. (The commenter was referring to a serologic survey of Yucatan swine herds conducted from January through March 1995.) The commenter asked about the results of an APHIS evaluation of the methodology used by Mexican animal health officials to collect serologic samples in Yucatan and whether APHIS made recommendations regarding the methodology used.

Two commenters asked whether a serologic survey was conducted in 1996 and, if so, about the results. One commenter asked upon what census the 1996 serologic survey was based. The commenter further asked about the level of monitoring of the backyard herds that APHIS or Mexican animal health officials consider necessary for ensuring the hog cholera status of these herds.

*Sampling Methodology*

A commenter asked how the prevalence figure of 0.2 percent was arrived at for use in the sampling methodology and stated that, if a lower prevalence were used, the number of samples required for the survey would increase drastically. The commenter further stated that the site visit report made a recommendation regarding sampling methodology but that no indication has been given that the recommendation was implemented and what the results were. Another commenter asked about the conclusions of the review of the sampling methodology in backyard pigs and whether this review resulted in modifications to the current sampling to increase the likelihood of detecting disease. The commenter further asked whether experience with hog cholera in backyard herds provided any indication of the expected ranges of seroprevalence in positive herds.

In taking a census of the Yucatan swine population in 1993 and again in 1996, Mexican animal health officials used standard methods to gather data, including visiting townships in Yucatan to interview swine producers. The data from the 1993 census was used in conducting the serologic survey in 1995. While we do not know the total number of backyard swine farms that existed in Yucatan in 1995, the 1993 census reported the number of swine in Yucatan backyard farms as 114,254. We do not expect Mexican animal health

officials to conduct a yearly census of Yucatan swine, nor do we believe that such a census is necessary. Mexican officials have collected swine census data for Yucatan, and, as a result of ongoing serologic sampling by animal health technicians, that data has been updated from year to year.

In the serologic survey conducted in 1995, samples were taken from every commercial farm, with a total of 2,459 samples taken from such farms. Samples were also taken from backyard farms in proportion to each municipality's swine population based on the 1993 census. Mexican animal health officials used the sampling methodology just described again in 1996 and 1997 to sample commercial and backyard farms. In every year's survey, all samples have been negative for hog cholera. The following table presents the number of serum samples collected and evaluated with negative results at Yucatan swine facilities from 1995 to 1997:

| Type of operation | 1995 | 1996 | 1997 | Total |
|---|---|---|---|---|
| Commercial Farms | 2,459 | 2,526 | 2,502 | 7,487 |
| Backyard Farms | 429 | 1,185 | 1,743 | 3,357 |
| Community Slaughterhouses | ..... | 641 | 660 | 1,301 |
| Federally Inspected Slaughterhouses | ..... | 1,378 | 1,360 | 2,738 |
| Total | 2,888 | 5,730 | 6,265 | 14,883 |

The seroprevalence figure of 0.2 percent was established by Mexican animal health officials to determine the sampling strategy. It is true that a lower prevalence figure would increase the number of samples to be taken. However, if hog cholera were endemic in Yucatan, the prevalence figure would far exceed 0.2 percent. Based on our own judgment and experience with hog cholera eradication in the United States, if hog cholera existed in Yucatan, the seroprevalence would be higher than 0.2 percent because Yucatan's swine population is immunologically naive as a result of being unvaccinated for several years. Moreover, we do not believe that hog cholera could survive in the backyard herds in Yucatan without passing into the commercial herds and quickly being detected.

Currently, serologic surveys are being conducted as follows: Every year, samples are taken from all commercial herds and from 300 randomly selected backyard herds. For the backyard swine population in Yucatan, 300 herds is the sample size needed to detect hog cholera with a 95 percent confidence level if the disease exists at a herd prevalence of 1 percent or higher. The census results do not change this number. The census serves to give a complete listing of all of the farms that have an equal chance of being sampled. At the backyard farms in Yucatan, up to five samples are taken per herd.

The same sampling procedures are being conducted in Campeche and Quintana Roo (the two Mexican States that border Yucatan) as in Yucatan. Every year, Mexican animal health officials take blood samples from 300 randomly selected backyard herds (up to 5 samples per herd) in each of those 2 States. In addition, Mexican animal health officials are sampling an additional 600 backyard herds in Campeche along the State border with Tabasco. Most of the herds being sampled have fewer than five animals.

In the site visit report, we stated, ''Pending further analysis of the data, recommendations may be made to modify their current sampling methodology to increase the likelihood of detecting disease.'' We have recommended increased sampling of backyard farms in high-risk areas, such as along the borders with other States, and this recommendation has been followed. Based on available data, we do not believe that a precise level of monitoring of backyard herds in Yucatan on a periodic basis can be determined. Such a determination would require such additional information as an evaluation of the veterinary infrastructure and disease status of Yucatan's neighboring States. However, we have confidence that the current annual sampling of 300 backyard herds as described previously would reveal any hog cholera virus present in those herds.

We would like to emphasize that serologic surveillance of the Yucatan swine population was only one component of our proposal to allow the importation under certain conditions of pork and pork products from Yucatan. Many other factors, which are listed in the proposed rule and the qualitative risk assessment, were considered and continue to be important. As examples, hog cholera has not been diagnosed within Yucatan for more than 15 years and is not known to exist in any adjacent State, and Yucatan has prohibited vaccination of swine for hog cholera for more than 5years. As a result, the Yucatan swine population has become immunologically naive, so any introduction of hog cholera virus would spread quickly, easing detection. In considering many factors altogether, including the fact that serologic surveillance has been maintained for several years now with no findings of animals positive for hog cholera, we believe that pork and pork products from Yucatan can be imported into the United States without putting the health of the U.S. swine population at risk.

**Risk Assessment**

A commenter questioned the statement in the risk assessment that the importation of pork and pork products from Yucatan would present a negligible risk of introducing hog cholera. The commenter asked how the risk of introducing hog cholera from pork and pork products is negligible if the risk of hog cholera introduction from live swine is low.

The site visit report characterizes Yucatan as an area of low risk for hog cholera based on a high-medium-low paradigm. However, APHIS policy on the importation of animals and animal products states that import decisions on animals and animal products will not be based solely on the characterization or status of the exporting region but rather on a risk assessment addressing the risks presented by a specific commodity from a specific region. The risk assessment must consider information about the animal health situation existing in the region and the probability that the commodity would transmit and establish disease in the United States.

Based on the observations of the site visit team and analysis of information submitted by Mexico, we performed a qualitative risk assessment of the importation of pork and pork products from Yucatan into the United States. Taking into account all of the available evidence concerning hog cholera virus and Yucatan, APHIS found that the probability that Yucatan swine are infected with undetected hog cholera virus is small. The pathway for hog cholera introduction into the U.S. swine

population via contaminated imported pork or pork products would be via feeding uncooked or improperly cooked pork or pork products to pigs in this country. Pork is known to be capable of transmitting hog cholera. However, pork is a high-value commodity intended for human consumption, and U.S. consumers routinely cook pork at a temperature sufficient to kill hog cholera virus. Furthermore, before human food waste such as pork can legally be fed to swine, the waste must be cooked again. Therefore, even if a small quantity of pork contaminated with hog cholera virus were to be imported into the United States, the probability that it would be fed uncooked to pigs is extremely small. For these reasons and the many others discussed in this document, the proposed rule, and the qualitative risk assessment, we find the combined evidence sufficient to conclude that imported pork and pork products from Yucatan, even if containing a low level of hog cholera virus, are unlikely to cause an outbreak of hog cholera in the United States.

**Request for New Site Visit**

A commenter requested that APHIS conduct another site visit to the Yucatan and include veterinary practitioners and representatives of the U.S. swine industry.

We believe that the data gathered from our 1996 site visit is still valid and supports our proposal to allow the importation of pork and pork products from Yucatan under certain conditions, and we do not believe that an additional site visit is necessary to gather additional data. We believe that, if the data has changed in any way, it has likely changed to provide stronger support for the proposed rule. Since our site visit in 1996, more time has passed since the last outbreak of hog cholera in Yucatan and since vaccination for hog cholera was discontinued there. In addition, since our site visit, the States bordering Yucatan have been declared free of hog cholera by the Mexican Government, so the threat of possible introduction of hog cholera into Yucatan from adjacent regions has been further reduced. Moreover, as stated previously, APHIS employees permanently stationed in Mexico maintain constant contact with Mexican agricultural officials. We have confidence in their abilities and efforts to eradicate hog cholera and prevent reintroduction into areas that have been declared free of the disease.

**Other Diseases**

A commenter asked whether APHIS has conducted a review of diseases that might be present in Mexico and are not considered to be present in the United States other than ''List A'' diseases. The commenter was particularly concerned about blue eye disease, which the commenter states has been reported in many States in Central Mexico and has been identified in hogs in Yucatan slaughterhouses. The commenter wanted to know whether APHIS has considered the potential for transmission of blue eye virus in pork products from Yucatan and Sonora and what type of surveillance program is in place for this disease.

This rule pertains exclusively to the importation of pork and pork products—not live swine—from Yucatan and Sonora. Other than hog cholera, which is known to be transmitted by fresh pork, no other swine diseases that can be transmitted by pork exist in Mexico. Therefore, our risk assessment pertained exclusively to hog cholera. Mexican animal health officials report that blue eye disease has never been confirmed in Yucatan. In addition, no evidence exists to indicate that the agent that causes blue eye disease is transmitted by fresh pork.

**Proposed Conditions**

A commenter asked how APHIS or Mexican animal health officials would determine that pork and pork products from Yucatan or Sonora, Mexico, have not been in contact with pork or pork products from any State in Mexico other than Yucatan or Sonora or from any other region not listed in § 94.9(a) as a region where hog cholera is not known to exist.

The commenter asked another question about the proposed regulation regarding seals on the containers of pork and pork products from Yucatan and Sonora. The commenter asked how, in situations where, upon arrival of the pork or pork product in the United States, the numbers on the seals do not match the numbers on the foreign meat inspection certificate, would the APHIS representative at the port of arrival be certain that the shipment contains the original product and has not been subject to contamination.

The commenter also asked about what procedures are in place to ensure that only products from swine born and raised in Sonora or Yucatan will be exported to the United States since Yucatan animal health officials allow the movement into Yucatan of pork products from other Mexican States. Another commenter stated that, although the intent of allowing only pork or pork products to be imported from federally inspected plants in Yucatan is to eliminate the risk of importing products derived from swine raised in backyard herds, nothing in the rule prohibits a federally inspected plant in Yucatan from accepting such swine.

The Mexican Government is ultimately responsible for ensuring that our import conditions are followed. Mexican animal health officials are responsible for certifying that pork or pork products from Yucatan and Sonora have not been in contact with pork or pork products from regions where hog cholera could possibly exist and that only pork or pork products from swine born and raised in Yucatan or Sonora are exported to the United States. When importations of pork and pork products from Yucatan commence, our Mexican counterparts will have to certify that these conditions have been met.

Regulating the activities of Mexican slaughtering facilities would not be within our purview, so we would not attempt to prohibit federally inspected slaughtering facilities in Yucatan or Sonora from accepting swine from backyard farms. However, we also believe that such a prohibition is unnecessary. As stated previously, Mexican animal health officials have confirmed that the federally inspected slaughtering facilities in Yucatan and Sonora do not accept swine from backyard farms. To ensure that they are receiving high-quality hogs, the federally inspected slaughtering facilities in Yucatan and Sonora accept swine only from the large, commercial production facilities. The owners of the slaughtering facilities know that, to be able to ship pork and pork products to the United States, the facilities must not ship any pork or products derived from pigs with an unknown veterinary health status. In the unlikely event federally inspected slaughtering facilities in Yucatan and Sonora start accepting swine from backyard farms, we could take any necessary action to prevent the importation of pork or pork products derived from such swine. Through publication of an interim rule, we could immediately prohibit such shipments.

Our requirements regarding the seals are the same as our requirements for seals on animal products from many foreign regions. Any manipulation of the seals applied to containers of pork or pork products imported from Yucatan or Sonora and application of new seals must be performed under the direct supervision of a Mexican Government official, and an explanation must accompany the product to the U.S. port

of arrival. If containers of pork or pork products from Yucatan or Sonora arrive at a U.S. port with broken seals and insufficient documentation, we would require that the importer provide the proper documentation within 48 hours or the shipment would be denied entry. In accordance with § 94.7, animal products denied entry into the United States must be disposed of or exported within a prescribed period of time.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. A summary of the analyses required by Executive Order 12866 and the Regulatory Flexibility Act are set forth below. Copies of the entire analyses may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

In accordance with 21 U.S.C. 111, the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction or dissemination of any contagious, infectious, or communicable disease of animals from a foreign country into the United States. This rule amends the regulations pertaining to the importation of animal products by establishing new, less restrictive, conditions for the importation of fresh and processed pork and pork products from Yucatan, Mexico, into the United States. The rule also provides for the movement of pork and pork products from Yucatan through areas where hog cholera may exist while in transit to the United States. The rule also amends the regulations regarding the importation of fresh pork from Sonora, Mexico, to allow the importation of pork products from Sonora and to modify the import conditions for Sonoran pork and pork products so that those conditions parallel the import conditions for pork and pork products from Yucatan. These amendments provide for the importation of pork products from Sonora and for the in-transit movement of Sonoran pork and pork products through areas where hog cholera may exist and make it clear that pork and pork products from Sonora must be derived from swine slaughtered at federally inspected slaughter plants.

The disease of concern regarding the importation of pork and pork products from Yucatan is hog cholera. The segment of the U.S. swine industry most likely to be first exposed to hog cholera from imported pork products is the segment that uses human food waste as a feed source. Because the hog cholera virus remains infective in pork products for a long time unless the products are cooked properly, the disease can be transmitted to swine fed discarded, uncooked or insufficiently cooked pork. The Swine Health Protection Act requires that waste-feeding swine operations heat the waste according to prescribed procedures that kill such organisms before feeding the waste to the swine.

A qualitative risk assessment prepared by APHIS indicates that the expected costs of disease introduction are likely to be zero, as the proposed imports pose a low probability of causing a hog cholera outbreak in the United States. APHIS also conducted a quantitative risk assessment based only on serologic survey data of commercial swine operations in Yucatan. Due to modeling constraints, the quantitative risk assessment did not include some of the information most pertinent to risk evaluation, such as the fact that an outbreak of hog cholera has not occurred in Yucatan since 1982. However, the quantitative model is useful in that it provides an upper limit on the estimated probability of a hog cholera outbreak and acknowledges that the actual risk is likely to be lower. Expected costs associated with the anticipated trade in pork and pork products from Yucatan are calculated by multiplying the estimates from the quantitative model of the likelihood of an outbreak and the estimated economic consequences of an outbreak.

In accordance with Executive Order 12866, APHIS has compared the benefits of the increased trade to the expected costs resulting from a disease outbreak. The benefits are calculated as the net change in consumer and producer surplus that results from the estimated volume of trade.

Yucatan generates 7–8 percent of Mexico's pork production and is a net exporter of pork, with 65 percent of the pork produced in the State going to the tourist centers in the neighboring State of Quintana Roo, population centers in and around Mexico City, and Japan. Pork intended for export is produced at the State's only federally inspected slaughter facility, which accepts swine only from commercial producers. Commercial swine production in Yucatan is concentrated among approximately 200 producers, who collectively own about 65,000 sows (1996 data). Three producers alone own 65 percent of these sows, all of which are housed in highly integrated operations similar to those found in the United States. At full capacity, the federally inspected slaughtering facility in Yucatan can slaughter up to 1,000 head per day, with a maximum annual production of 10,000 metric tons of pork.

Based on existing Yucatan hog production and slaughter capacity, we believe that Yucatan producers could export between 200 and 10,000 metric tons of fresh and frozen pork to the United States per year. The high-volume scenario is based on the maximum output of the federally inspected slaughter facility and assumes that all 10,000 metric tons produced there would be shipped to the United States. Because this scenario is highly unlikely, we also evaluated more realistic scenarios of 1,000 and 200 metric tons. The most likely amount of pork imported into the United States from Yucatan would probably be between these two amounts. Therefore, the regulatory impact analysis summarized here examines the potential economic impact of such imports under low – (200 metric tons per year), medium – (1,000 metric tons per year), and high – (10,000 metric tons per year) volume scenarios.

Results of computer simulation iterations for the low-volume simulations indicate positive net benefits in 90 percent of the iterations run. Results of the medium-volume simulations indicate positive net benefits in 85 percent of the iterations run. Results from the high-volume scenario indicate positive net benefits in 75 percent of the iterations run. In the absence of disease (when likelihood estimates are zero), the annual net benefits of trade for the low-, medium-, and high-volume scenarios are estimated, in 1997 dollars, at $6,478, $32,429, and $329,011, respectively. Therefore, based on these calculations, positive net benefits would result from any of the scenarios. The details are contained in the economic impact analysis, as indicated previously.

In conclusion, we believe that the likelihood of hog cholera introduction and its associated biological and economic consequences is sufficiently low as to warrant allowing the importation of pork and pork products from Yucatan. Assuming that, among other things, Yucatan pork is a perfect substitute for domestic pork, we estimate that the net benefits of Yucatan pork imports will be positive. Importations of Yucatan pork will cause U.S. farm gate prices to decrease marginally, benefitting U.S. consumers.

**Final Regulatory Flexibility Analysis**

The Regulatory Flexibility Act requires Federal agencies to analyze possible effects of their regulations on small businesses and to use flexibility to provide relief when regulations could create economic disparities between entities of different sizes. According to the Small Business Administration (SBA), regulations create economic disparities based on size when the regulations have a ''significant economic impact on a substantial number of small entities.''

Over the past several decades, the U.S. pork industry has experienced enormous structural change, which mirrors the overall trend toward ''concentration'' in U.S. agriculture. The shift toward fewer but larger farms has been dramatic in the hog sector. According to the 1997 Census of Agriculture, from 1992 to 1997, the number of farms selling hogs decreased by almost 46 percent (from 188,000 to 102,000), while the value of hogs and pigs sold increased by 37 percent (from $10 billion to $13.8 billion). The pork processing industry is also characterized by a decreasing number of companies operating increasingly large, capital-intensive processing and packing plants that are dependent on high volumes of raw product and that begin to realize economies of size at about 4 million hogs per year.

In 1994, about 2,000 swine producers were licensed as waste-feeding establishments in the continental United States, and this number has not changed greatly since then. The majority of these premises were located in Texas (871), Florida (309), Arkansas (248), and North Carolina (178). Waste-feeding operations are predominantly small. Based on a 1994 APHIS survey, the median number of swine per waste-feeding premises in the 48 conterminous States was 34 (average of 97). Only 10 of the premises had more than 1,000 swine.

The potential economic effects of the importation of pork and pork products from Yucatan, Mexico, are dependent on a number of factors, such as where the products would be consumed in the United States. While it is currently unknown exactly how Yucatan pork would enter U.S. marketing and distribution channels and where it would ultimately be consumed, we believe that the pork would likely be shipped by ocean vessel from Progreso, Yucatan, to a U.S. Gulf Coast port, most likely in Texas or Florida, perhaps in Louisiana. If Yucatan pork is purchased by a local retail chain or wholesaler in those States, the pork would likely be consumed locally. If purchased by a national wholesaler, Yucatan pork could be consumed anywhere in the United States. For the purposes of this analysis, we examined both the possibility that Yucatan pork would be consumed locally in selected Gulf Coast States and also the possibility that it would enter national distribution channels.

The SBA defines small hog farms (Standard Industrial Code 0213) as those earning less than $500,000 in annual receipts. Industry experts suggest that only those hog operations with inventories in excess of 2,000 animals would earn $500,000 or more in sales annually. According to Census of Agriculture data, 6.5 percent of U.S. hog and pig operations held inventories in excess of 2,000 animals in 1997, so by SBA standards, 93.5 percent of all U.S. hog farms are small entities. By these same criteria, more than 99 percent of hog farms in Texas, Louisiana, and Florida are small entities. The average U.S. small hog farm sold 560 head of stock and reported sales of $58,531 in 1997. In Texas, Florida, and Louisiana, small hog farmers sold substantially fewer animals (77 head per farm) and earned substantially less in sales ($7,413 annually).

In 1997, according to the Census of Agriculture, 87,820 small hog farms were in operation nationwide; 4,700 of these were located in the Gulf Coast States of Texas, Florida, and Louisiana. Whether we consider the United States as a whole or just selected Gulf Coast States, the overwhelming majority of hog farms are small entities, so it is reasonable to conclude that a substantial number of small entities could be affected by this rule.

**Economic Effect on Small Entities**

While no general rule sets threshold or trigger levels for ''significant economic impact,'' it has been suggested that an economic effect that equals a small business' profit margin—5 to 10 percent of annual sales—could be considered significant.

We used estimated changes in producer surplus together with the 1997 Census of Agriculture data on hog inventories and hog sales to develop very rough estimates of the potential economic effects of the rule on small hog farmers across the United States and in selected Gulf Coast States. To do this, we assumed that losses in producer surplus would be shared equally among all hog farms in the geographic area under consideration (either the entire United States or selected Gulf Coast States). We then compared per-farm changes in producer surplus with small farms' annual sales to determine whether the economic effects approach the 5–10 percent threshold.

If Yucatan pork enters national distribution channels and, therefore, economic effects are shared by all U.S. producers, no significant economic effect on small entities would occur regardless of the volume (low, medium, or high) of imports assumed. Producer surplus losses per U.S. hog farm would range from $0.63 to $31.61 per year, and these amounts are substantially less than 1 percent of the typical small hog farmer's annual sales ($58,531) in every scenario.

If, under the high-volume scenario, the maximum 10,000 metric tons are imported annually from the Yucatan and consumed locally in Louisiana, Texas, and Florida, the imports could result in significant economic effects on small pork producers in those States. In this case, a subset of small hog farmers with considerably fewer head per farm and considerably less in annual revenues than the average U.S. small hog farm would face the most significant economic effects of an increase in imports. The producer surplus losses per small hog farm in those States would range from $12.02 to $600.58. The larger amount is equivalent to 8.1 percent of the annual sales of the typical Gulf Coast small hog farmer and, therefore, could be considered a significant economic effect.

In conclusion, the rule could affect a substantial number of small hog farms because almost all hog farms meet the SBA size criteria for small entity. However, it is unclear whether the rule will have a significant economic effect on small hog farms. The latter issue depends on how much Yucatan pork is imported and where it is consumed. Under the most extreme assumptions (highest volume imports and limited geographic area affected), small hog producers in selected Gulf Coast States could experience losses in producer surplus equaling approximately 8 percent of annual sales. Such losses would meet ''significant economic impact'' criteria. Under the most likely import volume scenario (1,000 metric tons per year), the rule will not have a significant economic effect on small hog farmers either nationwide or in selected Gulf Coast States.

**Alternatives Considered**

In developing this rule, we considered either (1) making no changes to the existing requirements for the importation of fresh and processed pork and pork products from Yucatan and Sonora, Mexico, (2) allowing the importation of pork and pork products

from Yucatan and Sonora under conditions different from those set forth in this document, or (3) allowing the importation of pork and pork products from Yucatan and Sonora under the conditions set forth in this document.

We rejected the first alternative because it would continue to restrict the importation of pork and pork products from Yucatan under the same conditions that apply to the remainder of Mexico. Because we have determined that pork and pork products can be imported under specified conditions from Yucatan and Sonora with negligible hog cholera risk, taking no action would not be scientifically defensible and would be contrary to trade agreements entered into by the United States. We also rejected the second alternative, which would allow the importation of pork and pork products from Yucatan and Sonora under conditions other than those established by this rule. In developing the criteria for the importation of such pork and pork products, we determined that conditions less stringent than those set forth would present a risk of the introduction of hog cholera into the United States via pork or pork products from regions of Mexico other than Sonora or Yucatan. We further concluded that more stringent conditions would be unnecessarily restrictive. We consider the conditions set forth by this rule to be both effective and necessary in ensuring that the risk of hog cholera introduction via pork and pork product imports from Yucatan and Sonora remains at a negligible level.

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of pork and pork products from Sonora and Yucatan, Mexico, under the conditions specified in this rule will not present a risk of introducing or disseminating hog cholera disease agents into the United States and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0138.

**List of Subjects in 9 CFR Part 94**

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

## PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

**Authority:** 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 94.20 is revised to read as follows:

### § 94.20 Importation of pork and pork products from Sonora and Yucatan, Mexico.

Notwithstanding any other provisions of this part, pork and pork products from the States of Sonora and Yucatan, Mexico, may be imported into the United States under the following conditions:

(a) The pork or pork product is from swine that were born and raised in Sonora or Yucatan and slaughtered in Sonora or Yucatan at a federally inspected slaughter plant that is under the direct supervision of a full-time salaried veterinarian of the Government of Mexico and that is approved to export pork products to the United States in accordance with § 327.2 of this title.

(b) If processed, the pork or pork product was processed in either Sonora or Yucatan in a federally inspected processing plant that is under the direct supervision of a full-time salaried veterinarian of the Government of Mexico.

(c) The pork or pork product has not been in contact with pork or pork products from any State in Mexico other than Sonora or Yucatan or from any other region not listed in § 94.9(a) as a region where hog cholera is not known to exist.

(d) The foreign meat inspection certificate accompanying the pork or pork product (required by § 327.4 of this title) includes a statement certifying that the requirements in paragraphs (a), (b) (if applicable), and (c) of this section have been met and, if applicable, a list of the numbers of the seals required by paragraph (e)(1) of this section.

(e) The shipment of pork or pork products has not been in any State in Mexico other than Sonora or Yucatan or in any other region not listed in § 94.9(a) as a region where hog cholera is not known to exist en route to the United States, unless:

(1) The pork or pork product arrives at the U.S. port of entry in shipping containers bearing intact, serially numbered seals that were applied at the federally inspected slaughter or processing plant in either Sonora or Yucatan by a full-time salaried veterinarian of the Government of Mexico, and the seal numbers correspond with the seal numbers listed on the foreign meat inspection certificate; or

(2) The pork or pork product arrives at the U.S. port of entry in shipping containers bearing seals that have different numbers than the seal numbers on the foreign meat inspection certificate, but, upon inspection of the hold, compartment, or container and all accompanying documentation, an APHIS representative is satisfied that

the pork or pork product containers were opened and resealed en route by an appropriate official of the Government of Mexico and the pork or pork product was not contaminated or exposed to contamination during movement from Sonora or Yucatan to the United States.

(Approved by the Office of Management and Budget under control number 0579–0138)

Done in Washington, DC, this 6th day of January 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–589 Filed 1–10–00; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–24–AD; Amendment 39–11498; AD 2000–01–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300 B2–1A, B2–1C, B2–203, B2K–3C, B4–103, B4–2C, and B4–203 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2–1A, B2–1C, B2–203, B2K–3C, B4–103, B4–2C, and B4–203 series airplanes, that requires modification of the wire harness routing next to the pitch artificial feel unit, and removal of the green and yellow colors from various connectors. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent the electrical connections of the actuators of the green and yellow hydraulic systems for the pitch artificial feel unit from being cross connected due to the design of the wire harness routing, which could result in a stiff elevator control at takeoff, and consequent reduced controllability of the airplane.

**DATES:** Effective February 15, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 15, 2000.

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

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

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2–1A, B2–1C, B2–203, B2K–3C, B4–103, B4–2C, and B4–203 series airplanes was published in the **Federal Register** on November 16, 1999 (64 FR 62131). That action proposed to require modification of the wire harness routing next to the pitch artificial feel unit, and removal of the green and yellow colors from various connectors.

### Comments

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

### Conclusion

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

### Cost Impact

The FAA estimates that 1 airplane of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,079 per airplane. Based on these figures, the cost impact of the AD on the single U.S. operator is estimated to be $3,259.

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 adopted herein 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2000–01–01 Airbus Industrie:** Amendment 39–11498. Docket 99–NM–24–AD.

*Applicability:* Model A300 B2–1A, B2–1C, B2–203, B2K–3C, B4–103, B4–2C, and B4–203 series airplanes; except those airplanes on which Airbus Modification 10702S20752 (reference Airbus Service Bulletin A300–27–0184, dated August 19, 1996, or Revision 01, dated December 4, 1998) 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 (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 the electrical connections of the actuators of the green and yellow hydraulic systems for the pitch artificial feel unit from being cross connected due to the design of the wire harness routing, which could result in a stiff elevator control at takeoff, and consequent reduced controllability of the airplane, accomplish the following:

**Replacement and Removal**

(a) Within 24 months after the effective date of this AD, perform the actions specified in paragraphs (a)(1) and (a)(2) of this AD in accordance with Airbus Service Bulletin A300–27–0184, Revision 01, dated December 4, 1998.

(1) Replace the wire harness routing with a new, improved wire harness routing.

(2) Remove the green and yellow colors from the connectors specified in the service bulletin.

**Note 2:** Accomplishment of the actions in paragraph (a) of this AD in accordance with Airbus Service Bulletin A300–27–0184, dated August 19, 1996, is considered acceptable for compliance with this AD.

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

**Special Flight Permits**

(c) 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.

**Incorporation by Reference**

(d) The actions shall be done in accordance with Airbus Service Bulletin A300–27–0184, Revision 01, dated December 4, 1998, which contains the following list of effective pages:

Revision Level Date

| Page No. | Revision level shown on page | Date shown on page |
|---|---|---|
| 1–8 | 1 | December 4, 1998. |
| 9–30 | Original | August 19, 1996. |

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in French airworthiness directive 98–447–264(B), dated November 18, 1998.

(e) This amendment becomes effective on February 15, 2000.

Issued in Renton, Washington, on January 3, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–376 Filed 1–10–00; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–80–AD; Amendment 39–11499; AD 2000–01–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Model BAe.125 Series 1000A and 1000B Airplanes and Model Hawker 1000 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Raytheon Model BAe.125 series 1000A and 1000B airplanes and Model Hawker 1000 series airplanes, that requires an inspection to determine the integrity of the duct connection on both ends of the turbine air discharge duct in the air conditioning system; an inspection to measure the bead height on the ends of the turbine air discharge duct; and corrective actions, if necessary. This amendment is prompted by reports indicating that the turbine air discharge duct disconnected from the cold air unit (CAU) or water separator due to insufficient bead height on the ends of the turbine air discharge duct. The actions specified by this AD are intended to prevent such disconnection from the CAU or water separator, which could result in cabin depressurization.

**DATES:** Effective February 15, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 15, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas

67209; telephone (316) 946–4142; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Raytheon Model BAe.125 series 1000A and 1000B airplanes and Model Hawker 1000 series airplanes was published in the **Federal Register** on October 14, 1999 (64 FR 55638). That action proposed to require an inspection to determine the integrity of the duct connection on both ends of the turbine air discharge duct in the air conditioning system; an inspection to measure the bead height on the ends of the turbine air discharge duct; and corrective actions, if necessary.

**Comments**

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

**Conclusion**

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

**Cost Impact**

There are approximately 52 airplanes of the affected design in the worldwide fleet. The FAA estimates that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $18,900, or $540 per airplane.

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

**Regulatory Impact**

The regulations adopted herein will not have 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. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2000–01–02 Raytheon Aircraft Company** (Formerly Beech): Amendment 39–11499. Docket 99–NM–80–AD.

*Applicability:* All Model BAe.125 series 1000A and 1000B airplanes and Model Hawker 1000 series airplanes, certificated in any category.

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

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the turbine air discharge duct in the air conditioning system from disconnecting from the CAU or water separator in flight, which could result in cabin depressurization, accomplish the following:

**Inspections**

(a) Within 25 flight hours after the effective date of this AD, perform a general visual inspection to determine the integrity of the duct connections (i.e., ensure that the duct and securing clamps are in place, the sleeve is central to the joint gap, and the clamps are clear of the duct bead) on both ends of the turbine air discharge duct in accordance with Raytheon Service Bulletin SB 21–3108, dated November 1998. If any discrepancy is detected, prior to further flight, adjust the clamps in accordance with the service bulletin.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

(b) Within 300 flight hours or 6 months after the effective date of this AD, whichever occurs first, perform a one-time detailed inspection to measure the bead height on the ends of the turbine air discharge duct in accordance with Raytheon Service Bulletin SB 21–3108, dated November 1998. If the bead height does not conform to the dimension shown in the service bulletin, prior to further flight, either rework the duct or replace the duct with a new duct, in accordance with the service bulletin.

**Note 3:** For the purposes of this AD, a detailed 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.''

**Spares**

(c) As of the effective date of this AD, no person shall install a turbine air discharge duct, part number 25–9VF425–1A, on any airplane, unless that duct has been inspected in accordance with Part II of Raytheon Service Bulletin SB 21–3108, dated November 1998.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small 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, Wichita ACO.

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

**Special Flight Permits**

(e) 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.

**Incorporation by Reference**

(f) The actions shall be done in accordance with Raytheon Service Bulletin SB 21–3108, dated November 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 15, 2000.

Issued in Renton, Washington, on January 3, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–375 Filed 1–10–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 98–CE–84–AD; Amendment 39–11507; AD 98–19–15 R1]**

**RIN 2120–AA64**

## Airworthiness Directives; Fairchild Aircraft, Inc. SA226 and SA227 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises Airworthiness Directive (AD) 98–19–15, which currently requires incorporating information into the Limitations Section of the airplane flight manual (AFM) that imposes a speed restriction and a minimum pilot requirement for Fairchild Aircraft, Inc. (Fairchild) SA226 and SA227 series airplanes equipped with Barber-Colman pitch trim actuators, part number (P/N) 27–19008–001/–004 or P/N 27–19008–002/–005. Since AD 98–19–15 became effective, improved design pitch trim actuators have been developed that, when installed, will eliminate the speed restriction and minimum pilot requirements of the current AD. This AD requires incorporating these installations as a method of complying with the current AD. The actions specified by this AD are intended to lessen the possibility of airplane pitch up caused by mechanical failure of the pitch trim actuator, which could result in a pitch upset and structural failure of the airplane.

**DATE:** Effective March 3, 2000.

**ADDRESSES:** Service information that applies to this AD may be obtained from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; telephone: (800) 577–7273; facsimile: (210) 824–3869. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–84–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

**FOR FURTHER INFORMATION CONTACT:** Mr. Werner G. Koch, Aerospace Engineer, FAA, Aircraft Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

**SUPPLEMENTARY INFORMATION:**

### Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Fairchild SA226 and SA227 series airplanes equipped with Barber-Colman pitch trim actuators, part number (P/N) 27–19008–001/–004 or P/N 27–19008–002/–005 was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 23, 1999 (64 FR 51479). The NPRM proposed to revise AD 98–19–15. AD 98–19–15 Amendment 39–10794 (63 FR 50983, September 24, 1998), currently requires incorporating the following information into the applicable AFM on Fairchild SA226 and SA227 airplanes that are equipped with Barber-Colman pitch trim actuators, P/N 27–19008–001/–004 or P/N 27–19008–002/–005:

• ''Limit the maximum indicated airspeed to maneuvering airspeed (Va) as shown in the appropriate airplane flight manual (AFM).'' and

• ''The minimum crew required is two pilots.''

The following service information describes the AFM requirements:

—Fairchild Service Letter 226–SL–017, FAA Approved: August 26, 1998; Revised: September 2, 1998;

—Fairchild Service Letter 227–SL–033, FAA Approved: August 26, 1998; Revised: September 2, 1998; and

—Fairchild Service Letter CC7–SL–023, FAA Approved: August 26, 1998; Revised: September 2, 1998.

The NPRM proposed to retain the requirements of the existing AD, and would provide the option of incorporating one of the design alternatives developed since the issuance of AD 98–19–15. These design alternatives are:

—Barber-Colman P/N 27–19008–006 or P/N 27–19008–007 pitch trim actuators. Procedures to install these pitch trim actuators are contained in Fairchild Service Bulletin 226–27–064 , Fairchild Service Bulletin 227–27–046, and Fairchild Service Bulletin CC7–27–015. All airplane models are eligible for this installation and airplane models vary by service bulletin;

—Simmonds-Precision P/N DL5040M5 or P/N DL5040M6 pitch trim actuators. All airplane models are eligible for this installation. Procedures and limitations to install these pitch trim actuators for the Models SA227–CC and SA227–DC airplanes are contained in Fairchild Service Bulletin CC7–27–014, and are contained in engineering data for all other models (contact Fairchild); and

—Simmonds-Precision P/N DL5040M8 pitch trim actuators. Procedures and limitations to install these pitch trim actuators are contained in Fairchild Service Bulletin 227–27–045, Fairchild Service Bulletin 226–27–063, and Fairchild Service Bulletin CC7–27–013. All airplane models are eligible for this installation and airplane models vary by service bulletin.

These pitch trim actuators, when installed, would eliminate the need for the requirements of AD 98–19–15.

Interested persons have been afforded an opportunity to participate in the making of this amendment. One comment was received in favor of the NPRM and no comments were received on the FAA's determination of the cost to the public.

### The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden

upon the public than was already proposed.

**Cost Impact**

The FAA estimates that 508 airplanes in the U.S. registry could have the affected pitch trim actuators installed and, therefore, could be affected by the AFM requirements of this AD. Since an owner/operator who holds at least a private pilot's certificate as authorized by sections 43.7 and 43.9 of the Federal Aviation Regulations (14 CFR 43.7 and 43.9) may accomplish the AFM insertions, the only cost impact upon the public will be the approximately 30 minutes it will take each owner/operator to incorporate the information into the AFM.

The FAA has no way of determining the number of airplanes that have the design alternative pitch trim actuators installed, and will therefore not be affected by this AD.

**Regulatory Impact**

These regulations 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. Therefore, the FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 98–19–15, Amendment 39–10794, and adding a new AD to read as follows:

**98–19–15 R1 Fairchild Aircraft, Inc.:** Amendment 39–11507; Docket No. 98–CE–84–AD, Revises AD 98–19–15, Amendment 39–10794.

*Applicability*: Models SA226–T, SA226–T(B), SA226–AT, SA226-TC, SA227–TT, SA227–AT, SA227–AC, SA227–BC, SA227–CC, and SA227–DC airplanes, all serial numbers, certificated in any category; that are equipped with Barber-Colman pitch trim actuators, part number (P/N) 27–19008–001/–004 or P/N 27–19008–002/–005.

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

*Compliance:* Required as indicated in the body of this AD, unless already accomplished or made unnecessary by replacement of the P/N 27–19008–001/–004 or P/N 27–19008–002/–005 Barber-Colman pitch trim actuator with a Simmonds-Precision actuator, P/N DL5040M5, P/N DL5040M6, or P/N DL5040M8; or a Barber-Colman actuator, P/N 27–19008–006 or P/N 27–19008–007.

To lessen the possibility of airplane pitch up caused by mechanical failure of the pitch trim actuator, which could result in a pitch upset and structural failure of the airplane, accomplish the following:

To lessen the possibility of airplane pitch up caused by mechanical failure of the pitch trim actuator, which could result in a pitch upset and structural failure of the airplane, accomplish the following:

(a) Prior to further flight after September 25, 1998 (the effective date of AD 98–19–15), revise the FAA-approved Airplane Flight Manual (AFM) by incorporating the following into the Limitations Section of the AFM. This may be accomplished by inserting a copy of this AD into the AFM:

• ''Limit the maximum indicated airspeed to maneuvering airspeed (Va) as shown in the appropriate airplane flight manual (AFM).''

and

• ''The minimum crew required is two pilots.''

**Note 2:** Fairchild Service Letter 226–SL–017, Fairchild Service Letter 227–SL–033, and Fairchild Service Letter CC7–SL–023, all FAA Approved: August 26, 1998; Revised: September 2, 1998; address the subject matter of this AD.

**Note 3:** The prior to further flight compliance time of paragraph (a) of this AD is being retained from AD 98–19–15. The only substantive difference between this AD and AD 98–19–15 is the addition of the alternative method of compliance referenced in paragraph (c) of this AD.

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

**Note 4:** This AD does not affect AD 97–23–01, Amendment 39–10188 (62 FR 5922, November 3, 1997). AD 97–23–01 still applies to all SA226 and SA227 series airplanes equipped with either Barber-Colman or Simmonds-Precision pitch trim actuators. AD 97–23–01 will be superseded to cover the improved design pitch trim actuators referenced in paragraphs (c)(1), (c)(2), and (c)(3) of this AD. AD 97–23–01 requires the following:

—repetitively measuring the freeplay of the pitch trim actuator and repetitively inspecting the actuator for rod slippage or ratcheting;

—immediately replacing any actuator if certain freeplay limitations are exceeded or rod slippage or ratcheting is evident; and

—eventually replacing the Simmonds-Precision actuators regardless of the inspection results.

(c) As an alternative method of compliance to the requirements of this AD, replace each of the P/N 27–19008–001/–004 or P/N 27–19008–002/–005 Barber-Colman pitch trim actuators with one of the following, or FAA-approved equivalent part number:

(1) Barber-Colman P/N 27–19008–006 or P/N 27–19008–007 pitch trim actuators. Procedures to install these pitch trim actuators are contained in Fairchild Service Bulletin 226–27–064 , Fairchild Service Bulletin 227–27–046, and Fairchild Service Bulletin CC7–27–015. All airplane models are eligible for this installation and airplane models vary by service bulletin;

(2) Simmonds-Precision P/N DL5040M5 or P/N DL5040M6 pitch trim actuators. All airplane models are eligible for this installation. Procedures and limitations to install these pitch trim actuators for the Models SA227–CC and SA227–DC airplanes are contained in Fairchild Service Bulletin CC7–27–014, and are contained in engineering data for all other models (contact Fairchild); or

(3) Simmonds-Precision P/N DL5040M8 pitch trim actuators. Procedures and limitations to install these pitch trim actuators are contained in Fairchild Service Bulletin 227–27–045, Fairchild Service Bulletin 226–27–063, and Fairchild Service Bulletin CC7–27–013. All airplane models

are eligible for this installation and airplane models vary by service bulletin.

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

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Fort Worth Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150.

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

(2) Alternative methods of compliance approved in accordance with AD 98–19–15 are considered approved as alternative methods of compliance for this AD.

**Note 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(f) All persons affected by this directive may obtain copies of the documents referred to herein upon request to Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine these documents at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(g) This amendment becomes effective on March 3, 2000.

Issued in Kansas City, Missouri, on January 4, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–537 Filed 1–10–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF THE INTERIOR

## Minerals Management Service

## 30 CFR Parts 202 and 206

**RIN 1010–AB57**

## Amendments to Gas Valuation Regulations for Indian Leases—Additional Information Related to Valuing Indian Gas Produced from Leases Located in Index Zones; Correction

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of eligible index zones; correction.

**SUMMARY:** On November 30, 1999, MMS published a ''Notice of Eligible Index Zones'' (64 FR 66771) concerning information related to valuing gas produced from Indian leases located in index zones. This notice clarifies the second paragraph following Table No. 2.–MMS-Approved Publications. That paragraph discusses the valuation of production when leases are excluded from valuation under the index-based valuation method. This notice also corrects the lease prefix data for the Jicarilla Apache Reservation in Table No. 4.—Lease Prefixes and MMS-Designated Areas.

**EFFECTIVE DATE:** January 1, 2000.

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

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of November 30, 1999, in FR Doc. 99–30991, page 66772, columns 1 and 2, the second paragraph following Table No. 2.—MMS-Approved Publications is revised to read as follows:

As stated in 30 CFR 206.172 (64 FR 43517), an Indian tribe may ask MMS to exclude some or all of its leases from valuation under the index-based valuation method. After consulting with the Bureau of Indian Affairs (BIA), MMS may also exclude any Indian allotted leases from valuation under the index-based valuation method. If MMS approves any requests for exclusion from an index zone, the lessee must value the production under the non-index-based valuation method subject to the provisions of 30 CFR 202.555(c) (64 FR 43514) and 206.170(b) (64 FR 43515).

In addition, on pages 66774 and 66775, correct Table No. 4.—Lease Prefixes and MMS-Designated Areas to read as follows:

TABLE NO. 4.—LEASE PREFIXES AND MMS-DESIGNATED AREAS

| MMS-designated areas | Lease prefixes |
|---|---|
| Alabama—Coushatta | 615 |
| Blackfeet Reservation | 507, 512, 513, 514, 515, 517, 526. |
| Crow Reservation | 520, 619. |
| Fort Belknap | 538. |
| Fort Berthold | 528, 529, 540. |
| Fort Peck Reservation | 506, 523, 533, 536, 622. |
| Jicarilla Apache Reservation | 609. |
| Oklahoma Counties: Alfalfa, Beaver, Cimarron, Cleveland, Creek, Garfield, Grant, Harper, Kay, Lincoln, Noble, Nowata, Oklahoma, Pawnee, Payne, Pottawatomie, Rogers, Texas, Tulsa, Washington, Woods. | 503, 505, 510, 511, 518, 521, 601, 602, 607, 615, 714. |
| Oklahoma Counties: Beckham, Blaine, Caddo, Canadian, Comanche, Cotton, Custer, Dewey, Ellis, Garvin, Grady, Greer, Harmon, Jackson, Jefferson, Kingfisher, Kiowa, Logan, Major, McClain, Roger Mills, Stephens, Tillman, Washita, Woodward. | 503, 505, 518, 601, 602, 607. |
| Oklahoma Counties: Adair, Atoka, Bryan, Carter, Cherokee, Choctaw, Coal, Craig, Delaware, Haskell, Hughes, Johnston, Latimer, Le Flore, Love, Marshall, Mayes, McCurtain, McIntosh, Murray, Muskogee, Okfushee, Okmulgee, Ottawa, Pittsburg, Pontotoc, Pushmataha, Seminole, Sequoyah, Wagoner. | 503, 505, 511, 601, 602, 607, 615. |
| Navajo Allotted Leases in the Navajo Reservation | 516, 525, 527, 621, 623. |
| Navajo Tribal Leases in the Navajo Reservation | 415, 516, 525, 527, 620, 621, 623. |
| Northern Cheyenne Reservation | None. |
| Rocky Boys Reservation | 053, 154, 537, 889. |
| Southern Ute Reservation | 519, 522, 524, 614, 750. |
| Turtle Mountain Reservation | 610. |
| Ute Mountain Ute Reservation | 519, 522, 524, 614, 750. |
| Ute Allotted Leases in the Uintah and Ouray Reservation | 509, 531, 532. |
| Ute Tribal Leases in the Uintah and Ouray Reservation | 509, 531, 532. |

TABLE NO. 4.—LEASE PREFIXES AND MMS-DESIGNATED AREAS—Continued

| MMS-designated areas | Lease prefixes |
|---|---|
| Wind River Reservation | 502, 535, 634. |

Dated: December 30, 1999.

**Lucy Querques Denett,**

*Associate Director for Royalty Management.*

[FR Doc. 00–528 Filed 1–10–00; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD08–99–064]**

**RIN 2115–AE47**

## Drawbridge Operating Regulation; Black River, Wisconsin

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of Temporary Deviation from Regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Chicago, Milwaukee, St. Paul and Pacific Railroad Drawbridge, Mile 1.0, Black River at LaCrosse, Wisconsin. This deviation allows the drawbridge to remain closed to navigation for 59 days from January 3, 2000 to March 1, 2000. This action is required to allow the bridge owner time for preventive maintenance in the winter, when there is less impact on navigation.

**DATES:** This deviation is effective from January 3, 2000 to March 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103–2832, (314) 539–3900, extension 378.

**SUPPLEMENTARY INFORMATION:** The Chicago, Milwaukee, St. Paul and Pacific Railroad Bridge has a vertical clearance of 17.0 feet above low water and 4.0 feet above high water in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows. This deviation has been coordinated with the commercial waterway industry. No one objected to the proposed deviation.

The Canadian Pacific Railway has requested a temporary deviation from the normal operation of the bridge to remove mechanical devices for refurbishing.

The deviation is for the period January 3, 2000 to March 3, 2000. This temporary deviation allows the draw of the Chicago, Milwaukee, St. Paul and Pacific Railroad Bridge to remain in the close-to-navigation position for 59 days. The drawbridge operation regulation normally requires that the drawbridge open on signal if at least two hours notice is given.

Dated: December 27, 1999.

**K.J. Eldridge,**

*Captain, USCG, Acting District Commander, Eighth Coast Guard District.*

[FR Doc. 00–584 Filed 1–10–00; 8:45 am]

**BILLING CODE 4910–15–M**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 117

**[CGD13–99–011]**

**RIN 2115 AE47**

## Drawbridge Operations Regulations; Columbia River, OR

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the operating regulations for the dual Interstate 5 drawbridges across the Columbia River, mile 106.5, between Vancouver, WA, and Portland, OR. The amendment simplifies the operating regulations by removing the river level and vessel types as schedule factors and establishes a single schedule during which the draw spans need not be opened for the passage of vessels from 6:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday except federal holidays.

**DATES:** This rule is effective February 10, 2000.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD13–99–011 and are available for inspection or copying at the office of the Commander(oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067, room 3510 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, Telephone (206) 220–7272.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On June 29, 1999, we published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Columbia River, Oregon, in the **Federal Register** (64 FR 34748). We received two letters commenting on the proposed rulemaking. No public hearing was requested and none was held.

### Background

The purpose of this rule is to streamline the operating regulations by removing the various periods when the dual lift spans need not open for vessels and replacing them with a single schedule, Monday through Friday, for all vessels. This rule does not change the operation of the draw spans on weekends and federal holidays, when openings on signal are provided.

The current operating regulations are dependent upon river level measured by the gauge at the bridges. The hours during which the bridges need not open for navigation are presently changed whenever the river level is at 6 feet or above. This rule removes river level as a schedule factor to streamline the regulations to an easily remembered and administered schedule of operation. This rule applies uniformly to all types of navigation, no longer distinguishing between commercial and recreational vessels.

### Discussion of Comments and Changes

The Coast Guard received two letters in response to the notice of proposed rulemaking. One letter objected to the lack of distinction between commercial and recreational traffic in the proposed regulation. The respondent wished this distinction to be retained. This distinction is not necessary for operation of the draws and is not in keeping with current Coast Guard policy for the operation of drawbridges. The proposal was not incorporated in the final rule. A second letter, from the Oregon Department of Transportation (ODOT), owner of the dual bridges, persuaded the District Commander to drop the proposed one-hour notice requirement for all draw openings

between 6:30 a.m. and 6 p.m. The Coast Guard proposed this advance notice from vessel operators so that warnings could be given to highway traffic, giving travelers the option to take I–205 across the Columbia River. However, ODOT considered this notice to be too short to effectively post warning to motorists. The Coast Guard concurs and further notes that longer notice would not make for greater accuracy in judging the arrival time of vessels at the drawspan. The requirement for advance notice for openings is not included in this final rule.

This rule only amends 33 CFR 117.869 so that the draws need not be opened for the passage of vessels from 6:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday, except federal holidays.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The final rule should improve commuter traffic flow by a one-hour reduction in both morning and evening times when commercial navigation can pass through the open draw spans. This is the reduction that occurs when the gauge reads 6 feet or more at the bridge. When the river level is 5.9 feet or less at the bridge, all vessels gain one hour of opening opportunity by this change.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit through the Columbia River drawbridge during the minimally changed closed periods. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant impact on a substantial number of small entities.

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

We have analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the federal government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under E.O. 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 risk to safety that may disproportionately affect children.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule changes a drawbridge regulation which has been found not to have a significant effect on the environment. A ''Categorical Exclusion Determination'' is not required.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.869(a) to read as follows:

**§ 117.869 Columbia River.**

(a) The draws of the Interstate 5 Bridges, mile 106.5, between Portland, OR, and Vancouver, WA, shall open on signal except that the draws need not be opened for the passage of vessels from 6:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m. Monday through Friday except federal holidays.

* * * * *

Dated: December 27, 1999.

**Paul M. Blayney,**

*Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.*

[FR Doc. 00–585 Filed 1–10–00; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Chapter 1

**RIN 2900–AJ57**

### Rules of Practice: Title Change

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Board of Veterans' Appeals (Board) adjudicates appeals from denials of claims for veterans' benefits filed with the Department of Veterans Affairs. This document amends the Board's Rules of Practice to reflect that ''Office of Counsel to the Chairman (01C)'' has been changed to ''Office of the Senior Deputy Vice Chairman (012).''

**DATES:** *Effective Date:* January 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Steven L. Keller, Senior Deputy Vice Chairman (012), Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202–565–5978).

**SUPPLEMENTARY INFORMATION:** This final rule merely concerns agency management. Accordingly, we are dispensing with prior notice and

comment and delayed effective date provisions of 5 U.S.C. 553.

The Secretary of Veterans Affairs hereby certifies that this final rule will 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. 601–602, since this final rule does not contain any substantive provisions. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the regulatory flexibility analysis requirements of §§ 603 and 604.

Approved: December 6, 1999.

**Togo D. West, Jr.**

*Secretary of Veterans Affairs,*

For the reasons set out in the preamble, under 38 U.S.C. 501, 38 CFR chapter 1 is amended as set forth below:

**CHAPTER I—DEPARTMENT OF VETERANS AFFAIRS**

1. In chapter I, revise all references to ''Office of Counsel to the Chairman (01C)'' to read ''Office of the Senior Deputy Vice Chairman (012)''.

[FR Doc. 00–606 Filed 1–10–00; 8:45 am]

BILLING CODE 8320–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[085–1085b; FRL–6517–9]**

## Approval and Promulgation of Implementation Plans; State of Kansas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a variety of revisions to the State Implementation Plan (SIP) for Kansas. These revisions include revising and renumbering regulatory definitions, streamlining opacity requirements, expanding testing of gasoline delivery vehicles, and methods for calculating actual emissions. These revisions enhance and strengthen the SIP to promote attainment and maintenance of established air quality standards.

**DATES:** This direct final rule is effective on March 13, 2000 without further notice, unless EPA receives adverse comment by February 10, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** All comments should be addressed to: Christopher D. Hess, U.S. EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101, or via e-mail at hess.christopher@epamail.epa.gov.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Christopher D. Hess, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7213.

**SUPPLEMENTARY INFORMATION:**

Information regarding this action is presented in the following order:

Why is EPA taking this action?

Who should be concerned with these revisions?

How does EPA decide these revisions are approvable?

''Final Action.''

Throughout this document, wherever ''we, us, or our'' is used, that means EPA.

### Why Is EPA Taking This Action?

The state of Kansas maintains a SIP that contains regulations, control measures, and strategies to maintain national ambient air quality standards (NAAQS). Our process for approving revisions to the SIP allows all interested citizens, government agencies, and regulated groups and individuals to know precisely what is in the SIP. It also allows us or the public to take enforcement action to address violations of the approved regulations.

### Who Should Be Concerned With These Revisions?

If you use the state of Kansas' regulatory definitions, are concerned with opacity requirements (especially in Wyandotte County), operate a gasoline delivery vehicle in Kansas City, or need to know how to calculate actual emissions, the revisions we are approving may interest you. We are providing a summary of each revision in the next four sections.

*A. Kansas Regulatory Definitions*

K.A.R. 28–19–7 of the previously approved SIP contained the primary definitions for the Kansas air quality regulations. This section is now revoked. The definitions are now included in K.A.R. 29–19–200, which is a planned renumbering of the regulations by the state. Furthermore, the Federal lists of volatile organic compounds (VOC) and hazardous air pollutants that were previously contained in K.A.R. 28–19–7 are now contained in K.A.R. 28–19–201. K.A.R. 28–19–16a, regarding new source permit requirements for designated nonattainment areas, is amended to remove duplications of certain terms previously contained in K.A.R. 28–19–7 that now appear in K.A.R. 28–19–200.

The net effect is that the definitions are now renumbered, free of duplications, and the Federal lists are now separated from the main body of definitions so that changes generated by Federal revisions can be made quickly and without reprinting the entire definitions section (e.g., the new K.A.R. 28–19–200) each time a Federal revision is enacted.

*B. Opacity*

K.A.R. 28–19–50 of the previously approved SIP contained the general opacity regulations (''opacity'' is a term that describes the percentage of visible air emissions allowable from an emissions unit). K.A.R. 28–19–52 contained the exceptions to the general opacity requirements contained in K.A.R. 28–19–50.

Both of the existing opacity regulations are now revoked. Their content is now incorporated into K.A.R. 28–19–650. This new, single regulation also incorporates provisions for Wyandotte County regarding opacity.

The net effect of these revisions is that previous opacity requirements remain in effect but are now contained in renumbered regulations. Additionally, by including the local rules from Wyandotte County, the state rule is now consistent with the local rule, which was previously approved by EPA as part of the SIP as a local, but not a state, rule.

*C. Gasoline Delivery Vehicles in Kansas City*

K.A.R. 28–19–70 in the Kansas air quality regulations establish controls on emissions of VOCs from gasoline delivery vehicles. The regulation is now revised so that inspections of vehicles to determine compliance is expanded from two months to five months of each year. This change will increase the ability of Kansas to ensure that testing and compliance demonstrations are performed for gasoline delivery vehicles.

*D. Method for Determining Actual Emissions*

In regulation K.A.R. 28–19–20, the state outlines various alternatives for calculating actual emissions for owners or operators of an emissions unit or stationary source.

The regulation enables sources to determine actual emissions using data from continuous monitoring systems, approved emissions factors, material balances, or methods specified in an issued permit. If a source is unable to qualify for one of these methods, the calculation will be performed using the potential to emit of the emission unit or stationary source.

*E. Permit Applicability Limits*

We are not acting on one portion of the Kansas SIP submittal. The May 3, 1999, submittal contains a new regulation, K.A.R. 28–19–564, which provides an exemption from certain major source permitting requirements for sources which limit their emissions to specified levels. During the state's rule adoption process, we commented that the rule should be revised to define more clearly the records that sources must keep to demonstrate their emission levels. In response, Kansas indicated that it would make changes in the rule to address EPA concerns at a later date. EPA plans to propose action on K.A.R. 28–19–564 after the state has made revisions and submitted them to EPA.

If you are interested in a technical analysis of these revisions, please request the technical support document (TSD) from us. It is dated July 22, 1999, and titled ''Kansas SIP Revisions, 1999.'' Please refer to the contact information provided in the summary section of this document to request the TSD.

**How Does EPA Decide These Revisions Are Approvable?**

First, we participate with the state to identify which portions of the SIP need to be revised to, for example, incorporate changes in Federal regulations or strengthen measures used to maintain the NAAQS. The state then initiates a public consultation process that allows anyone who is interested to provide comments on proposed regulations. Once these regulations are adopted as final by the state, they are submitted to us for Federal approval.

We then compare the state's revised regulations to established Federal criteria to ensure those regulations meet all Federal criteria. (Although we participate early in the rule revision process, the subsequent public review process can occasionally mean the state makes certain revisions to the proposed regulations. So, we make sure that any revisions still meet all applicable criteria after the state regulations are finalized).

The criteria we use are contained in a variety of documents such as the Clean Air Act (CAA) and the Code of Federal Regulations. When a state's proposals fulfill Federal requirements, we propose approval through this **Federal Register** document.

As mentioned earlier, we have conducted a rigorous technical analysis of these revisions in our TSD, and anyone who is interested can request that document to examine these revisions more closely.

In summary, we consider all of the proposed revisions noncontroversial and fully approvable. Each revision is already an adopted requirement in Kansas and, as such, has undergone extensive public review and comment process. Therefore, we are not imposing any new requirements that are not already in effect in the state of Kansas or in Wyandotte County.

**Final Action**

EPA is approving revisions submitted by the state of Kansas regarding the topics outlined in this document. Nothing in this action should be construed as making any determinations or expressing any position with regard to Kansas' audit law (K.S.A. 60–3332, *et seq*.), and this action does not express or imply any viewpoint regarding any legal deficiencies in this or any other Federally authorized, delegated, or approved program resulting from the effect of Kansas' audit law.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective March 13, 2000 without further notice unless the Agency receives adverse comments by February 10, 2000.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this action will be effective on March 13, 2000 and no further action will be taken on the proposed rule.

**Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

*B. Executive Order 13132*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612 (Federalism) and Executive Order 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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.

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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under 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 an economically significant regulatory action as defined by Executive Order 12866, and it does not establish a further health or risk-based standard because it approves state rules which implement a previously promulgated health or safety-based standard.

*D. 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 OMB, 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 officials 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. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*E. Regulatory Flexibility Act (RFA)*

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

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

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

*G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the United States Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*H. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 13, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. [See section 307(b)(2).]

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 29, 1999.

**Dennis Grams, P.E.,**

*Regional Administrator, Region VII.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

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

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

## Subpart R—Kansas

2. In § 52.870 the table in paragraph (c) is amended by:

a. Removing entries ''K.A.R. 28–19–7'' and ''K.A.R. 28–19–50'';

b. Revising entries ''K.A.R. 28–19–16a'', ''K.A.R. 28–19–20'' and ''K.A.R. 28–19–70'';

c. Adding in numerical order entries ''K.A.R. 28–19–200'' and ''K.A.R. 28–19–201'' under the heading ''General Provisions''; and

d. Adding in numerical order the entry ''K.A.R. 28–19–650'' under the heading ''Open Burning Restrictions.''

The revisions and additions read as follows:

**§ 52.870 Identification of plan.**

* * * * *

(c) EPA-approved regulations.

EPA-APPROVED KANSAS REGULATIONS

| Kansas citation | Title | State effective date | EPA approval date | Explanations |
|---|---|---|---|---|
| **Kansas Department of Health and Environment Ambient Air Quality Standards and Air Pollution Control** | | | | |
| * | * | * | * | * |
| **Nonattainment Area Requirements** | | | | |
| * | * | * | * | * |
| K.A.R. 28–19–16a | Definitions | 10/10/97 | 1/11/00, 65 FR 1548. | |
| * | * | * | * | * |
| **Processing Operation Emissions** | | | | |
| * | * | * | * | * |
| K.A.R. 28–19–20 | Calculation of Actual Emissions | 9/28/93 | 1/11/00, 65 FR 1548. | |
| * | * | * | * | * |
| **Volatile Organic Compound Emissions** | | | | |
| * | * | * | * | * |
| K.A.R. 28–19–70 | Leaks from Gasoline Delivery Vessels and Vapor Collection Systems. | 5/15/98 | 1/11/00, 65 FR 1548. | |
| * | * | * | * | * |
| **General Provisions** | | | | |
| * | * | * | * | * |
| K.A.R. 28–19–200 | General Provisions; definitions .. | 10/10/97 | 1/11/00, 65 FR 1548 | New rule. Replaces K.A.R. 28–19–7 definitions. |
| K.A.R. 28–19–201 | General Provisions; Regulated Compounds List. | 10/10/97 | 1/11/00, 65 FR 1548 | New rule. Replaces Regulated Compounds in K.A.R. 28–19–7. |
| * | * | * | * | * |
| **Open Burning Restrictions** | | | | |
| * | * | * | * | * |
| K.A.R. 28–19–650 | Emissions Opacity Limits | 3/1/96 | 1/11/00, 65 FR 1548 | New rule. Replaces K.A.R. 28–19–50 and 28–19–52. |
| * | * | * | * | * |

[FR Doc. 00–270 Filed 1–10–00; 8:45 am]
**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 712 and 716

**[**

**OPPTS–82050; FRL–5777–2]**

**RIN–2070–AB08 and 2070–AB11**

## Preliminary Assessment Information and Health and Safety Data Reporting; Addition and Removal of Certain Chemicals and Removal of Stay

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This final rule addresses the recommendations of the 39th TSCA Interagency Testing Committee (ITC) Report by adding 19 of 23 recommended nonylphenol ethoxylates to the Toxic Substances Control Act (TSCA) section 8(a) Preliminary Assessment Information Reporting (PAIR) rule. The TSCA ITC in its 39th Report to EPA revised the TSCA section 4(e) *Priority Testing List* by recommending testing for 23 nonylphenol ethoxylates, 19 of which are associated with unique Chemical Abstract Service (CAS) Registry numbers. The ITC recommendations are given priority consideration by EPA in promulgating TSCA section 4 test rules. This PAIR rule will require manufacturers (including importers) of the 19 CAS-numbered substances identified in this document to report certain production, use, and exposure-related information to EPA. This action also removes a stay for TSCA section 8(a) PAIR and section 8(d) Health and Safety Data Reporting rules issued previously for 18 nonylphenol ethoxylates recommended by the TSCA ITC in its 38th Report to EPA and removes those 18 chemicals from these reporting rules.

**DATES:** This rule is effective on February 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact*: Joseph S. Carra, Deputy Director, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 554–1404 and TDD: (202) 554–0551; e-mail address: TSCA-Hotline@epa.gov.

*For technical information contact*: David R. Williams, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: (202) 260–8130; e-mail address: ccd.citb@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information:**

*A. Does This Action Apply to Me?*

You may be affected by this action if you manufacture (defined by statute to include import) any of the chemical substances that are listed in section 712.30(e) of the regulatory text portion of this document. Entities potentially affected by this action may include, but are not limited to:

| Type of Entity | SIC | NAICS | Examples of Potentially Affected Entities |
|---|---|---|---|
| Chemical manufacturers (including importers) | 28, 2911 | 325, 32411 | Persons who manufacture (defined by statute to include import) one or more of the subject chemical substances. |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. The Standard Industrial Classification (SIC) codes and the North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section.

*B. How Can I Get Additional Information or Copies of This Document or Other Documents?*

1. *Electronically*. You may obtain electronic copies of this document and other documents from the EPA Internet EPA Home Page at http://www.epa.gov/ . On the Home Page select ''Law and Regulations'' and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The official record for this proposed rule, which includes the public version, has been established under docket control number OPPTS–82050. The official record consists of the documents referenced in this preamble, as well as any public comments, and other information related to this rulemaking, including information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as all documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted as described in Units I.C. and D. of this preamble, is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, your comments must identify docket control number OPPTS–82050 in the subject line on the first page of your response.

1. *By mail*. Submit comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., East Tower, Rm. G–099, Washington, DC 20460.

2. *In person or by courier*. Deliver comments to: Document Control Office, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., East Tower, Rm. G-099, Washington, DC. The telephone number for the OPPT Document Control Office is (202) 260–7093.

3. *Electronically*. Submit your comments electronically by e-mail to: oppt.ncic@epa.gov, or you may mail or deliver your computer disk to the addresses identified in Units I.C.1. or 2. of this preamble. Do not submit any information electronically that you consider to be CBI. Submit comments as an ASCII file, avoiding the use of special characters and any form of encryption. Comments will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All copies of electronic comments must be identified by docket control number OPPTS–82050. Electronic comments may be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI Information That I Want To Submit To The Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comments that include any information claimed as CBI, a copy of the comments that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, consult the technical person identified in ''FOR FURTHER INFORMATION CONTACT''at the beginning of this preamble.

**II. What is the Purpose of Today's Action?**

In today's action, EPA is issuing a final TSCA section 8(a) ''Preliminary Assessment Information Reporting'' (PAIR) rule for 19 of 23 nonylphenol ethoxylates recommended for testing in the 39th TSCA ITC Report to the EPA Administrator (62 FR 8578, February 25, 1997) (FRL–5580–9). Specifically at the request of the ITC in a letter to EPA dated September 15, 1997, EPA is not issuing a final TSCA section 8(d) ''Unpublished Health and Safety Data'' reporting rule at this time for the 23 nonylphenol ethoxylates recommended for testing in the 39th ITC Report so as to give the ITC an opportunity to implement the voluntary information submission policy that was proposed in the ITC's 40th Report (62 FR 30580, June 4, 1997) (FRL–5718–3). Also in today's action, EPA is removing the ''stay'' (61 FR 65186, December 11, 1996) (FRL–5577–6) that was issued for the TSCA section 8(a) and TSCA section 8(d) rules (61 FR 55871, October 29, 1996) (FRL–5397–9) promulgated by the Agency for the 18 nonylphenol ethoxylates recommended for testing in

the ITC's 38th Report (61 FR 39832, July 30, 1996) (FRL–5379–2). Further, EPA is revoking those TSCA section 8(a) and TSCA section 8(d) rules issued on October 29, 1996.

**III. What is the Basis for Today's Action?**

On May 31, 1996, EPA received the 38th Report of the TSCA Section 4 ITC. In the 38th Report, the ITC recommended 18 nonylphenol ethoxylates for testing under section 4 of TSCA (61 FR 39832, July 30, 1996). In response to the ITC's 38th Report, EPA promulgated final TSCA section 8(a) ''Preliminary Assessment Information Reporting'' (PAIR) and TSCA section 8(d) ''Unpublished Health and Safety Data'' reporting rules (61 FR 55871, October 29, 1996) (FRL–5397–9) for the 18 nonylphenol ethoxylates listed in the ITC's 38th Report.

Shortly after the effective date for these TSCA rules, EPA became aware of the fact that the ITC's use of some alternate CAS numbers and several unclear chemical names in the 38th Report had resulted in confusion among U.S. producers, importers, and processors about the exact identities of the chemical substances for which TSCA section 8(a) and 8(d) reporting was being required. In order to eliminate further confusion within the regulated community about the actual identities of the subject chemicals, EPA formally ''stayed'' the TSCA section 8(a) and 8(d) rules for the 18 nonylphenol ethoxylates recommended in the ITC's 38th Report. EPA issued this stay on December 11, 1996 (61 FR 65186) and also requested the ITC to clarify the identities of the nonylphenol ethoxylates recommended in its 38th Report.

In an attempt to eliminate the ambiguities resulting from the ITC's use of alternate CAS numbers and unclear chemical names for the 18 nonylphenol ethoxylates recommended in its 38th Report, the ITC, in its 39th Report to the EPA Administrator, recommended for testing a revised list comprised of 23 nonylphenol ethoxylates (62 FR 8578, February 25, 1997). According to the 39th Report, the ITC had re-examined its use of alternate CAS numbers for several of the 18 nonylphenol ethoxylates recommended in the 38th Report and determined that 5 of those CAS numbers were not associated with any of the 18 chemical substances.

For the 23 nonylphenol ethoxylates recommended in the 39th Report, the ITC provided where possible more accurate CAS numbers and more up-to-date chemical names (using 9th Collective Index chemical nomenclature where possible). In a letter addressed to the EPA Administrator dated September 15, 1997, the ITC formally requested that EPA:

1. Revoke the TSCA section 8(a) PAIR and TSCA section 8(d) rules issued by EPA on October 29, 1996 (61 FR 55871) for the 18 nonylphenol ethoxylates that were recommended in the ITC's 38th Report and ''stayed'' by EPA on December 11, 1996 (61 FR 65186).

2. Issue a final TSCA section 8(a) PAIR rule for the 19 nonylphenol ethoxylates with CAS numbers of the 23 total nonylphenol ethoxylates recommended in the ITC's 39th Report.

3. Not issue a TSCA section 8(d) rule for the 23 recommended nonylphenol ethoxylates in order to allow the ITC the opportunity to implement its voluntary information submission policy proposed in the ITC's 40th Report (62 FR 30580, June 4, 1997).

EPA reserves the right to issue a TSCA section 8(d) rule for some or all of these 23 nonylphenol ethoxylates if:

1. EPA believes that such a rulemaking is necessary to gather data to determine if testing is needed for, or otherwise support the assessment of, the subject chemical(s); or

2. The ITC notifies EPA in writing that the ITC did not receive adequate information via its voluntary information submission activity. (The ITC's voluntary submission policy can be found on the ITC's Internet Homepage under Voluntary Information Submission Innovative Online Network or ''VISION'' (http://www.epa.gov/opptintr/itc/vision). Hard copies of the ITC's voluntary information submission policy are available from the TSCA Environmental Assistance Division at the address listed under ''FOR FURTHER INFORMATION CONTACT.'')

**IV. What is the Preliminary Assessment Information Reporting (PAIR) Rule?**

EPA promulgated the PAIR rule in 40 CFR part 712 under section 8(a) of TSCA (15 U.S.C. 2607(a)). This model section 8(a) rule establishes standard reporting requirements for manufacturers (including importers) of the chemicals listed in the rule at 40 CFR 712.30. These entities are required to submit a one-time report on general production/importation volume, end use, and exposure-related information using the Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35). EPA uses this model section 8(a) rule to quickly gather current information on chemicals.

This model rule provides for the automatic addition of ITC *Priority Testing List* chemicals. Whenever EPA announces the receipt of an ITC report, EPA may, at the same time and without providing notice and opportunity for public comment, amend the model information-gathering rule by adding the recommended (or designated) chemicals. The amendment adding these chemicals to the PAIR rule is effective February 10, 2000.

**V. Chemicals To Be Deleted**

The following 18 nonylphenol ethoxylates that were recommended in the ITC's 38th Report are being deleted as a result of today's revocation of the TSCA section 8(a) PAIR and TSCA section 8(d) rules that were issued by EPA on October 29, 1996 (61 FR 55871) and stayed by the Agency on December 11, 1996 (61 FR 65186).

| Chemical Name | CAS Number |
|---|---|
| *Nonylphenol ethoxylates* | |
| alpha-(p-Nonylphenol)-omega-hydroxypoly(oxyethylene) | NA |
| Decaethylene glycol, isononylphenyl ether | 65455–72–3 |
| Ethanol, 2-[2-(p-nonylphenoxy)ethoxy]- | 20427–84–3 |
| Ethanol, 2-[2-[2-[2-(p-nonylphenoxy)ethoxy]ethoxy]ethoxy]- | 7311–27–5 |
| Nonoxynol-2 | NA |
| Nonoxynol-3 | NA |
| Nonoxynol-7 | NA |
| Nonylphenol hepta(oxyethylene)ethanol | 27177–05–5 |
| Nonylphenol octa(oxyethylene)ethanol | 26571–11–9 |
| Nonylphenol polyethylene glycol ether | 9016–45–9, 20636–48–0, 26027–38–3, 26064–02–8, 27177–01–1, 37205–87–1, 127087–87–0 |

| Chemical Name | CAS Number |
|---|---|
| Nonylphenol polyethylene glycol ether | 27177–08–8 |
| Nonylphenolnona(oxyethylene) ethanol | 27986–36–3 |
| Nonylphenoxy ethanol | 27176–93–8 |
| Nonylphenoxydiglycol | 68412–54–4 |
| Nonylphenoxypolyoxyethanol | 152143–22–1, 26027–38–3 |
| p-Nonylphenol polyethylene glycol ether | 27986–36–3, 37205–87–1, 98113–10–1 |
| Poly(oxy-1,2-ethanediyl), alpha-(isononylphenyl)-omega-hydroxy- | 37205–87–1 |
| Poly(oxy-1,2-ethanediyl), alpha-(2-nonylphenyl)-omega-hydroxy- | 51938–25–1 |

**VI. Chemicals To Be Added**

In its 39th Report to EPA, the ITC recommended a group of 23 nonylphenol ethoxylates. These chemicals can be automatically added to the PAIR and TSCA section 8(d) Health and Safety Data Reporting rules unless requested otherwise by the ITC to implement its voluntary information submission policy. In a letter dated September 15, 1997, the ITC requested that a TSCA section 8(d) Health and Safety Data Reporting rule not be promulgated for these 23 nonylphenol ethoxylates. Therefore, these substances will not be added to § 716.120.

The regulatory text (§ 712.30(e)) of this document lists the 19 nonylphenol ethoxylates that are being added to the PAIR rule as a result of today's action. The other 4 nonylphenol ethoxylates recommended in the ITC's 39th report are not being added to the PAIR rule because they are not associated with unique CAS numbers.

**VII. Reporting Requirements**

*A. Who Must Report Under this PAIR Rule?*

All persons who manufactured (defined by statute to include import) the 19 nonylphenol ethoxylates identified in the regulatory text (§ 712.30(e)) of this rule during their latest complete corporate fiscal year must submit a Preliminary Assessment Information Manufacturer's Report (EPA Form No. 7710–35) for each site at which they manufactured or imported a named substance. A separate form must be completed for each substance and submitted to the Agency as specified in 40 CFR 712.28 no later than April 10, 2000. Persons who have previously and voluntarily submitted a Manufacturer's Report to the ITC or EPA may be able to submit a copy of the original Report to EPA or to notify EPA by letter of their desire to have this voluntary submission accepted in lieu of a current data submission. See § 712.30(a)(3).

Details of the PAIR reporting requirements, including the basis for exemptions, are provided in 40 CFR part 712. Copies of the form are available from the TSCA Environmental Assistance Division at the address listed under ''FOR FURTHER INFORMATION CONTACT.'' Copies of the PAIR form are also available electronically from the Chemical Testing and Information Gathering Home Page on the Internet at http://www.epa.gov/opptintr/chemtest/.

*B. Removal of Chemical Substances from the PAIR Rule*

Any person who believes that section 8(a) reporting required by this rule is not warranted, should promptly submit to EPA on or before January 25, 2000, detailed reasons for that belief. EPA, in its discretion, may remove the substance from this rule (40 CFR 712.30(c)). When withdrawing a chemical from the rule, EPA will publish a rule amendment in the **Federal Register**.

**VIII. Public Record**

The following documents constitute the public record for this rule (docket control number OPPTS–82050). All of these documents are available to the public in the TSCA Nonconfidential Information Center (NCIC), from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA Headquarters, Rm. NE–B607, 401 M St., SW., Washington, DC.

1. This final rule.
2. The Economic Analysis for this rule, December 15, 1999.
3. The 39th Report of the ITC, (62 FR 8578, February 25, 1997).
4. The 38th Report of the ITC, (61 FR 39832, July 30, 1996).
5. Stay of the TSCA section 8(a) and 8(d) rules issued in response to the 38th Report of the ITC, (61 FR 65186).
6. Letter from the ITC to EPA, September 15, 1997.

**IX. Why is this Action Being Issued as a Final Rule?**

EPA is publishing this action as a final rule without prior notice and an opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary. This final rule makes modifications needed to clarify the identities of certain chemicals subject to the TSCA section 8(a) PAIR regulations and removes certain chemicals from the TSCA section 8(d) regulations. EPA therefore finds that there is ''good cause'' under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553 (b)(3)(B)) to make these amendments without prior notice and comment.

**X. Economic Analysis**

The economic analysis for the addition of the 19 CAS-numbered nonylphenol ethoxylates to the TSCA section 8(a) PAIR rule is entitled *Economic Analysis for the Addition of 19 CAS-Numbered Chemicals Recommended for Testing in the 39th Report of the TSCA Interagency Testing Committee to EPA's Preliminary Assessment Information Reporting (PAIR) Rule* December 15, 1999 (Economic Analysis).

EPA's 1998 Chemical Update System (CUS) was searched to identify manufacturers (including importers) of the 19 CAS-numbered nonylphenol ethoxylates recommended in the ITC's 39th report. Only 1 of the 19 chemicals was located in CUS indicating, for example, that the other chemicals are not being produced or imported in quantities large enough to be reported to EPA for 1998 under the TSCA Inventory Update Rule (IUR) (40 CFR part 710) or are not subject to reporting under the IUR. The Economic Analysis estimates governmental and industry burden and costs associated with this final rule based upon the data regarding the one chemical substance found in CUS. Five firms were identified as manufacturers of the chemical, at five sites. The costs and burden associated with this rule are estimated in the Economic Analysis to be the following:

*Reporting Costs (dollars)*

5 sites/reports estimated at $2,057.28 per report = $10,286.38
Total Cost = $10,286.38
Mean cost per site/firm = $10,286.38/5 = $2,057.28

*Reporting Burden (hours)*

Rule familiarization: 7 hours/site x 5 sites = 35
Reporting: 21.88 hours/report x 5 reports = 109.4
Total burden hours = 144.4
Average burden per site/firm = 144.4/5 = 28.88

*EPA Costs (dollars)*

The annual costs to the Federal Government will be approximately 0.013 FTEs (or 26.25 hours annually). At an estimated $75,306 per FTE, the total 0.013 FTEs, plus $1,020 for data processing, will cost EPA $1,999.

**XI. Regulatory Assessment Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted actions under TSCA section 8(a) related to the PAIR rule from the requirements of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

*B. Executive Order 12898*

This action does not involve special considerations of environmental justice-related issues pursuant to Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

*C. Executive Order 13045*

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), does not apply to this final rule, because it is not ''economically significant'' as defined under Executive Order 12866, and does not concern an environmental health or safety risk that may have a disproportionate effect on children. This rule requires the reporting of production, importation, use, and exposure-related information to EPA by manufacturers (including importers) of certain chemicals recommended in the 39th Report of the TSCA Interagency Testing Committee.

*D. Regulatory Flexibility Act*

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this rule will not have a significant impact on a substantial number of small entities. The factual basis for the Agency's determination is presented in the small entity analysis prepared as a part of the Economic Analysis for this rule, and is briefly summarized here. Three of the five firms identified as manufacturers of chemicals affected by this rule met the Small Business Administration definition of a small business, (i.e., having less than 1,000 employees when combined with any corporate parents). Based on the Agency's analysis, the maximum potential impact of this action on an individual firm is estimated to be less than $2,260, regardless of the firm's size. To determine the potential significance of the estimated impact of this action on the small firms, the Agency compared the estimated maximum potential cost with the estimated annual sales revenue for these firms. Based on currently available financial information for these firms, EPA has determined that this action will not result in a significant impact on any of these firms. Information relating to this EPA determination is included in the docket for this rulemaking (OPPTS–82050). Any comments regarding the economic impacts that this action imposes on small entities should be submitted to the Agency at the address listed under ''FOR FURTHER INFORMATION CONTACT.''

*E. Paperwork Reduction Act*

Pursuant to the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that is subject to approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after appearing in the preamble of the final rule, are listed in 40 CFR part 9, and included on the related collection instrument. The information collection activities related to this action have already been approved by OMB, under OMB control number 2070–0054 (EPA ICR No. 586) for PAIR reporting. This action does not impose any burdens requiring additional OMB approval. The public reporting burden for this collection of information is estimated to be 144.4 hours. Of that total, an estimated 35 hours are spent in an initial review of the rule, and the remaining 109.4 hours are associated with actual reporting activities. Because this rule does not contain any new information collection activities, additional review and approval of these activities by OMB under the PRA is not necessary (1999 Economic Analysis).

*F. Unfunded Mandates Reform Act and Executive Orders 13084 and 13132*

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. In addition, EPA has determined that this rule will not significantly or uniquely affect small governments. Accordingly, the rule is not subject to the requirements of UMRA sections 202, 203, 204, or 205.

Based on EPA's experience with past section 8(a) rulemakings, State, local, and tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or tribal government will be impacted by this rulemaking. As a result, this action is not subject to the requirement for prior consultation with Indian tribal governments as specified in Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998). Nor will this action have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

*G. National Technology Transfer and Advancement Act*

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to 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). Section 12(d) of NTTAA 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 standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on the Agency's determination that this regulatory action does not require the consideration of voluntary consensus standards.

*H. Congressional Review Act*

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. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). EPA has made such a good cause finding for this final rule, and established an effective date of February 10, 2000. Pursuant to 5 U.S.C. 808(2), this determination is supported by the brief statement in Unit IX. of this preamble. EPA will submit a report containing this final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This is not a ''major rule'' as defined by 5 U.S.C. 804(2).

*I. Executive Order 12988*

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

*J. Executive Order 12630*

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the *Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings* issued under the Executive Order.

**List of Subjects in 40 CFR Parts 712 and 716**

Environmental protection, Chemicals, Hazardous substances, Health and safety, Reporting and recordkeeping requirements.

Dated: December 21, 1999.

**Joseph S. Carra,**

*Acting Director, Office of Pollution Prevention and Toxics.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 712—[AMENDED]

1. In part 712:

a. The authority citation for part 712 continues to read as follows:

**Authority**: 15 U.S.C. 2607(a).

b. In § 712.30, the table in paragraph (e) is amended by removing the stay and revising the entire category for ''Nonylphenol ethoxylates'' to read as follows:

**§ 712.30 Chemical lists and reporting periods.**

* * * * *

(e) * * *

| CAS No. | Substance | Effective date | Reporting date |
|---|---|---|---|
| | * * * * * * * | | |
| Nonylphenol ethoxylates | | | |
| 7311–27–5 | Ethanol, 2-[2-[2-[2-(p-nonylphenoxy)ethoxy]ethoxy]ethoxy]- | 2/10/00 | 4/10/00 |
| 9016–45–9 | Poly(oxy-1,2-ethanediyl), alpha-(nonylphenyl)-omega-hydroxy- | 2/10/00 | 4/10/00 |
| 20427–84–3 | Ethanol, 2-[2-(p-nonylphenoxy)ethoxy]- | 2/10/00 | 4/10/00 |
| 20636–48–0 | 3,6,9,12-Tetraoxatetradecan-1-ol, 14-(4-nonylphenoxy)- | 2/10/00 | 4/10/00 |
| 26027–38–3 | Poly(oxy-1,2-ethanediyl), alpha-(4-nonylphenyl)-omega-hydroxy- | 2/10/00 | 4/10/00 |
| 26264–02–8 | 3,6,9,12-Tetraoxatetradecan-1-ol, 14-(nonylphenoxy)- | 2/10/00 | 4/10/00 |
| 26571–11–9 | 3,6,9,12,15,18,21,24-Octaoxahexacosan-1-ol, 26-(nonylphenoxy)- | 2/10/00 | 4/10/00 |
| 27176–93–8 | Ethanol, 2-[2-(nonylphenoxy)ethoxy]- | 2/10/00 | 4/10/00 |
| 27177–01–1 | 3,6,9,12,15-Pentaoxaheptadecan-1-ol, 17-(nonylphenoxy)- | 2/10/00 | 4/10/00 |
| 27177–05–5 | 3,6,9,12,15,18,21-Heptaoxatricosan-1-ol, 23-(nonylphenoxy)- | 2/10/00 | 4/10/00 |
| 27177–08–8 | 3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(nonylphenoxy)- | 2/10/00 | 4/10/00 |
| 27986–36–3 | Ethanol, 2-(nonylphenoxy)- | 2/10/00 | 4/10/00 |
| 37205–87–1 | Poly(oxy-1,2-ethanediyl), alpha-(isononylphenyl)-omega-hydroxy- | 2/10/00 | 4/10/00 |
| 51938–25–1 | Poly(oxy-1,2-ethanediyl), alpha-(2-nonylphenyl)-omega-hydroxy- | 2/10/00 | 4/10/00 |
| 65455–72–3 | 3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(isononylphenoxy)- | 2/10/00 | 4/10/00 |
| 68412–54–4 | Poly(oxy-1,2-ethanediyl), alpha-(nonylphenyl)-omega-hydroxy-, branched | 2/10/00 | 4/10/00 |
| 98113–10–1 | NP9 | 2/10/00 | 4/10/00 |
| 127087–87–0 | Poly(oxy-1,2-ethanediyl), alpha-(4-nonylphenyl)-omega-hydroxy-, branched. | 2/10/00 | 4/10/00 |
| 152143–22–1 | Poly(oxy-1,2-ethanediyl), alpha-(4-nonylphenyl)-omega-hydroxy-, branched, phosphates. | 2/10/00 | 4/10/00 |
| | * * * * * * * | | |

## PART 716—[AMENDED]

2. In part 716:

a. The authority citation for part 716 continues to read as follows:

**Authority**: 15 U.S.C. 2607(d).

### § 716.120 [Amended]

b. In § 716.120, the table in paragraph (d) is amended by removing the stay, and by removing the ''Nonylphenol ethoxylates'' category name and the 18 nonylphenol ethoxylates listed thereunder.

[FR Doc. 00–491 Filed 1–10–00; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

**[Docket No. FEMA–7724]**

### List of Communities Eligible for the Sale of Flood Insurance

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The dates listed in the third column of the table.

**ADDRESSES:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Shea, Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Paperwork Reduction Act**

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

### § 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

| State/Location | Community Number | Effective date of eligibility | Current effective map date |
|---|---|---|---|
| **New Eligibles—Emergency Program** | | | |
| North Carolina: | | | |
| Selma, town of, Johnston County | 370499 | October 14, 1999 | |
| Alaska: | | | |
| Kwethluk, city of, Kwethluk County | 020130 | October 26, 1999 | |
| Arkansas: | | | |
| Sharp County, unincorporated areas | 050464 | .....do | |
| North Carolina: | | | |
| Elm City, town of, Wilson County | 370521 | October 29, 1999 | |
| **New Eligibles—Regular Program** | | | |
| Tennessee: | | | |

| State/Location | Community Number | Effective date of eligibility | Current effective map date |
|---|---|---|---|
| Ethridge, city of, Lawrence County | 470301 | October 14, 1999 | December 16, 1988. |
| **Suspensions** | | | |
| Michigan: | | | |
| Owosso, township of, Shiawassee County | 260809 | October 22, 1987 Emerg., October 20, 1999 Susp | October 20, 1999. |
| **Regular Program Conversions** | | | |
| **Region IX** | | | |
| California: Hillsborough, city of, San Mateo | 060320 | October 6, 1999, Suspension Withdrawn | October 6, 1999. |
| **Region I** | | | |
| Vermont: Royalton, town of, Windsor County | 500153 | October 20, 1999, Suspension Withdrawn | October 20, 1999. |
| **Region II** | | | |
| New York: | | | |
| Deerpark, town of, Orange County | 360612 | .....do | Do. |
| Vienna, town of, Oneida County | 360562 | .....do | Do. |
| **Region III** | | | |
| West Virginia: Mineral County, unincorporated areas | 540129 | .....do | Do. |
| **Region V** | | | |
| Michigan: Owosso, township of, Shiawassee County | 260809 | .....do | Do. |
| Region IX | | | |
| California: | | | |
| Alturas, city of, Modoc County | 060193 | .....do | Do. |
| Modoc County, unincorporated areas | 060192 | .....do | Do. |

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension; With.-Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: January 3, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–596 Filed 1–10–00; 8:45 am]

**BILLING CODE 6718–05–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

## 44 CFR Part 64

**[Docket No. FEMA–7726]**

## List of Communities Eligible for the Sale of Flood Insurance

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

**EFFECTIVE DATES:** The dates listed in the third column of the table.

**ADDRESSES:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Shea, Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

### National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

### Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Paperwork Reduction Act**

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 64.6 [Amended]**

2. The tables published under the authority of § 64.6 are amended as follows:

| State/location | Community No. | Effective date of eligibility | Current effective map date |
|---|---|---|---|
| **New Eligibles—Emergency Program** | | | |
| Alabama: | | | |
| Chatom, town of, Washington County | 010376 | November 1, 1999. | October 20, 1978. |
| Georgia: | | | |
| Irwin County, unincorporated areas | 130572 | November 3, 1999. | |
| Iowa: | | | |
| Floyd, city of, Floyd County | 190382 | November 10, 1999. | March 19, 1976. |
| Minnesota: | | | |
| Aurora, city of, St. Louis County | 270417 | November 12, 1999. | June 25, 1976. |
| Kansas: | | | |
| Anderson County, unincorporated areas | 200569 | November 23, 1999. | December 13, 1977. |
| North Dakota: | | | |
| Des Lacs, city of, Ward County | 380712 | .....do. | |
| Do. | | | |
| Maza, city of, Towner County | 380716 | .....do. | |
| **New Eligibles—Regular Program** | | | |
| Minnesota: | | | |
| Gnesen, township of, St. Louis County | 270737 | November 12, 1999. | February 19, 1992. |
| Arkansas: | | | |
| Perry County, unincorporated areas | 050165 | November 17, 1999. | July 6, 1998. |
| North Carolina: | | | |
| Hookerton, town of, Greene County | 370326 | November 24, 1999. | January 20, 1982. |
| **Reinstatement:** | | | |
| Georgia: | | | |
| East Ellijay, city of, Gilmer County | 130089 | July 3, 1975 Emerg., August 15, 1990 Susp., November 3, 1999 Reg., November 3, 1999 Rein. | August 15, 1990. |
| Texas: | | | |
| Brewster County, unincorporated areas | 480084 | October 5, 1976 Emerg., October 15, 1985 Susp., November 23, 1999 Reg., November 23, 1999 Rein. | April 2, 1991. |
| **Regular Program Conversions** | | | |
| **Region II** | | | |
| New York: | | | |
| Brighton, town of, Monroe County | 360410 | November 8, 1999, Suspension Withdrawn. | November 8, 1999. |
| **Region III** | | | |
| Virginia: | | | |
| Rocky Mount, town of, Franklin County | 510291 | .....do. | Do. |
| **Region V** | | | |
| Michigan: Farmington Hills, city of, Oakland County | 260172 | .....do. | Do. |
| **Region VII** | | | |
| Nebraska: | | | |
| Boelus, village of, Howard County | 310117 | .....do. | Do. |
| Howard County, unincorporated areas | 310446 | .....do. | Do. |

| State/location | Community No. | Effective date of eligibility | Current effective map date |
|---|---|---|---|
| **Region IX** | | | |
| Nevada: | | | |
| Douglas County, unincorporated areas | 320008 | .....do. | Do. |
| **Region X** | | | |
| Washington: | | | |
| Arlington, city of, Snohomish County | 530271 | .....do. | Do. |
| Bothell, city of, King and Snohomish Counties | 530075 | .....do. | Do. |
| Brier, city of, Snohomish County | 530276 | .....do. | Do. |
| Darrington, town of, Snohomish County | 530233 | .....do. | Do. |
| Edmonds, city of, Snohomish County | 530163 | .....do. | Do. |
| Everett, city of, Snohomish County | 530164 | .....do. | Do. |
| Gold Bar, town of, Snohomish County | 530285 | .....do. | Do. |
| Index, town of, Snohomish County | 530166 | .....do. | Do. |
| King County, unincorporated areas. | 530071 | .....do. | Do. |
| Lake Stevens, city of, Snohomish County | 530291 | .....do. | Do. |
| Lynwood, city of, Snohomish County | 530167 | .....do. | Do. |
| Marysville, city of, Snohomish County | 530168 | .....do. | Do. |
| Mill Creek, city of, Snohomish County | 530330 | .....do. | Do. |
| Monroe, city of, Snohomish County | 530169 | .....do. | Do. |
| Mountlake Terrace, city of, Snohomish County. | 530170 | .....do. | Do. |
| Mukilteo, city of, Snohomish County | 530235 | .....do. | Do. |
| Snohomish, city of, Snohomish County | 530171 | .....do. | Do. |
| Snohomish County, unincorporated areas. | 535534 | .....do. | Do. |
| Spokane County, unincorporated areas. | 530174 | .....do. | Do. |
| Stanwood, city of, Snohomish County | 530172 | .....do. | Do. |
| Sultan, city of, Snohomish County | 530173 | .....do. | Do. |
| **Region II** | | | |
| New Jersey: Lavallette, borough of, Ocean County. | 340379 | November 22, 1999, Suspension Withdrawn. | November 22, 1999. |
| New York: Oswego, city of, Oswego County | 360656 | .....do. | Do. |
| **Region VI** | | | |
| Louisiana: | | | |
| Ball, town of, Rapides Parish | 220373 | .....do. | Do. |
| Farmersville, town of, Union Parish | 220325 | .....do. | Do. |
| Lincoln Parish, unincorporated areas | 220366 | .....do. | Do. |
| Newcastle, city of, McClain County | 400103 | .....do. | Do. |
| **Region X** | | | |
| Oregon: Milwaukie, city of, Clackamas County | 410019 | .....do. | Do. |

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Issued: January 3, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–595 Filed 1–10–00; 8:45 am]

**BILLING CODE 6718–05–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 990713189–9335–02; I.D. 060899B]**

**RIN 0648–AK79**

## Fisheries of the Northeastern United States; Spiny Dogfish Fishery Management Plan

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to initiate management of spiny dogfish (*Squalus acanthias*) through implementation of the Spiny Dogfish Fishery Management Plan (FMP) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This final rule implements the following measures: A commercial quota; seasonal (semi-annual) allocation of the quota; a prohibition on finning; a framework adjustment process; establishment of a Spiny Dogfish Monitoring Committee; annual FMP review; permit and reporting requirements for commercial vessels, operators, and dealers; and other measures. The intent of this rule is to conserve spiny dogfish in order to acheive optimum yield from the resource.

**DATES:** Effective February 10, 2000.

**ADDRESSES:** Copies of the FMP, the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA) contained within the RIR, the Supplement to the FMP dated May 1999, and the Final Environmental Impact Statement (FEIS) are available

from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council (MAFMC), Room 2115, Federal Building, 300 South New Street, Dover, DE 19904–6790. The IRFA, its summary in the proposed rule, the comments and responses on economic impacts, and the discussion in the classification section of the final rule constitute the Final Regulatory Flexibility Analysis (FRFA) for this action.

Comments regarding burden-hour estimates for collection-of-information requirements contained in this rule should be sent to Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Richard A. Pearson, Fishery Policy Analyst, at 978–281–9279.

**SUPPLEMENTARY INFORMATION:** The spiny dogfish (*Squalus acanthias*) is a common small shark that inhabits the temperate and sub-Arctic latitudes of the North Atlantic Ocean. In the Northwest Atlantic, spiny dogfish range from Labrador to Florida, but are most abundant from Nova Scotia to Cape Hatteras. They migrate seasonally, moving north in spring and summer, and south in fall and winter. Spiny dogfish are considered a unit stock in the Northwest Atlantic Ocean.

Spiny dogfish landings on the East Coast have increased dramatically in the last 10 years as export markets for dogfish have been developed. The fishing mortality rate (F) has correspondingly risen from below an estimated F=0.1 in the 1980's to the current estimate of F=0.3. Dogfish landings have been primarily composed of females because they attain a larger size than males, and large fish are preferred by the processing sector. The 26th Northeast Regional Stock Assessment Workshop (SAW 26), in 1998, indicated that biomass estimates of mature females (> 80 cm) have declined by over 50 percent since 1989. Recruitment of juvenile spiny dogfish was the lowest on record in 1997. The combination of increased fishing mortality, declining biomass of mature females, and low recruitment have contributed to the overfished condition of the stock.

NMFS notified the Mid-Atlantic and New England Fishery Management Councils (Councils) on April 3, 1998, that spiny dogfish was being added to the list of overfished stocks in the Report on the Status of the Fisheries of the United States, prepared pursuant to section 304 of the Magnuson-Stevens Act. The Magnuson-Stevens Act requires the regional fishery management councils to prepare measures within 1 year of notification to end overfishing and to rebuild the overfished stock.

The FMP was developed jointly by the Councils, with the Mid-Atlantic Council having the administrative lead.

A Notice of Availability (NOA) for the FMP was published in the **Federal Register** on June 29, 1999 (64 FR 34759), and solicited public comment through August 30, 1999. The proposed rule to implement the FMP was published in the **Federal Register** on August 3, 1999 (64 FR 42071), and solicited public comments through September 17, 1999. The NOA for the FEIS was published on August 20, 1999 (64 FR 45541), and solicited comments through September 10, 1999. Comments received by August 30, 1999, in response to any of these documents, were considered when NMFS made the decision to partially approve the FMP on September 29, 1999. The only measure in the FMP that was disapproved was the specification of 180,000 mt as the spawning stock biomass (SSB) target level. The SSB target was not a regulatory measure and the disapproval has no impact on these final regulations.

**Management Measures**

This final rule implements the following measures contained in the FMP: (1) A commercial quota; (2) seasonal (semi-annual) allocation of a commercial quota; (3) a prohibition on finning; (4) a framework adjustment process; (5) the establishment of a Spiny Dogfish Monitoring Committee; (6) annual FMP review; (7) permit and reporting requirements for commercial vessels, operators, and dealers; and (8) other measures regarding sea samplers, foreign fishing, and exempted fishing activities.

*Commercial Quota*

An annual spiny dogfish commercial quota will be allocated to the fishery to control F. The quota will be set at a level to assure that the F specified for the appropriate year in the FMP and § 648.230(a) will not be exceeded. The annual commercial quota will be established by the Regional Administrator, Northeast Region, NMFS (Regional Administrator), based upon recommendations made by the Councils with the advice of the Spiny Dogfish Monitoring Committee and the Joint Spiny Dogfish Committee. The quota recommendation will be based upon projected stock size estimates for each year, as derived from the latest stock assessment information, coupled with the target F specified for each year. The quota is specified for a fishing year that begins on May 1, and is subdivided into two semi-annual periods. The period from May 1–October 31 is allocated 57.9 percent of the annual quota and the period from November 1–April 30 is allocated 42.1 percent of the annual quota. The percent allocation of quota between the two semi-annual quota period may be revised through the framework adjustment process described herein.

All spiny dogfish landed for sale in the states from Maine through Florida will be applied against the commercial quota, regardless of where the spiny dogfish were harvested. NMFS will monitor the fishery to determine when the quota for a semi-annual quota period is reached. NMFS will publish notification in the **Federal Register** prohibiting possession, fishing for, or landing of spiny dogfish by vessels with Federal spiny dogfish permits from the date on which the quota is projected to be attained through the remainder of the quota period.

The rebuilding schedule and corresponding annual quotas, as described in the FMP, were developed assuming an implementation date of May 1, 1999. According to the rebuilding schedule adopted by the Councils for the period May 1, 1999, to April 30, 2000, F is reduced to 0.2, which results in a quota of 22,059,228 lbs (10,006 mt), for the first year. The semi-annual allocations for this period are 12,772,293 lb (5,793.5 mt) for the period May 1, 1999–October 31, 1999; and 9,286,935 lb (4,212.5 mt) for the period November 1, 1999–April 30, 2000. Due to delays in the development of the FMP, the implementation date of this FMP will be February 10, 2000. Therefore, the requirements established by this final rule concerning quotas apply for the second semi-annual period only.

For the remaining years of the rebuilding plan, the FMP specifies that F will be reduced to 0.03. This has been initially projected to result in annual quotas ranging from approximately 2,901,254 lbs (1,316 mt) to 3,198,875 lbs (1,451 mt) until rebuilding is achieved. The quotas in the FMP were developed assuming, among other things, that current levels of discard mortality will continue at recent average annual rates.

*Prohibition on Finning*

Finning, the act of removing the fins of spiny dogfish and discarding the carcass, is prohibited. Vessels that land

spiny dogfish are prohibited from landing fins in excess of 5 percent, by weight, of the weight of spiny dogfish carcasses landed. Fins may not be stored on board a vessel after the vessel lands spiny dogfish.

*Framework Adjustment Process*

The Councils may add or modify management measures through a framework adjustment process that establishes a streamlined public review process. The following management measures could be implemented or adjusted at any time through the framework adjustment process: (1) Minimum fish size; (2) maximum fish size; (3) gear requirements, restrictions, or prohibitions, including, but not limited to, mesh size restrictions and net limits; (4) regional gear restrictions; (5) permitting restrictions and reporting requirements; (6) recreational fishery restrictions, including possession limits, size limits, and season/area restrictions; (7) commercial season and area restrictions; (8) commercial trip or possession limits; (9) fin weight to carcass weight restrictions; (10) onboard observer requirements; (11) commercial quota system, including commercial quota allocation procedure and possible quota set-asides to mitigate bycatch and to conduct scientific research or for other reasons; (12) recreational harvest limit; (13) annual quota specification process; (14) FMP Monitoring Committee composition and process; (15) description and identification of essential fish habitat (EFH); (16) description and identification of habitat areas of particular concern; (17) overfishing definition and related thresholds and targets; (18) regional season restrictions (including the option to split seasons); (19) restrictions on vessel size (length and gross registered tonnage (GRT)) or shaft horsepower; (20) target quotas; (21) provisions to mitigate marine mammal entanglements and interactions; (22) regional management; (23) any management measures currently included in the FMP; and (24) provisions relating to aquaculture projects.

The framework adjustment process involves the following steps. If the Councils determine that an adjustment to management measures is necessary to meet the goals and objectives of the FMP, they will develop and analyze appropriate management actions over the span of at least two meetings of each Council. The Councils will provide the public with advance notice of the availability of the recommended measures, justification for the measures, and all appropriate analyses, such as economic and biological analyses. The Councils will allow the public an opportunity to comment on the proposed framework adjustment before and during the second Council meeting. After developing management actions and receiving public comments, the Councils will make a recommendation approved by a majority of each Council's members, present and voting, to the Regional Administrator. Adjustments to the FMP using the framework adjustment process will require the approval of both Councils. The Councils' recommendation to the Regional Administrator must include supporting rationale, an analysis of impacts, and a recommendation to the Regional Administrator on whether to publish the management measures as a proposed or final rule. The Councils' recommendation is reviewed by NMFS, and NMFS will determine whether the measures should be published or not. If NMFS does not concur with the Councils' recommendation, the Councils will be notified in writing of the reason for non concurrence.

*Spiny Dogfish Monitoring Committee and Annual FMP Review*

A Spiny Dogfish Monitoring Committee is established made up of staff representatives of the Mid-Atlantic and New England Councils, the NMFS Northeast Regional Office, the NMFS Northeast Fisheries Science Center, and state representatives. The state representatives will include any individual designated by an interested state from Maine to Florida. In addition, the Monitoring Committee will include two non-voting, ex-officio industry representatives (one each from the Mid-Atlantic and New England Council regions). The Mid-Atlantic Council Executive Director or a designee will chair the Committee.

The Spiny Dogfish Monitoring Committee will annually review the best available data, as specified in 50 CFR 648.230, and recommend to the Joint Spiny Dogfish Committee a commercial quota and, possibly, other measures to assure that the target F specified for the appropriate year in § 648.230(a) for spiny dogfish is not exceeded. These recommendations will be reviewed, and possibly modified, by the Joint Spiny Dogfish Committee, which will then forward its recommendations to the Councils. The Councils will consider the recommendations of the Joint Spiny Dogfish Committee and then jointly make their recommendations to the Regional Administrator. The Regional Administrator will review the recommendations and, if necessary, may modify the annual quota and other management measures to assure that the target F will not be exceeded. The Regional Administrator may modify the recommendations using any of the measures that were not rejected by both Councils. NMFS will publish a proposed and final rule in the **Federal Register** specifying a coastwide commercial quota and other measures, if any, necessary to assure the appropriate F specified in § 648.230(a) will not be exceeded.

*Permits for Vessels, Operators, and Dealers*

Any vessel of the United States that fishes for, possesses, or lands spiny dogfish in or from the exclusive economic zone (EEZ) must have been issued and carry on board a valid commercial spiny dogfish vessel permit. Individuals with commercial vessel permits may only sell spiny dogfish, at the point of first sale, to a dealer who has a valid dealer permit issued pursuant to this FMP.

Any individual who operates a vessel that is issued a valid Federal commercial vessel permit for spiny dogfish must be issued an operator permit. Any vessel fishing commercially for spiny dogfish will be required to have at least one operator who holds an operator permit on board. The operator is accountable for violations of the fishing regulations, with penalties that may include a permit sanction. During a permit sanction period, the individual operator may not work in any capacity aboard a federally permitted fishing vessel.

Any dealer of spiny dogfish must be issued a Federal dealer permit to receive spiny dogfish for a commercial purpose other than transport from a vessel possessing a Federal commercial spiny dogfish permit.

*Reporting Requirements for Vessels, Dealers and Processors*

Owners or operators of vessels issued a Federal spiny dogfish permit are required to submit vessel trip reports on a monthly basis. These vessel trip reports are the same as those required under other Federal FMPs in the Northeast Region.

Dealers with permits issued pursuant to regulations implementing this FMP are required to submit weekly reports showing the quantity of all fish purchased and the name and permit number of the vessels from which the fish were purchased and to report purchases of spiny dogfish through the Interactive Voice Response (IVR) system utilized for quota-managed species in the Northeast Region. Dealers also are required to report annually to NMFS certain employment data. These

requirements are the same as those established by other Federal FMPs in the Northeast Region.

*Other Measures*

This rule authorizes the Regional Administrator to place sea samplers aboard spiny dogfish vessels.

The total allowable level of foreign fishing is zero; therefore, foreign fishing vessels may not fish for or retain any spiny dogfish. Foreign fishing vessels may not fish for nor retain spiny dogfish.

The Regional Administrator, in consultation with the Executive Directors of the Councils, may exempt any person or vessel from the requirements of the regulations implementing the FMP in order to conduct experimental fishing beneficial to the management of the spiny dogfish resource or fishery. The exemption must be consistent with the objectives of the FMP, the provisions of the Magnuson-Stevens Act, and other applicable law. The exemption may not have a detrimental effect on the spiny dogfish resource and/or fishery, cause any quota to be exceeded, or create significant enforcement problems.

**Comments and Responses**

There were 124 written comments received from the public during the comment period announced in the NOA of the FMP, which ended August 30, 1999. Many of the comments were submitted in support of the comments offered by a coalition of several conservation groups including the Center for Marine Conservation, the National Audubon Society, the Environmental Defense Fund, the Ocean Wildlife Campaign, the Natural Resources Defense Council, Fish Forever, and the American Oceans Campaign. Other comments were submitted by the Massachusetts Division of Marine Fisheries (MDMF), and law firms representing fishing industry groups and non-fishing entities. All comments received prior to August 30, 1999, were considered in making the decision September 29, 1999, to partially approve the FMP. All of these comments are addressed here. There were three comments received after the close of the comment period for the FMP but during the comment period of the proposed rule, which closed September 17, 1999. The portions of these comments that concern the implementation of the approved FMP measures in this final rule are addressed here.

*Comment 1*: There were 122 commenters who requested NMFS to reject the rebuilding target of 180,000 mt spawning stock biomass (SSB) specified in the FMP. These commenters noted their support for a rebuilding target of 200,000 mt SSB.

*Response*: The rebuilding target of 180,000 mt SSB was disapproved by NMFS because it does not provide for rebuilding to maximum sustainable yield as required by the Magnuson-Stevens Act. The best available scientific information identified 200,000 mt SSB as the appropriate biomass rebuilding target.

*Comment 2*: There were 122 commenters who expressed support for specific measures in the FMP. The measures cited were the requirement to close the fishery upon attainment of the semi-annual quota and the prohibition on ''finning.''

*Response*: These measures were approved.

*Comment 3*: There were 122 commenters who indicated that the Spiny Dogfish Monitoring Committee should be composed only of technical and scientific members, without fishing industry representation because the management process provides for public input through Council, Committee, and Advisory Panel meetings.

*Response*: NMFS sees no legal basis to question the specific membership of the Monitoring Committee. In addition, NMFS notes that the two industry representatives will be non-voting, ex-officio industry representatives (one each from the Mid-Atlantic and New England Council regions). NMFS notes that the intent of the Councils in including these representatives on the committee is to provide information regarding the commercial fishery.

*Comment 4*: One commenter stated that the rebuilding target of 180,000 mt SSB is too high. The commenter contended that the rebuilding target was determined subjectively using a Ricker dome-shaped stock/recruitment (S/R) curve and that a Beverton model would be just as appropriate to determine the rebuilding target.

*Response*: NMFS disapproved the rebuilding target of 180,000 mt SSB contained in the FMP because it does not provide for rebuilding to maximum sustainable yield as required by the Magnuson-Stevens Act. An Overfishing Definition Review Panel was initially established by the Councils to develop definitions of overfishing that conform with the Magnuson-Stevens Act. The Spiny Dogfish Technical Committee, in developing the FMP, adopted the definition that was developed by the Overfishing Definition Review Panel. Both of these groups recommended a rebuilding target of 200,000 mt SSB. Later, upon request by the Councils, the joint Scientific & Statistical Committee (SSC) reviewed and discussed the argument in favor of the Beverton model. The SSC clearly indicated that the Ricker S/R model is appropriate for spiny dogfish.

*Comment 5*: A commenter stated that the rebuilding schedule in the FMP cannot be met without an effective control on discards of spiny dogfish in fisheries targeting other species. The commenter asserts that such discards will increase as the spiny dogfish stock rebuilds.

*Response*: The rebuilding schedule in the FMP presumes that the proportion of mortality from discards will remain at current levels, relative to landings, throughout the rebuilding period. The fishery data indicate that a significant portion of dogfish discards occur in the directed dogfish fishery, which does not retain dogfish that are too small for purchase by processors. Since the FMP restricts the directed fishery, it is presumed the discards from those participants will decrease beginning in year 2 of the FMP. The Spiny Dogfish Technical Committee projected that the rebuilding schedule can be accomplished with minimal impacts on other fisheries. However, if discards do increase significantly in fisheries targeting other species, the Councils can develop measures to address discards through the framework adjustment process or through an FMP amendment.

*Comment 6*: A commenter indicates that discards in the FMP are noted as being approximately 4,445 mt, yet the rebuilding projection is predicated upon discards of 80,000 mt. The letter requests that this discrepancy be reconciled.

*Response*: The value of 4,445 mt was obtained using the average of dogfish discards from 1995 - 1997 based upon sea sampled trips. The estimate of 80,000 mt, which the commenter notes is embedded in the rebuilding projection models, is obtained by subtracting 1997 dogfish landings (approximately 20,000 mt) from the NMFS 1997 survey area-swept biomass estimate multiplied by the 1997 exploitation rate (100,000 mt). These values should not be used for comparison, primarily because of how the survey area-swept biomass estimate is used in the dogfish assessment (i.e., as an index of abundance), and because of some uncertainty regarding estimates of discard mortality using sea-sampling data.

The estimates of swept area biomass were used in a biological projection model to assess the effects of various alternative rebuilding strategies. The Technical Committee noted the strong

correlation between the magnitude of landings when the fishery was directed for dogfish and the estimates of fishing mortality, and concluded that reductions in fishing mortality (including discards) should be proportional to the reduction in reported landings when directed fishing was reduced. This conclusion implies that discards are roughly proportional to, rather than independent of, the directed fishery. The rebuilding strategies were evaluated using trajectories of fishing mortality to attain the target biomass level. If the target fishing mortality rates cannot be achieved due to ineffective controls on discards, then the rebuilding strategy would need to be re-evaluated. The selected rebuilding strategy utilizes a strong assumption regarding the effectiveness of landings reductions to rebuild the resource. Rebuilding strategies that assume no proportionality between landings and discards would require more stringent measures and, possibly, a longer rebuilding period.

SAW 26 (1998) discussed estimating dogfish discards using sea sampling data and concluded that, at the time, it was not possible to derive reliable annual estimates of dogfish discards for all major gear/area/target species cells. There are some components of the fishery in which dogfish discards occur, but are not accounted for in the sea sampling data calculations. Sea sampling estimates are provisional, and further work on discard rates and the magnitude of total discard mortality is warranted. However, it is important to note that overall dogfish discards are likely substantially lower now, than in the period prior to 1994, owing to effort control strategies in a number of fisheries that would normally encounter dogfish.

*Comment 7*: One comment was received concerning the Regulatory Impact Review (RIR) portion of the FMP. The commenter was concerned that minimal analysis was provided in the RIR to determine the economic impact of implementing a very low quota in year 2 of the rebuilding schedule. The commenter indicated that the FMP does not consider the economic impacts of these quota levels, and contends the regulations will shut down processors who depend upon large quantities of dogfish to operate. The commenter also indicated that the analysis did not fully consider the loss of markets overseas.

*Response*: The RIR indicates that in year 2 ex-vessel gross revenue declines reach a high of $3,383,903, as landings are reduced to 2,901,780 lbs (1316 mt). Pack-out facility gross revenue declines are also the greatest in year 2, estimated at $902,374. The FRFA concludes that these impacts are significant. The FRFA also concludes that in year 2, with an 89 percent reduction in landings (relative to status quo), 39 percent of harvesters will realize a reduction in gross revenue greater than 5 percent.

The FMP does acknowledge some uncertainty regarding the effects of very low quotas upon markets. Since most spiny dogfish are currently processed and exported, the implications of a very low total allowable level of landings (TAL) upon both foreign and domestic markets is difficult to predict. The RIR indicates that one of two scenarios is likely to occur. The demand for spiny dogfish by foreign markets may decline as this species is replaced by more readily available alternatives, or conversely, a reduced dogfish supply in combination with a static demand may cause increased dogfish prices and allow for a limited fishery to exist at low landings levels. The FMP acknowledges that the first scenario is more likely to occur, but the long-term effect of a large decline in demand is unknown. The FMP further states that the ability of processors and harvesters to re-establish export markets, if they are lost during the rebuilding phase, is unknown.

*Comment 8*: Three commenters suggested that alternative management strategies should be considered including establishment of a fishery harvesting male dogfish only, landing limits (aside from size limits) on mature females, area or seasonal closures, and gear alternatives.

*Response*: The Spiny Dogfish Committee considered a wide range of alternatives, including those suggested by the commenters. Three of the alternatives that were suggested by the respondents were specifically included as management options by the Spiny Dogfish Committee during the FMP development process, but were rejected and not considered to be significant alternatives to the proposed rule.

On January 22, 1998, at the first meeting of the Joint Spiny Dogfish Committee, a motion was unanimously adopted that the selective harvest of males be removed as a management measure in the FMP. Specific reasons for this decision were not provided in the Councils' summary minutes, but the Committee did not consider the option to be a significant feasible alternative at the time. After the FMP was submitted, on April 21, 1999, the Committee suggested that a male-only fishery be reexamined. The analysis of this option is not yet available.

Area and seasonal closures were recommended by the Committee to be included as management measures in the Public Hearing Document on January 22, 1998. The Spiny Dogfish Technical Committee discussed these alternatives, but reached a general consensus on May 8, 1998, that the effects of area closures would vary greatly from year to year and would be difficult to quantify due to spatial distribution and environmental factors affecting spiny dogfish annual migration. Therefore, area and seasonal closures were not considered to be a significant alternative to the preferred alternative. In addition, NMFS notes that area closures alone would, most likely, need to be very large and lengthy to effectively achieve the large reduction in fishing mortality that is specified in the FMP. Because of these reasons, the Councils chose not to develop area closures for inclusion in the FMP.

The Joint Spiny Dogfish Committee and the Mid-Atlantic Council did request that NMFS implement seasonal closures as interim measures in January 1999. The New England Council did not support the request for interim seasonal closures. NMFS ultimately denied the request for interim seasonal closures, in part because existing multispecies area closures were projected to reduce dogfish landings perhaps near the level specified in the FMP.

Gear alternatives, primarily minimum mesh sizes, were considered early in the FMP development process. The Committee discussed a minimum mesh size at their first meeting on January 22, 1998. At that meeting, the Committee voted to include minimum mesh size, gear restrictions, and gear limits as management options. Later, Council staff indicated on May 13, 1998, that there was very little available scientific information on spiny dogfish gear selectivity. An industry advisor indicated on May 12, 1998, that there should not be a minimum mesh size. Use of a minimum mesh size would capture larger dogfish and allow smaller dogfish to escape, thereby contradicting the need to protect larger females to improve recruitment of the species. A minimum mesh size is, therefore, not considered to be a significant alternative to the preferred alternative. The Committee discussion on minimum mesh size evolved into discussion on minimum fish size. A minimum fish size was rejected as a preferred option by the Committee on June 8, 1998.

A limit of 80 nets for the gillnet fishery was identified as a preferred alternative in the Public Hearing Document. This measure was rejected by the Committee on December 2, 1998.

A landing limit, or quota, for mature females was not specifically considered by the Committee. However, the Committee did reject the selective harvest of males as an option, which is very similar. At the time, the Committee did not believe that the selective harvest of males could be implemented in a feasible manner.

If alternative harvest strategies prove to be feasible, the FMP provides the Councils with framework and amendment processes to implement them.

*Comment 9*: One commenter stated that the possibility of a fishery targeting male dogfish was discussed at a public hearing, but was not mentioned in the FMP as an option considered by the Councils.

*Response*: As discussed above, the Joint Spiny Dogfish Committee considered the possibility of a male-only fishery, but did not recommend that the Councils pursue it. A similar option was brought forward, which would allow only the harvest of dogfish within a particular size range of 27.5 to 32 inches (70 to 81 cm) (a so-called slot size limit). This measure was discussed because it could protect larger, mature female dogfish. However, a mechanism to implement a ''slot-limit'' was not identified. Unless gear could be devised to prevent the capture of dogfish larger or smaller than the slot size, such dogfish would be discarded and incur some level of mortality. The results of a projected TAL under this scenario indicated that the strategy would not shorten the rebuilding period. Thus, the potential benefits under this management strategy are less than the preferred alternative.

*Comment 10*: One commenter suggested that the management measures should focus on trip limits and area closures, rather than relying upon a quota to control the spiny dogfish harvest.

*Response*: The Joint Spiny Dogfish Committee and the Councils did consider trip limits for the spiny dogfish fishery. They decided against establishing a coastwide trip limit in conjunction with the quota system. The analysis conducted by the Councils indicated that a trip limit specified on an annual basis might be very low. The analysis indicated roughly 5000 federally permitted vessels from Maine to North Carolina. Assuming that each vessel makes 100 trips per year, and that half of those trips land dogfish, there are approximately 250,000 trips to distribute the quota between. For a quota of 1,316 mt, the associated trip limit would calculated in this manner would be about 12 pounds (5.5 kg). Conceivably, a trip limit could be higher if the trip limit were specified for a limited duration. At the time, the Committee indicated that a trip limit established at one level for all vessels may not ensure quota availability distributed across all areas, gear types, and seasons.

As mentioned earlier, area closures were not considered to be a significant alternative because the movement of dogfish make it difficult to quantify the effects of closures on the dogfish harvest.

In all likelihood, to achieve the specified mortality reduction that is necessary to rebuild the dogfish stock, a trip limit would have to be very low and area closures would have to be large. Nevertheless, the FMP does allow for these options (area closures and trip limits) to be implemented under a framework action if the Councils choose this management option in the future.

*Comment 11*: One commenter alleged that the Councils did not utilize the best available scientific information in developing the FMP.

*Response*: NMFS disagrees. The FMP is based upon the best scientific information available. Spiny dogfish were last assessed at SAW 26. Also, the Council's joint SSC reviewed important spiny dogfish information in 1999, including use of the Ricker stock-recruitment function, alternative biomass rebuilding targets, and consideration of ecosystem interactions in establishing the biomass rebuilding target.

*Comment 12*: One commenter stated that the absence of historical data resulted in a poor proxy value that was used to establish the biomass rebuilding target.

*Response*: NMFS disagrees. Data from 1970 through 1997 were used to determine the stock/recruitment function and the average spawning biomass at maximum sustainable yield ($B_{msy}$) proxy. This represents 27 years worth of data.

*Comment 13*: One commenter noted that the FMP indicates a recent shift in dogfish landings from Federal waters to state waters. Because the states, through the Atlantic States Marine Fisheries Commission (ASMFC), do not have a management plan, the commenter expressed concern that there would be an effect on the success of the FMP.

*Response*: This was recognized as a potential problem during development of the FMP. As a result, the ASMFC has indicated its intention to develop a spiny dogfish fishery management plan. The FMP provides management for vessels that are permitted in the Federal spiny dogfish fishery. The FMP indicates that landings of spiny dogfish shall be prohibited by vessels possessing Federal spiny dogfish permits upon attainment of the semi-annual quota. This prohibition affects catches of dogfish in state waters by federally permitted vessels because there is an underlying provision that requires Federal permit holders to comply with Federal regulations regardless of where their fishery operations occur. Agreeing to comply in this manner is a condition precedent to obtaining a Federal fisheries permit. It enhances the enforceability of the Federal regulations and plays an important role in achieving the goals of the Magnuson-Stevens Act. The FMP also contains an annual framework mechanism that will enable the Council to adjust the spiny dogfish quota to ensure that the fishing mortality rate specified in the FMP will not be exceeded. The level of landings from state waters can be considered when establishing the annual quota.

*Comment 14*: One commenter stated that the analysis of the economic impact of the status quo option (no management measures) is overstated.

*Response*: NMFS disagrees. Because recent recruitment has been very poor, stock projections indicate that if there are no management measures for the dogfish fishery, landings will continuously decline at current levels of fishing effort. Fishing at this level will lead to recruitment failure and, eventually, stock collapse. As landings decline, annual ex-vessel revenues from dogfish are projected to decline correspondingly. This was the basis for the economic analysis of the status quo option.

*Comment 15*: One commenter expressed concern regarding the inclusion of two measures on the list of measures that could be implemented by framework action: (1) The description and identification of essential fish habitat (EFH), and (2) the description and identification of habitat areas of particular concern (HAPC). The commenter is concerned that the framework process would allow changes to these measures to be published as a final rule, without publication first as a proposed rule. The commenter states that nonfishing interests lack representation at Council meetings and, therefore, will not have the opportunity to comment upon actions regarding EFH. The commenter also asserts that the framework adjustment process for these two measures will create inconsistencies in the measures among different NMFS Regions and the Councils, thereby complicating the EFH consultation process. The commenter

requests that the inclusion of these measures be delayed until NMFS EFH interim final regulations and guidelines are revised.

*Response*: The framework adjustment process requires the Councils, when making specifically allowed adjustments to the FMP, to develop and analyze these actions over the span of at least two Council meetings. The Councils must provide the public with advance notice of the meetings, the proposals, and the analysis. Publication of the meeting agenda in the **Federal Register** is required. The public is provided an opportunity to comment on the proposals prior to, and at, the second Council meeting. Upon review of the analysis and public comments, the Council may recommend to the Regional Administrator that the measures be published as a final rule if certain conditions are met. NMFS may either publish the measures as a final rule, or as a proposed rule if NMFS or the Council determines that additional public comment is needed.

The list of frameworkable measures included in the FMP and the final rule to implement the FMP is inclusive to give the Councils maximum flexibility to respond quickly to fishery information as it becomes available and to adjust the regulations accordingly. As such, modifications to EFH and HAPC can be implemented in a expedited manner if circumstances warrant, based upon Council and NMFS approval. The framework adjustment process requires adherence to all applicable law, and a framework adjustment requires full analysis to evaluate the impact of the measures. The degree of the required analysis will differ for each framework adjustment, depending upon the scope of the action and the degree to which the impacts have been previously analyzed.

*Comment 16*: One commenter considered the definition for spiny dogfish EFH to be too broad, vague, and unworkable. The commenter specifically cited the breadth of EFH designation, noting that EFH appeared to be designated over the range of the species, and in estuarine and coastal waters of the states.

*Response*: The Magnuson-Stevens Act defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. Therefore, the geographic scope of EFH must be sufficiently broad to encompass the biological requirements of the species. The information that the Councils used for EFH designation was primarily species distribution and relative abundance data, which would be classified as ''level 2'' information under the EFH regulations (50 CFR 600.815). Since the information available was not more specific (e.g., did not show species production by habitat type), the approach prescribed by the regulations led to fairly broad EFH designations. The EFH regulations at 50 CFR 600.10 interpret the statutory definition of EFH to include aquatic areas that are used by fish, including historically used areas, where appropriate, to support a sustainable fishery and the managed species' contribution to a healthy ecosystem, provided that restoration is technologically and economically feasible. The Councils' EFH designation for spiny dogfish is consistent with these requirements.

The specific methodology used by the Councils for designating EFH was based on the highest relative density of spiny dogfish. This methodology was developed by scientists at the NMFS Northeast Fisheries Science Center, and is supported by scientific research and ecological concepts that show that the distribution and abundance of a species or stock are determined by physical and biological variables. The abundance of a species is higher where conditions are more favorable, and this tends to occur near the center of a species' range. As population abundance fluctuates, the area occupied changes. At low levels of abundance, populations are expected to occupy the habitat that maximizes their survival, growth, and reproduction. As population abundance increases, individuals move into other available habitats. NMFS and the Council have developed a management regime designed to increase the population of spiny dogfish. The broad EFH designation for spiny dogfish is intended to include habitat essential for the species' long-term well-being.

*Comment 17*: One commenter objects to the provision that requires Federal spiny dogfish vessel permit holders to comply with Federal regulations when fishing in state waters.

*Response*: This longstanding provision applies to all regulated fisheries in the Northwest Atlantic Ocean. It operates as a condition precedent to getting a Federal fisheries permit. Anyone who elects to obtain a Federal fisheries permit must agree to abide by the Federal regulations regardless of where fishing operations are conducted. This condition enhances the enforceability of the Federal regulations and plays an important role in achieving the goals of the Magnuson-Stevens Act. This requirement has been effect in other fisheries for nearly 20 years. See also the response to Comment 13.

*Comment 18*: One commenter indicated that NMFS should be more accurate regarding the assessment of impacts of the rebuilding schedule and low TALs on the dogfish industry. Specifically, the commenter objects to the statement that low TALs may cause processors to stop processing dogfish and may cause markets for the species to collapse.

*Response*: The RIR and the Regulatory Flexibility Analysis conducted for this action indicate two possible scenarios. First, markets for dogfish could be completely lost or, second, other market opportunities could develop. It is acknowledged that the first scenario is the most likely. However, the low TALs during the rebuilding period could possibly support a processing sector that is different from the current industry. For this reason, the RIR does not definitively indicate that processors will cease dogfish processing.

*Comment 19*: One respondent suggested that the definition of a sustainable fishery (in tonnage) should be provided.

*Response*: The FMP states that a rebuilt stock will allow for a sustainable fishery at yield levels of approximately 14 million pounds (6250 mt) per year.

*Comment 20*: One commenter asked for clarification of the meaning of ''fishing for spiny dogfish'' and asks if the FMP will allow harvesters to bring dogfish aboard a vessel.

*Response*: According to the Magnuson-Stevens Act, fishing means any activity, other than scientific research conducted aboard a scientific research vessel, that involves: (1) The catching, taking, or harvesting of fish; (2) the attempted catching, taking, or harvesting of fish; (3) any other activity that can reasonably be expected to result in the catching, taking, or harvesting of fish; or (4) any operations at sea in support of, or in preparation for, any activity described in (1), (2), or (3) of this definition. These regulations will prohibit any individual from possessing or landing spiny dogfish harvested from the EEZ if their vessel is not issued a Federal spiny dogfish permit. Any vessel with a Federal spiny dogfish permit will be prohibited from fishing for or possessing spiny dogfish harvested in or from the EEZ, and prohibited from landing spiny dogfish, after the effective date of notification in the **Federal Register** stating that the semi-annual quota has been harvested and the fishery is closed. It is recognized that a vessel may inadvertently encounter dogfish and may have them on board during the process of discarding them. It is a matter for law enforcement authorities to

determine the circumstances when such fish are possessed in violation of the regulations.

Comment 21: Two commenters questioned whether NMFS met its obligations under National Standard 8 to, in its words, ''consider the importance of fishing resources to the fishing community and select the alternative that minimizes the adverse economic impact on the community.'' The commenters cite the high percentage of spiny dogfish landings out of total fish landings in Plymouth, MA (96%), Wachapreague, VA (91%), and Scituate, MA (74%), as evidence of what it terms the ''high dependency'' of those communities on spiny dogfish harvesting. The comments also suggest that New Bedford, MA, is highly dependent on spiny dogfish processing, because it processes a high percentage of spiny dogfish landings.

Response: National Standard 8 states that ''[c]onservation and measures shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities.'' The commenter's suggestion that NMFS must choose the alternative that has the least impact on communities does not comport with National Standard 8. After extensive public input, the Council chose and recommended to NMFS, and NMFS approved and is implementing, an alternative that reduced economic impacts to the extent practicable while meeting the conservation requirements of the Magnuson-Stevens Act to stop overfishing and rebuild the overfished stock, and providing for long-term economic gains. The FMP states that the impacts associated with rebuilding the stock will be more severe if rebuilding is delayed. Nonetheless, recognizing the impacts of this FMP, the Council worked closely with both harvesters and processors to include an ''exit fishery'' in the FMP, as implemented by these regulations, to allow the industry time to modify its activities before the landings were reduced by the rebuilding program. At the same time, the Council decided, based on stock condition of spiny dogfish (low abundance of males and females, especially females of spawning age and those soon to reach maturity), that an exit fishery lasting longer than a year was ill-advised and that harvest of spiny dogfish needed to be reduced drastically by year 2 to protect females nearing maturity.

NMFS recognizes that some participants in the commercial fishing industry, namely, some fishermen and some processors, will be adversely affected by the conservation measures in the FMP in the short-term. NMFS also recognizes that some smaller communities involved in the dogfish fishery might be disproportionately affected by the conservation measures. The Council has made these points very clear in the FMP. While individual processing plants and fishing vessels may process or harvest spiny dogfish exclusively, none of the communities mentioned are engaged in the spiny dogfish fishery to meet social and economic needs of the community. Two of the communities, Plymouth and Scituate, are part of the suburban areas of a large city and are dependent on and substantially engaged in the businesses of the metropolitan area, as bedroom communities and tourist areas. The other community, Wachapreague, has significant fishing activities, both commercial and recreational fishing, but also attracts retirees and tourism, and is substantially dependent on these two sectors for economic activity. New Bedford is a fishing community with about 25 vessels landing dogfish and a processing plant handling catches from these vessels and other ports. The multispecies nature of the fishing industry in New Bedford and the diversification of the other communities' economies in non-fishing activities is such that closing the directed fishery for spiny dogfish would affect these communities only to a degree.

*Comment 22*: One commenter stated that dogfish are abundant and that biomass is at or near its historic high, implying that rebuilding is not necessary.

*Response*: The total dogfish biomass is currently comparable to recent high levels of abundance. However, the current age structure has been seriously distorted by the selective removal of mature females by the fishery. Because of the lack of mature females, recruitment is low and the stock will collapse if no action is taken. The management measures in the FMP will reduce fishing mortality rates to allow the population to return to equilibrium at a lower level of abundance than is currently observed. Preliminary projections, calculated with a spawning stock biomass of 200,000 mt, indicate that the total long-term biomass of a sustainable dogfish fishery would be about 416,000 mt, which is actually lower than the current total biomass of 515,513 mt.

*Comment 23*: One commenter expressed concern that the 5-year rebuilding plan and the 180,000 mt SSB rebuilding target in the FMP were not given adequate consideration during the public hearing process. The commenter stated that the 180,000 mt SSB rebuilding target was adopted by the Councils despite the fact that the SSC had previously stated that 200,000 mt SSB was the appropriate rebuilding target.

*Response*: NMFS has disapproved the 180,000 mt SSB rebuilding target, because it does not comply with the Magnuson-Stevens Act.

*Comment 24*: One commenter stated that the Councils failed to consider the impacts of a rebuilt dogfish stock on other managed fisheries, especially with regards to predation and other ecosystem interactions.

*Response*: NMFS disagrees. The Councils specifically requested the SSC to evaluate estimates of Bmsy for spiny dogfish within an ecological context. The SSC found no compelling reason to consider predation by spiny dogfish on other commercially valuable groundfish in determining its Bmsy. The SSC indicated that changing the SSB rebuilding target to as low as 150,000 mt would not significantly effect predation on groundfish and have a minimal effect on groundfish rebuilding. The stock of spiny dogfish is a very small part of the ecological community, and because of its opportunistic predatory habits it may have minimal direct and indirect effects on the relationships of different species. It was recognized that dogfish do have some effect on other species through predation and competition. However, the SSC stated that trying to determine pairwise relationships between one species and a series of others is currently not feasible.

*Comment 25*: Several commenters requested NMFS to keep track of landings to see if 10,000 mt is exceeded in the first year.

*Response*: NMFS will monitor the quota, as required by the FMP. However, NMFS notes that for the period May 1–February 10, 2000 monitoring may be incomplete because the mandatory reporting provision will not be in place. NMFS must also rely on state agencies for data from state water fisheries.

**Changes From the Proposed Rule**

In the definition for Spiny Dogfish Monitoring Committee, minor editorial changes have been made for clarity.

In § 648.4(a)(11) wording has been added to clarify that permits are

required for vessels fishing commercially.

In § 648.4(b) wording has been added to clarify that restrictions on landings take effect as of the effective date of the notification of a fishery closure in the **Federal Register**.

In § 648.5(a) a reference to the recently published 50 CFR part 697 has been added to indicate that operator permits issued under that part satisfy the permitting requirements of this section.

In the final rule, two sentences in § 648.6(a) have been combined for the purpose of brevity. References to regulations not yet in effect have been deleted.

In § 648.7(b), the paragraph headings for paragraph (b) and (b)(1)(i) have been revised to reflect that both owners and operators are responsible for reporting.

In § 648.11, paragraph (b) is revised to be consistent with the language in paragraph (a) that clarifies that vessels chosen to carry sea samplers/observers are required to do so, unless exempted by the Regional Administrator. The original language in paragraphs (a) and (b) used the word ''request'' even though each paragraph as a whole indicated that carrying sea samplers was a requirement, not an option. Additional editorial corrections have been also made.

§ 648.14(a)(119), the phrase ''the owner or operator of a vessel'' has been changed to ''any person on board a vessel'' to make it clear that it is illegal to receive spiny dogfish from anyone on board a vessel with a spiny dogfish permit unless the purchaser/receiver has a spiny dogfish dealer permit.

§ 648.14(aa)(2), the prohibition on vessels from possessing spiny dogfish harvested from the EEZ after the date by which the semi-annual quota has been harvested and on which the EEZ is closed to the harvest of spiny dogfish, as announced in a notification published in the **Federal Register** has been revised to also prohibit fishing for spiny dogfish after that date. This is to better reflect the intent of the FMP. There are additional editorial corrections made within the section.

In § 648.230, the term ''the Regional Administrator'' has been replaced with ''NMFS'' to indicate that the agency as whole is responsible for review and publication of the regulations. Other, minor editorial corrections are also made.

In § 648.230(b), the portion of a sentence that specified the semi-annual quota periods has been deleted, because that information is specified in § 648.230(d)(1).

In § 648.230(b) and (c), the paragraphs have been revised to be consistent with the final sentence in § 648.230(c), which makes it clear that the Monitoring Committee and the Joint Spiny Dogfish Committee are to recommend a quota and other measures necessary to assure that the fishing mortality rate specified in the FMP and § 648.230(a) for the upcoming fishing year will not be exceeded. The language is also revised to note that management measures listed in paragraph (b) are not restricted to those shown.

In § 648.230(c), the final regulations now specify that the Joint Spiny Dogfish Committee is a joint committee of the Councils. The portion of a sentence that specified the semi-annual quota periods has been deleted, because this information is already specified in 648.230(d)(1). The last four sentences are revised to clarify the Councils' and NMFS responsibilities in establishing annual fishing measures.

In § 648.230(d)(2), the paragraph has been revised to remove closure procedures and effects from the paragraph because that information is specified in § 648.231.

In § 648.231, the paragraph has been revised to clarify closure procedures and to more accurately indicate the prohibited activities during a closure. Prohibited activities include fishing for or possessing spiny dogfish in the EEZ, landing spiny dogfish by vessels issued a Federal spiny dogfish permit, and purchasing spiny dogfish from vessels issued a Federal spiny dogfish permit by dealers issued a Federal dogfish dealer permit. These have been standard prohibitions for closures in Federal fishery regulations.

Other changes from the proposed rule have been made at §§ 648.1(a), 648.2, 648.4(a), 648.12, and 648.14 to reflect changes necessary because of the monkfish final rule becoming effective between the dates of publication of the proposed and final spiny dogfish rules.

Minor editorial changes have been made in §§ 648.231 and 648.237.

Throughout the regulations references to bluefish, for which the regulations are not yet effective, have been deleted.

*Classification*

The Administrator, Northeast Region, NMFS, determined that the FMP, except for the disapproved measure, is necessary for the conservation and management of the spiny dogfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Councils prepared a FEIS for this FMP. The EPA published a notice of availability (NOA) for the Draft EIS at 63 FR 54476, October 9, 1998, and a NOA for the FEIS at 64 FR 45541, August 20, 1999. A notice of availability for the FMP, which contains the FEIS, was published at 64 FR 34759, June 29, 1999. The management measures will have long-term positive impacts on the affected human environment.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The proposed rule to implement the FMP was published in the **Federal Register** on August 3, 1999, (64 FR 42071). A copy of the IRFA analysis is available from the Councils (see **ADDRESSES**). The Final Regulatory Flexibility Analysis (FRFA) incorporates the IRFA and its findings, the responses to public comments that mentioned possible effects of the FMP on small entities, and the following discussion, which is based on the IRFA. No changes were made in response to comments on the economic impact of the rule.

Domestic landings of spiny dogfish increased rapidly from 1989 through 1996, but began a decline in 1997. In 1998 NMFS declared the stock to be overfished. Without any management measures (status quo), landings in 2001 would be expected to decline to 21.3 million lb (9,662 mt), which is less than half of what they were in 1997. Projections indicate that an unregulated dogfish fishery would deplete the adult spawning portion of the stock by about 85 percent in 10 years. Landings would be expected to decline continuously due to the overfished condition of the stock. Nominal spiny dogfish ex-vessel revenues are correspondingly projected to decline. Eventually, the spawning stock would decline to a level that would lead to recruitment failure and stock collapse. Due to the slow growth and low fecundity of spiny dogfish, it would then take decades to rebuild the stock. The continuation of an unregulated fishery for spiny dogfish is, therefore, contrary to the Magnuson-Stevens Act, which requires remedial action through appropriate management measures for species designated as overfished. This final rule implements measures for spiny dogfish to prevent overfishing, rebuild the stock, and comply with other provisions of the Magnuson-Stevens Act.

The categories of small entities likely to be affected by this action are commercial vessel owners harvesting spiny dogfish and dogfish processors. The IRFA estimates that this action is expected to affect 595 vessels and 3 processors that meet the criteria for small entities.

*Impacts of Permitting and Reporting Requirements*

Under all of the alternatives, any vessel fishing commercially for spiny dogfish must have a valid open access Federal spiny dogfish vessel permit issued by NMFS. It is estimated that 87 percent of the 595 commercial vessels landing spiny dogfish in 1997 from Federal waters already possess a NMFS permit for at least one or more fisheries other than spiny dogfish. Therefore, the other 13 percent (approximately 77 vessels) will be required to apply for a Federal spiny dogfish vessel permit using the initial application form. The remainder will use the renewal form and will not likely incur an additional burden. It is estimated that the owner/operators of all 77 vessels will apply for a spiny dogfish permit. The burden costs to the public for the permit application consist only of the time required to complete an application (.5 hr), at a hourly rate of $15/hour. The total burden cost to the public will be $578 ($7.50 per vessel X 77 vessels).

The expected burden cost to the public for commercial logbook submissions will be $1,540 ($20 per vessel per year X 77 vessels).

In addition, the operators of these 77 vessels will be required to apply for a Federal spiny dogfish operator permit using the initial application form. The remainder would use the renewal form and will not likely incur an additional burden. The burden costs to the public for the operator permit consist only of the time required to complete an application (1 hr), at a hourly rate of $15/hour. The total burden cost to the public will be $1,155 ($15 per operator X 77 operators).

It is expected that there will be approximately 15 new applicants for dealer permits. The cost to the public for dealer permits will be $18.75 ($1.25 per applicant X 15 applicants). Thereafter, the public annual estimate of submitting weekly reports will be $26 per dealer per year. Thus, total cost for all new dealers (who do not currently have permits) for permitting requirements in the first year is $409 ($1.25 + $26 X 15 dealers).

*Non-Preferred Alternative to Permitting and Reporting Requirements*

The alternative to the permitting and reporting requirements is the status quo, or no regulation. Without these requirements, a Federal quota system would be unmanageable, as landings information would not be complete and closures would be unenforceable. Because the status quo option would not meet the requirements of the Magnuson-Stevens Act, this alternative was rejected.

*Impacts of Prohibition on Finning*

This rule prohibits the practice of finning spiny dogfish (cutting off and retaining the fins and discarding the carcass). Fishing industry representatives testified that this practice occurs only under extremely limited circumstances in the fishery; therefore, the prohibition would have a negligible effect on the current fishery. The provision is designed to prevent the practice in a reduced fishery and, thereby, reduce waste of the spiny dogfish resource.

*Non-Preferred Alternative to Prohibition on Finning*

The alternative to the prohibition of finning is the status quo, or no regulation. The practice is already banned in other shark fisheries in the management area; therefore, not having a prohibition in this fishery could complicate enforcement by allowing fishermen to claim that fins from other sharks were from dogfish. Due to the strong support for prohibiting finning from all sectors and the insignificant economic effects of the prohibition, the status quo alternative was rejected.

*Impacts of the Preferred Spiny Dogfish Rebuilding Schedule*

The impacts of the preferred rebuilding schedule were analyzed presuming a 180,000 mt rebuilding target. While this rebuilding target has been disapproved, the management program remains intact. The analyzed impacts are still relevant in the near-term, and will be updated as necessary when the Councils submit a revised rebuilding target.

The intent of the Councils is to rebuild the spawning stock biomass of the spiny dogfish stock to levels that will support the fisheries at long-term, sustainable levels. The preferred rebuilding schedule identified in the FMP is expected to eliminate overfishing and rebuild the spiny dogfish stock in the shortest possible time, while still allowing for a 1-year ''exit fishery.'' The 1-year ''exit fishery'' of 22 million lb (10,006 mt) includes 9,286,935 lb (4212.5 mt) for the semi-annual period from November 1, 1999 - April 30, 2000, and will allow participants to gradually reduce their activity in the directed spiny dogfish fishery. This approach was chosen to reduce the impacts of the rebuilding program on both the harvesting and processing sectors of the industry, during the first 6 months. Beginning May 1, 2000, landings will be reduced to 2.9 million lb (1,316 mt) and then maintained at under 4.4 million lb (2,000 mt) until the target biomass is reached. The analysis for the preferred alternative presented here, and in the FMP, was developed with an assumption that the fishery would rebuild in 2004.

Based upon projected status quo landings in relation to proposed total allowable commercial landings or TALs, ex-vessel gross revenue declines would reach a high of $3,383,903 in year two as landings are reduced to 2,901,780 lb (1,316 mt). Pack-out facility gross revenue declines would be the greatest ($902,374) in year two. Gross revenue losses after year two would then decline as projected landings under the preferred alternative increase, while landings under the status quo model decrease. Nominal gross ex-vessel revenues would exceed status quo ex-vessel revenues in 2004, assuming that rebuilding is achieved. Cumulative ex-vessel revenues would exceed status quo in 2016. More appropriately, cumulative gross ex-vessel revenues in real terms at a 7 percent discount rate would only exceed status quo in 2029.

In year one of the preferred rebuilding schedule, there would be a 30–percent reduction in landings compared with the status quo levels. This reduction would cause a decrease in gross revenues of greater than 5 percent for approximately 149 vessels (using 1997 dealer and weighout data) and for 2 processors. In year two, with an 89–percent reduction in landings (relative to the status quo levels), 232 harvesters would have a gross reduction of revenues greater than 5 percent (based on 1997 landings and dealer data). The IRFA also concluded that it is possible that the action will result in at least 12 spiny dogfish harvesters ceasing operations.

Processors have indicated that their ability to process spiny dogfish in a cost-effective manner is dependent upon volume. This action, which greatly reduces landings during the rebuilding period, could, therefore, result in the elimination of dogfish processing operations for the remaining 3 dogfish processors and the potential loss of approximately 200 jobs.

An area of uncertainty is the effect of low TALs upon markets. The low TALs may cause processors to cease processing spiny dogfish and cause established U.S.-based markets for this species to collapse. Since most spiny dogfish are currently processed and exported, the implications of this action upon both foreign and domestic markets are hard to predict. The demand for spiny dogfish by foreign markets may

decline as dogfish is replaced by a more readily available alternative, or, conversely, reduction of supply in combination with static demand could cause dogfish prices to rise and allow for a limited fishery to exist with landings at low levels. Industry members indicate that demand is likely to decline. The ability of processors and harvesters to re-establish markets, if they ceased operations earlier, is unknown.

If markets for spiny dogfish cease, there would be no processors to whom harvesters could sell their catch. Conversely, if prices rise, harvesters would be able to receive higher ex-vessel prices for spiny dogfish (assuming a market exists). Even if prices increase, due to the extremely low TALs, it would probably not mitigate the economic impacts on the processors and harvesters caused by the preferred alternative. Given low TALs, the harvesting, processing, and support industries are not likely to see cumulative benefits for at least 15 years.

While the short and intermediate effects of the FMP are negative for those involved in the fishery, the long-term effects are likely to be positive. Projections indicate that an unregulated dogfish fishery would deplete the adult spawning portion of the stock by about 85 percent within 10 years. This would lead to a stock collapse. Yields would be expected to plummet, and a rebuilding program after a stock collapse is projected to take decades, due to the life history of dogfish. This action will rebuild the adult spawning stock biomass and, then, allow for a sustainable fishery in future years.

*Impacts of Alternatives to the Preferred Rebuilding Schedule Considered but Rejected*

Other alternatives to the preferred rebuilding schedule were considered, but either did not meet the requirements of the Magnuson-Stevens Act, or did not provide long-term economic benefits greater than those of the proposed action.

Non-Preferred Alternative Rebuilding Schedule 1 would reduce landings to a consistent level of approximately 5.5 million lb (2,500 mt) until 2003 when the stock is assumed to be rebuilt, and landings reach a level of 14 million lb (6,350 mt). Relative to status quo, gross revenue declines would reach a high of $3,067,000 in year two (2000). Cumulative gross revenues would exceed status quo levels in 2015. Similarly, relative to status quo, gross revenue declines for pack-out facilities would reach a high of $817,000 in year two (2000). Impacts would then decline afterwards as projected landings increase. At approximately 5.5 million lb (2,500 mt), a directed fishery for spiny dogfish is unlikely, and as noted in discussing the preferred alternative, the effect that an incidental dogfish fishery would have on markets is difficult to predict. This option would not provide for a 1-year ''exit'' fishery; therefore, it would have imposed greater economic burdens on fishery participants in the short term. In addition, this alternative's long-term economic benefits would not exceed those of the preferred alternative.

Non-Preferred Alternative Rebuilding Schedule 2 would reduce landings to 22.5 million lb (10,206 mt) in year one, to 11.3 million lb (5,125 mt) in year two, and then limit landings to a level that would ensure the rebuilding of the stocks within a 10-year time-frame. Relative to status quo, gross revenue declines would reach a high of $2,778,962 in year three (2001). Cumulative gross revenues would exceed status quo levels in 2020. Similarly (also relative to status quo), gross revenue declines for pack-out facilities would reach a high of $741,056 in year three (2001). Impacts would then decline afterwards as projected landings increase. Unlike the preferred alternative, this alternative does not provide for a rebuilt stock until 2009. Similarly, although the second year of this option provides for a higher TAL than the preferred, the long-term economic outlook for the preferred alternative is superior. Given the higher TAL in year two of this option, there is a possibility that, in the short-term, this option could provide some cost savings by not forcing harvesters into other fisheries as quickly as the preferred alternative. However, the cost data needed to support this conclusion are currently unavailable. The analysis examined gross revenues, and the long-term benefits of the preferred alternative exceeded this alternative.

Non-Preferred Alternative Rebuilding Schedule 3 would allow for a reduction in dogfish landings to 13.2 million lb (5,988 mt) in 1999 and 8.8 million lb (3,992 mt) in 2000. Landings until 2004 would be reduced to a level which allows the stock to be rebuilt in 5 years. Year one gross ex-vessel revenue declines would be $2,631,447 and reach a high of $2,697,000 in year three (2001), compared to the status quo revenue levels. These impacts would decline throughout the time-span of the FMP as projected landings increase. Cumulative gross revenues would exceed status quo levels in 2015. This alternative would not provide for an economically feasible exit fishery compared to the preferred alternative; therefore, it was not favored by members of the fishing industry. In addition, this alternative's long-term economic benefits do not exceed those of the preferred alternative.

Alternatives four, five, and six would reduce F to levels that are necessary to rebuild spiny dogfish stocks within a 15–, 20–, and 30-year time frame, respectively. These options were rejected early in the FMP development process because the analysis indicated that spiny dogfish did not meet the necessary Magnuson-Stevens Act criteria that allow rebuilding to exceed 10 years. These options would spread economic impacts over a greater time period, but would not meet the requirements of the Magnuson-Stevens Act.

Alternative seven would establish a system of uniform trip limits in conjunction with an annual quota. In the second year of the rebuilding program, the projected trip limits per vessel could potentially be as low as 12 lb (5.4 kg) per trip, assuming a TAL of 2.9 million lb (1,315 mt) and 250,000 trips. Given that the average commercial fishing trip in 1997 landed 3,116 lb (1,413 kg), this low trip limit would preclude a viable directed fishery. There could be fewer participants involved in the commercial spiny dogfish fishery, an occurrence that would allow for larger trip limits. However, a uniform trip limit system would not necessarily ensure quota availability distributed across all geographic areas, gears, and seasons. This management option was rejected because positive long-term benefits would be limited.

Alternative eight would establish a minimum size limit for spiny dogfish that corresponds to the length at which 50 percent of female spiny dogfish are sexually mature (32 in (81 cm)). Alternative nine would establish a minimum size limit for spiny dogfish that corresponds to the length at which 100 percent of female spiny dogfish are sexually mature (36 in (91 cm)). These alternatives would have little economic impact on recreational fishing because most recreationally caught spiny dogfish are released after capture. However, there would likely be negative short-term economic impacts on the commercial harvesting sector through reduced landings because very few dogfish harvested by commercial fishermen currently achieve the proposed minimum sizes. These negative economic impacts would likely extend to processors and dealers because of reduced landings of spiny dogfish.

Alternative ten would allow only the harvest of spiny dogfish between 27.5 in (70 cm) to 32 in (81 cm) in length (a ''slot size'' limit). The results of projected TALs under this scenario indicate that this strategy would result in lower overall yields and not in reducing the rebuilding period. Thus, the potential benefits under this scenario would be less than the preferred alternative for the same time period.

The eleventh and twelfth alternatives would distribute the annual quota on a quarterly or bi-monthly basis. The effects of these alternatives would depend largely upon the distributional system set up by the Councils. The further sub-allocation of quotas could provide long-term benefits through a rebuilt spiny dogfish fishery. As the industry is presently structured, there are insufficient fish to make processing operations (which depend on volume) economically viable. Additionally, administrative logistics associated with implementing a quarterly or bimonthly quota monitoring system are expected to be formidable. For these reasons, these alternatives were rejected.

*Steps Taken to Minimize the Significant Impact on Small Entities*

Several steps have been taken to minimize the economic impact on small entities. First, the primary means of initially minimizing the effect of this action on small entities was to provide the 1-year ''exit fishery'' to allow participants to gradually reduce their activity in the first year of the plan. Second, the semi-annual quota allocates the catch to minimize the impact on any one portion of the fishery. Third, the FMP and regulations incorporate a wide range of framework actions that will allow the Councils and NMFS to tailor the fishery to minimize impacts on small entities over the life of the FMP. Finally, the rebuilding strategy for the fishery protects a large class of juvenile female spiny dogfish to allow them to mature and contribute to the stock quickly, as opposed to a rebuilding strategy that could take decades if that large class of juvenile females was not protected.

A copy of this analysis is available from the Councils (see **ADDRESSES**).

**Paperwork Reduction Act (PRA)**

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to, a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This final rule contains eight new collection-of-information requirements subject to the Paperwork Reduction Act. The collection of this information has been approved by OMB, and the OMB control numbers and public reporting burden are listed as follows:

Processed Products Family of Forms, OMB Control Number 0648–0018, (2 minutes/response).

Northeast Region Federal Fisheries Permit Family of Forms, OMB Control Number 0648–0202 (vessel permit - 30 minutes/response; dealer permit - 5 minutes/response; operator permit - 1 hour/response).

Northeast Region Logbook Family of Forms, OMB Control Number 0648–0212 (5 minutes/response).

Northeast Region Dealer Purchase Reports, OMB Control Number 0648–0229 (IVR - 4 minutes/response; form 88–30 - 2 minutes/response).

Northeast Region Vessel Identification, OMB Control Number 0648–0350 (45 minutes/response).

The response times shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

**Endangered Species Act**

A formal Section 7 consultation under the Endangered Species Act was initiated for the FMP. In a biological opinion dated August 13, 1999, the Assistant Administrator for Fisheries determined that fishing activities conducted under the FMP and its implementing regulations may adversely affect but are not likely to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS or result in the destruction or adverse modification of right whale critical habitat.

**Marine Mammal Protection Act**

Potential adverse impacts to marine mammals resulting from fishing activities conducted under this rule are discussed in the FEIS, which focuses on potential impacts to harbor porpoise, right whales, and humpback whales.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: January 5, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows.

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

**Subpart A—General Provisions**

2. In § 648.1, paragraph (a) is revised to read as follows:

**§ 648.1 Purpose and scope.**

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Atlantic Sea Scallop FMP (Scallop FMP)); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the Northeast multispecies and monkfish fisheries (NE Multispecies FMP) and (Monkfish FMP); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); and the spiny dogfish fishery (Spiny Dogfish FMP). These FMPs and the regulations in this part govern the conservation and management of the above named fisheries of the Northeastern United States.

* * * * *

3. In § 648.2, the definitions for ''Council'' and ''Councils'' are revised and the definition for ''Spiny Dogfish Monitoring Committee'' is added in alphabetical order to read as follows:

**§ 648.2 Definitions.**

* * * * *

*Council* means the New England Fishery Management Council (NEFMC) for the Atlantic sea scallop and the NE multispecies fisheries, or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; the Atlantic surf clam and ocean quahog; the summer flounder, scup, and black sea bass fisheries; the Atlantic bluefish fishery; and the spiny dogfish fishery.

*Councils* with respect to the monkfish fishery and spiny dogfish fishery means the New England Fishery Management

Council (NEFMC) and the Mid-Atlantic Fishery Management Council (MAFMC).

* * * * *

*Spiny Dogfish Monitoring Committee* means a committee made up of staff representatives of the MAFMC, NEFMC, the NMFS Northeast Regional Office, the Northeast Fisheries Science Center, and the states, as well as two ex-officio industry members (one from each Council jurisdiction). The MAFMC Executive Director or a designee chairs the committee.

* * * * *

4. In § 648.4, paragraph (a)(10) is reserved, paragraph (a)(11) is added, and the first 4 sentences of paragraph (b) are revised to read as follows:

**§ 648.4 Vessel and individual commercial permits.**

(a) * * *

(10) [Reserved].

(11) *Spiny dogfish vessels.* Any vessel of the United States that commercially fishes for, possesses, or lands spiny dogfish in or from the EEZ must have been issued and carry on board a valid commercial spiny dogfish vessel permit.

(b) *Permit conditions.* Any person who applies for a fishing permit under this section must agree as a condition of the permit that the vessel and the vessel's fishing activity, catch, and pertinent gear (without regard to whether such fishing activity occurs in the EEZ or landward of the EEZ, and without regard to where such fish or gear are possessed, taken or landed), are subject to all requirements of this part, unless exempted from such requirements under this part. All such fishing activities, catch, and gear will remain subject to all applicable state requirements. Except as otherwise provided in this part, if a requirement of this part and a management measure required by a state or local law differ, any vessel owner permitted to fish in the EEZ for any species managed under this part must comply with the more restrictive requirement. Owners and operators of vessels fishing under the terms of a summer flounder moratorium, scup moratorium, or black sea bass moratorium permit, or a spiny dogfish permit must also agree not to land summer flounder, scup, black sea bass, or spiny dogfish, respectively, in any state after the effective date of a notification published in the **Federal Register** stating that the commercial quota for that state or period has been harvested and that no commercial quota is available for the respective species. * * *

* * * * *

5. In § 648.5, paragraph (a) is revised to read as follows:

**§ 648.5 Operator permits.**

(a) *General.* Any operator of a vessel fishing for or possessing sea scallops in excess of 40 lb (18.1 kg), NE multispecies, monkfish, mackerel, squid, butterfish, scup, black sea bass, bluefish, or spiny dogfish harvested in or from the EEZ, or issued a permit for these species under this part, must have been issued under this section and carry on board a valid operator's permit. An operator's permit issued pursuant to parts 649 or 697 of this chapter satisfies the permitting requirement of this section. This requirement does not apply to operators of recreational vessels.

* * * * *

6. In § 648.6, paragraph (a) is revised to read as follows:

**§ 648.6 Dealer/processor permits.**

(a) *General.* All NE multispecies, monkfish, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, and spiny dogfish dealers, and surf clam and ocean quahog processors must have been issued under this section and have in their possession a valid permit for these species.

* * * * *

7. In § 648.7, paragraphs (a)(1)(i), (a)(3)(i), (b) heading, and (b)(1)(i) are revised to read as follows:

**§ 648.7 Recordkeeping and reporting requirements.**

(a) * * *

(1) * * *

(i) All summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, or spiny dogfish dealers must provide: Dealer's name and mailing address; dealer's permit number; name and permit number or name and hull number (USCG documentation number or state registration number, whichever is applicable) of vessels from which fish are landed or received; trip identifier for a trip from which fish are landed or received; dates of purchases; pounds by species (by market category, if applicable), price per pound by species (by market category, if applicable); or total value by species (by market category, if applicable); port landed; and any other information deemed necessary by the Regional Administrator. The dealer or other authorized individual must sign all report forms. If no fish are purchased during a reporting week, no written report is required to be submitted. If no fish are purchased during an entire reporting month, a report so stating on the required form must be submitted.

* * * * *

(3) * * *

(i) Summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, and spiny dogfish dealers must complete the ''Employment Data'' section of the Annual Processed Products Report; completion of the other sections of that form is voluntary. Reports must be submitted to the address supplied by the Regional Administrator.

* * * * *

(b) *Vessel owners or operators.*

(1) * * *

(i) *Owners or operators of vessels issued a summer flounder, scup, black sea bass, Atlantic sea scallop, NE multispecies, monkfish Atlantic mackerel, squid, butterfish, or spiny dogfish permit.* The owner or operator of any vessel issued a permit for the species listed in the preceding sentence must maintain on board the vessel and submit an accurate daily fishing log report for all fishing trips, regardless of species fished for or taken, on forms supplied by or approved by the Regional Administrator. If authorized in writing by the Regional Administrator, a vessel owner or operator may submit reports electronically, for example by using a VMS or other system. At least the following information, and any other information required by the Regional Administrator, must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; pounds by species (or count, if a party or charter vessel) of all species landed or discarded; dealer permit number; dealer name; date sold; port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

8. In § 648.11, paragraphs (a) and (e) are revised to read as follows:

**§ 648.11 At-sea sea sampler/observer coverage.**

(a) The Regional Administrator may require any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, Atlantic mackerel, squid, butterfish, scup, black sea bass, or spiny

dogfish, or a moratorium permit for summer flounder, to carry a NMFS-approved sea sampler/observer. If required by the Regional Administrator to carry an observer or sea sampler, a vessel may not engage in any fishing operations in the respective fishery unless an observer or sea sampler is on board, or the requirement is waived.

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, or a spiny dogfish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, spiny dogfish, or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, spiny dogfish, or other specimens taken by vessel.

* * * * *

9. In § 648.12, the introductory text is revised to read as follows:

**§ 648.12 Experimental fishing.**

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (general provisions), B (Atlantic mackerel, squid, and butterfish), D (sea scallop), E (surf clam and ocean quahog), F (NE multispecies and monkfish fisheries), G (summer flounder), H (scup), I (black sea bass), or L (spiny dogfish) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, and spiny dogfish fisheries.

* * * * *

10. In § 648.14, paragraph (z) is reserved and paragraphs (a)(119), (a)(120), and (aa) are added to read as follows:

**§ 648.14 Prohibitions.**

(a) * * *

(119) Purchase or otherwise receive, except for transport, spiny dogfish from any person on board a vessel issued a spiny dogfish permit, unless the purchaser/receiver is in possession of a valid spiny dogfish dealer permit.

(120) Purchase or otherwise receive for a commercial purpose spiny dogfish landed by a federally permitted vessel in any state, from Maine to Florida, after the effective date of notification published in the **Federal Register** stating that the semi-annual quota has been harvested and the EEZ is closed to the harvest of spiny dogfish.

* * * * *

(z) [Reserved].

(aa) In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person owning or operating a vessel issued a valid spiny dogfish permit or issued an operator's permit to do any of the following:

(1) Sell, barter, trade or transfer, or attempt to sell, barter, trade or otherwise transfer, other than for transport, spiny dogfish, unless the dealer or transferee has a dealer permit issued under § 648.6(a).

(2) Fish for or possess spiny dogfish harvested in or from the EEZ after the effective date of the notification published in the **Federal Register** stating that the semi-annual quota has been harvested and that the EEZ is closed to the harvest of spiny dogfish.

(3) Land spiny dogfish for a commercial purpose after the effective date of the notification published in the **Federal Register** stating that the semi-annual quota has been harvested and that the EEZ is closed to the harvest of spiny dogfish.

(4) Remove the fins from spiny dogfish and discard the carcass.

(5) Land spiny dogfish fins in excess of 5 percent, by weight, of the weight of spiny dogfish carcasses.

(6) Store spiny dogfish fins on board a vessel after the vessel lands spiny dogfish.

10. Subpart K is added and reserved.

**Subpart K—[Reserved]**

11. Subpart L is added to read as follows:

**Subpart L—Management Measures for the Spiny Dogfish Fishery**

Sec.


648.230 Catch quotas and other restrictions.
648.231 Closures.
648.232 Time Restrictions. [Reserved]
648.233 Minimum Fish Sizes. [Reserved]
648.234 Gear restrictions. [Reserved]
648.235 Possession limit. [Reserved]
648.236 Special Management Zones. [Reserved]
648.237 Framework provisions.


**§ 648.230 Catch quotas and other restrictions.**

(a) *Annual review.* The Spiny Dogfish Monitoring Committee will annually review the following data, subject to availability, to determine the total allowable level of landings (TAL) and other restrictions necessary to assure a target fishing mortality rate (F) of 0.2 in 1999 through April 30, 2000, a target F of 0.03 from May 1, 2000, through April 30, 2003, and a target F of 0.08 thereafter will not be exceeded: Commercial and recreational catch data; current estimates of F; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of spiny dogfish; and any other relevant information.

(b) *Recommended measures.* Based on this review, the Spiny Dogfish Monitoring Committee shall recommend to the Joint Spiny Dogfish Committee a commercial quota and any other measures including those in paragraphs (b)(1)-(b)(5) of this section that are necessary to assure that the F specified in paragraph (a) of this section for the upcoming fishing year (May 1 through April 30) will not be exceeded. The quota may be set within the range of zero to the maximum allowed. The measures that may be recommended include, but are not limited to:

(1) Minimum or maximum fish sizes;

(2) Seasons;

(3) Mesh size restrictions;

(4) Trip limits; or

(5) Other gear restrictions.

(c) *Annual fishing measures.* The Councils' Joint Spiny Dogfish Committee shall review the recommendations of the Spiny Dogfish Monitoring Committee. Based on these recommendations and any public comments, the Joint Spiny Dogfish Committee shall recommend to the Councils a commercial quota and, possibly, other measures, including those specified in paragraph (b) of this section, necessary to assure that the F specified in paragraph (a) of this section for the upcoming fishing year (May 1 through April 30) will not be exceeded. The commercial quota may be set within the range of zero to the maximum allowed. The Councils shall review these recommendations and, based on the recommendations and any public comments, recommend to the Regional Administrator a commercial quota and other measures necessary to assure that the F specified in paragraph (a) of this section for the upcoming fishing year will not be exceeded. The Councils' recommendations must include supporting documentation, as appropriate, concerning the environmental, economic, and other impacts of the recommendations. The Regional Administrator shall initiate a review of these recommendations and may modify the recommended quota

and other management measures to assure that the target F specified in paragraph (a) of this section will not be exceeded. The Regional Administrator may modify the Councils' recommendations using any of the measures that were not rejected by both Councils. After such review, NMFS shall publish a proposed rule in the **Federal Register** specifying a coastwide commercial quota and other measures necessary to assure that the F specified in paragraph (a) of this section will not be exceeded. After considering public comments, NMFS shall publish a final rule in the **Federal Register** to implement such a quota and other measures.

(d) *Distribution of annual quota.* (1) The annual quota specified according to the process outlined in paragraph (a) of this section shall be allocated between two semi-annual quota periods as follows: May 1 through October 30 (57.9 percent) and November 1 through April 30 (42.1 percent).

(2) All spiny dogfish landed for a commercial purpose in the states from Maine through Florida shall be applied against the applicable semi-annual commercial quota, regardless of where the spiny dogfish were harvested.

**§ 648.231 Closures.**

The Regional Administrator shall determine the date by which the quota for each semi-annual period described in § 648.230(d)(1) will be harvested and shall close the EEZ to fishing for spiny dogfish on that date for the remainder of that semi-annual period by publishing a notification in the **Federal Register**. Upon the closure date and for the remainder of the semi-annual quota period, no vessel may fish for or possess spiny dogfish in the EEZ, nor may vessels issued a spiny dogfish permit under this part land spiny dogfish, nor may dealers issued a Federal permit purchase spiny dogfish from vessels issued a spiny dogfish permit under this part.

**§ 648.232 Time Restrictions. [Reserved]**

**§ 648.233 Minimum Fish Sizes. [Reserved]**

**§ 648.234 Gear restrictions. [Reserved]**

**§ 648.235 Possession limit. [Reserved]**

**§ 648.236 Special Management Zones. [Reserved]**

**§ 648.237 Framework provisions.**

(a) *Within season management action.* The Councils may, at any time, initiate action to add or adjust management measures if they find that action is necessary to meet or be consistent with the goals and objectives of the Spiny Dogfish FMP.

(1) *Adjustment process.* After the Councils initiate a management action, they shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Councils shall provide the public with advance notice of the availability of both the proposals and the analysis for comment prior to, and at, the second Council meeting. The Councils' recommendation on adjustments or additions to management measures must come from one or more of the following categories: Minimum fish size; maximum fish size; gear requirements, restrictions or prohibitions (including, but not limited to, mesh size restrictions and net limits); regional gear restrictions; permitting restrictions and reporting requirements; recreational fishery measures (including possession and size limits and season and area restrictions); commercial season and area restrictions; commercial trip or possession limits; fin weight to spiny dogfish landing weight restrictions; onboard observer requirements; commercial quota system (including commercial quota allocation procedures and possible quota set-asides to mitigate bycatch, conduct scientific research, or for other purposes); recreational harvest limit; annual quota specification process; FMP Monitoring Committee composition and process; description and identification of essential fish habitat; description and identification of habitat areas of particular concern; overfishing definition and related thresholds and targets; regional season restrictions (including option to split seasons); restrictions on vessel size (length and GRT) or shaft horsepower; target quotas; measures to mitigate marine mammal entanglements and interactions; regional management; any other management measures currently included in the Spiny Dogfish FMP; and measures to regulate aquaculture projects.

(2) *Councils' recommendation.* After developing management actions and receiving public testimony, the Councils shall make a recommendation approved by a majority of each Council's members, present and voting, to the Regional Administrator. The Councils' recommendation must include supporting rationale, an analysis of impacts and, if management measures are recommended, a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Councils recommend that the management measures should be issued as a final rule, they must consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule and whether regulations have to be in place for an entire harvest/fishing season.

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Councils' recommended management measures.

(iii) Whether there is an immediate need to protect the resource.

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) *NMFS action.* If the Councils' recommendation includes adjustments or additions to management measures and:

(i) If NMFS concurs with the Councils' recommended management measures and determines that the recommended management measures should be issued as a final rule based on the factors specified in paragraph (b)(2) of this section, then the measures will be issued as a final rule in the **Federal Register**.

(ii) If NMFS concurs with the Councils' recommendation and determines that the recommended management measures should be published first as a proposed rule, then the measures will be published as a proposed rule in the **Federal Register**. After additional public comment, if NMFS concurs with the Councils' recommendation, then the measures will be issued as a final rule in the **Federal Register**.

(iii) If NMFS does not concur, the Councils will be notified in writing of the reasons for the non-concurrence.

(iv) Framework actions can be taken only in the case where both Councils approve the proposed measure.

(b) *Emergency action.* Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(e) of the Magnuson-Stevens Act.

[FR Doc. 00–630 Filed 1–10–00; 8:45 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 65, No. 7
Tuesday, January 11, 2000

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 COMMERCE

### National Institute of Standards and Technology

### 15 CFR Part 280

**[Docket No. 980623159–9316–03]**

**RIN 0693–AB47**

### Procedures for Implementation of the Fastener Quality Act

**AGENCY:** National Institute of Standards and Technology and the Bureau of Export Administration and the Patent and Trademark Office, United States Department of Commerce.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** The National Institute of Standards and Technology (NIST) and the Bureau of Export Administration (BXA) and the Patent and Trademark Office (PTO), United States Department of Commerce, are extending for 15 days the period for submitting comments on the proposed rule amending the regulations pertaining to the implementation of the Fastener Quality Act. NIST, BXA, and PTO are granting this extension based on requests received from the public for an extension of the comment period.

**DATES:** Comments must be received no later than January 28, 2000.

**ADDRESSES:** Comments must be submitted to Dr. Subhas Malghan, Director's Office, Technology Services, National Institute of Standards and Technology, Mail Stop 2000, Gaithersburg, MD 20899–2000; telephone number (301) 975–4510.

**FOR FURTHER INFORMATION CONTACT:** Dr. Subhas Malghan, Director's Office, Technology Services, National Institute of Standards and Technology, Mail Stop 2000, Gaithersburg, MD 20899–2000; telephone number (301) 975–4510.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of December 15, 1999 (64 FR 69969), NIST, BXA, and PTO proposed changes to their existing Fastener Quality Act (FQA) regulations to implement amendments to the FQA contained in the Fastener Quality Act Amendments of 1999 (Pub. L. 106–234). Interested parties were given until January 14, 2000 to submit written comments on the proposed rule.

Two representatives of the aerospace industry, two representatives of the fastener industry, and two fastener manufacturers have submitted requests to extend the comment period on the proposed rulemaking. The extension is sought because, since the holiday season fell in the middle of the comment period, there was not sufficient time to correlate industry comments and meet the stipulated January 14, 2000 due date.

To be responsive to these requests, and to ensure that the public has sufficient time to formulate appropriate comments, NIST, BXA, and PTO are granting an extension of 15 days. Although this notice is being issued by NIST, the extension applies to comments regarding all subparts of the proposed rule. Comments must be received at the address given above no later than January 28, 2000.

Dated: January 7, 2000.

**Karen H. Brown,**

*Deputy Director.*

[FR Doc. 00–701 Filed 1–10–00; 8:45 am]

**BILLING CODE 3510–13–M**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–111119–99]**

**RIN 1545–AX32**

### Partnership Mergers and Divisions

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations on the tax consequences of partnership mergers and divisions. The proposed regulations affect partnerships and their partners. This document also contains a notice of public hearing on these proposed regulations.

**DATES:** Written comments must be received by April 10, 2000. Requests to speak (with outlines of oral comments) at the public hearing scheduled for May 4, 2000, must be submitted by April 13, 2000.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG–111119–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–111119–99), 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 of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.ustreas.gov/tax__regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the regulations, Dan Carmody, (202) 622–3080; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** This document proposes to amend sections 708, 743, and 752 of the Income Tax Regulations (26 CFR part 1) regarding partnership mergers and divisions.

#### Partnership Mergers

#### Background

Section 708(b)(2)(A) provides that in the case of a merger or consolidation of two or more partnerships, the resulting partnership is, for purposes of section 708, considered the continuation of any merging or consolidating partnership whose members own an interest of more than 50 percent in the capital and profits of the resulting partnership. Section 1.708–1(b)(2)(i) of the Income Tax Regulations provides that if the resulting partnership can be considered a continuation of more than one of the merging partnerships, the resulting partnership is the continuation of the partnership that is credited with the contribution of the greatest dollar value of assets to the resulting partnership. If none of the members of the merging

partnerships own more than a 50 percent interest in the capital and profits of the resulting partnership, all of the merged partnerships are considered terminated, and a new partnership results. The taxable years of the merging partnerships that are considered terminated are closed under section 706(c).

Although section 708 and the applicable regulations provide which partnership continues when two or more partnerships merge, the statute and regulations do not prescribe a form for the partnership merger. (Often, state merger statutes do not provide a particular form for a partnership merger.) In revenue rulings, however, the IRS has prescribed the form of a partnership merger for Federal income tax purposes.

In Rev. Rul. 68–289 (1968–1 C.B. 314), three existing partnerships (P1, P2, and P3) merged into one partnership with P3 continuing under section 708(b)(2)(A). The revenue ruling holds that P1 and P2, the two terminating partnerships, are treated as having contributed all of their respective assets and liabilities to P3, the resulting partnership, in exchange for a partnership interest in P3. P1 and P2 are considered terminated and the partners of P1 and P2 receive interests in P3 with a basis under section 732(b) in liquidation of P1 and P2 (Assets-Over Form). Rev. Rul. 77–458 (1977–2 C.B. 220), and Rev. Rul. 90–17 (1990–1 C.B. 119), also follow the Assets-Over Form for a partnership merger.

**Explanation of Provisions**

*A. Form of a Partnership Merger*

The IRS and Treasury are aware that taxpayers may accomplish a partnership merger by undertaking transactions in accordance with jurisdictional laws that follow a form other than the Assets-Over Form. For example, the terminating partnership could liquidate by distributing its assets and liabilities to its partners who then contribute the assets and liabilities to the resulting partnership (Assets-Up Form). In addition, the partners in the terminating partnership could transfer their terminating partnership interests to the resulting partnership in exchange for resulting partnership interests, and the terminating partnership could liquidate into the resulting partnership (Interest-Over Form).

In the partnership incorporation area, a taxpayer's form generally is respected if the taxpayer actually undertakes, under the relevant jurisdictional law, all the steps of a form that is set forth in one of three situations provided in Rev. Rul. 84–111 (1984–2 C.B. 88). The three situations that Rev. Rul. 84–111 sets forth are the Assets-Over Form, Assets-Up Form, and Interest-Over Form. Rev. Rul. 84–111 explains that, depending on the form chosen to incorporate the partnership, the adjusted basis and holding periods of the various assets received by the corporation and the adjusted basis and holding periods of the stock received by the former partners can vary. Like partnership incorporations, each form of a partnership merger has potentially different tax consequences.

Under the Assets-Up Form, partners could recognize gain under sections 704(c)(1)(B) and 737 (and incur state or local transfer taxes) when the terminating partnership distributes the assets to the partners. However, under the Assets-Over Form, gain under sections 704(c)(1)(B) and 737 is not triggered. See §§ 1.704–4(c)(4) and 1.737–2(b). Additionally, under the Assets-Up Form, because the adjusted basis of the assets contributed to the resulting partnership is determined first by reference to section 732 (as a result of the liquidation) and then section 723 (by virtue of the contribution), in certain circumstances, the adjusted basis of the assets contributed may not be the same as the adjusted basis of the assets in the terminating partnership. These circumstances occur if the partners' aggregate adjusted basis of their interests in the terminating partnership does not equal the terminating partnership's adjusted basis in its assets. Under the Assets-Over Form, because the resulting partnership's adjusted basis in the assets it receives is determined solely under section 723, the adjusted basis of the assets in the resulting partnership is the same as the adjusted basis of the assets in the terminating partnership.

The regulations propose to respect the form of a partnership merger for Federal income tax purposes if the partnerships undertake, pursuant to the laws of the applicable jurisdiction, the steps of either the Assets-Over Form or the Assets-Up Form. (This rule applies even if none of the merged partnerships are treated as continuing for Federal income tax purposes.) Generally, when partnerships merge, the assets move from one partnership to another at the entity level, or in other words, like the Assets-Over Form. However, if as part of the merger, the partnership titles the assets in the partners' names, the proposed regulations treat the transaction under the Assets-Up Form. If partnerships use the Interest-Over Form to accomplish the result of a merger, the partnerships will be treated as following the Assets-Over Form for Federal income tax purposes.

In the context of partnership incorporations, Rev. Rul. 84–111 distinguishes among all three forms of incorporation. However, with respect to the Interest-Over Form, the revenue ruling respects only the transferors' conveyances of partnership interests, while treating the receipt of the partnership interests by the transferee corporation as the receipt of the partnership's assets (i.e., the Assets-Up Form). The theory for this result, based largely on *McCauslen* v. *Commissioner,* 45 T.C. 588 (1966), is that the transferee corporation can only receive assets since it is not possible, as a sole member, for it to receive and hold interests in a partnership (i.e., a partnership cannot have only one member; so, the entity is never a partnership in the hands of the transferee corporation).

Adherence to the approach followed in Rev. Rul. 84–111 creates problems in the context of partnership mergers that are not present with respect to partnership incorporations. Unlike the corporate rules, the partnership rules impose certain tax results on partners based upon a concept that matches a contributed asset to the partner that contributed the asset. Sections 704(c) and 737 are examples of such rules. The operation of these rules breaks down if the partner is treated as contributing an asset that is different from the asset that the partnership is treated as receiving.

Given that the hybrid treatment of the Interest-Over Form transactions utilized in Rev. Rul. 84–111 is difficult to apply in the context of partnership mergers, another characterization will be applied to such transactions. The Assets-Over Form generally will be preferable for both the IRS and taxpayers. For example, when partnerships merge under the Assets-Over Form, gain under sections 704(c)(1)(B) and 737 is not triggered. Moreover, the basis of the assets in the resulting partnership is the same as the basis of the assets in the terminating partnership, even if the partners' aggregate adjusted basis of their interests in the terminating partnership does not equal the terminating partnership's adjusted basis in its assets.

If partnerships merge under applicable law without implementing a form, the proposed regulations treat the partnerships as following the Assets-Over Form. This approach is consistent with the treatment of partnership to corporation elective conversions under the check-the-box regulations and technical terminations under section

708(b)(1)(B), other formless movements of a partnership's assets.

*B. Adverse Tax Consequences of the Assets-Over Form*

The IRS and Treasury are aware that certain adverse tax consequences may occur for partnerships that merge in a transaction that will be taxed in accordance with the Assets-Over Form. These proposed regulations address some of the adverse tax consequences regarding section 752 liability shifts and buyouts of exiting partners.

1. Section 752 Revisions

If a highly leveraged partnership (the terminating partnership) merges with another partnership (the resulting partnership), all of the partners in the terminating partnership could recognize gain because of section 752 liability shifts. Under the Assets-Over Form, the terminating partnership becomes a momentary partner in the resulting partnership when the terminating partnership contributes its assets and liabilities to the resulting partnership in exchange for interests in the resulting partnership. If the terminating partnership (as a momentary partner in the resulting partnership) is considered to receive a deemed distribution under section 752 (after netting increases and decreases in liabilities under § 1.752–1(f)) that exceeds the terminating partnership's adjusted basis of its interests in the resulting partnership, the terminating partnership would recognize gain under section 731. The terminating partnership's gain then would be allocated to each partner in the terminating partnership under section 704(b). In this situation, a partner in the terminating partnership could recognize gain even though the partner's adjusted basis in its resulting partnership interest or its share of partnership liabilities in the resulting partnership is large enough to avoid the recognition of gain, provided that the decreases in liabilities in the terminating partnership are netted against the increases in liabilities in the resulting partnership.

The proposed regulations clarify that when two or more partnerships merge under the Assets-Over Form, increases or decreases in partnership liabilities associated with the merger are netted by the partners in the terminating partnership and the resulting partnership to determine the effect of the merger under section 752. The IRS and Treasury consider it appropriate to treat the merger as a single transaction for determining the net liability shifts under section 752. Therefore, a partner in the terminating partnership will recognize gain on the contribution under section 731 only if the net section 752 deemed distribution exceeds that partner's adjusted basis of its interest in the resulting partnership.

2. Buyout of a Partner

Another adverse tax consequence may occur when a partner in the terminating partnership does not want to become a partner in the resulting partnership and would like to receive money or property instead of an interest in the resulting partnership. Under the Assets-Over Form, the terminating partnership will not recognize gain or loss under section 721 when it contributes its property to the resulting partnership in exchange for interests in the resulting partnership. However, if, in order to facilitate the buyout of the exiting partner, the resulting partnership transfers money or other consideration to the terminating partnership in addition to the resulting partnership interests, the terminating partnership may be treated as selling part of its property to the resulting partnership under section 707(a)(2)(B). Any gain or loss recognized by the terminating partnership generally would be allocated to all the partners in the terminating partnership even though only the exiting partner would receive the consideration.

The IRS and Treasury believe that, under certain circumstances, when partnerships merge and one partner does not become a partner in the resulting partnership, the receipt of cash or property by that partner should be treated as a sale of that partner's interest in the terminating partnership to the resulting partnership, not a disguised sale of the terminating partnership's assets. Accordingly, the proposed regulations provide that if the merger agreement (or similar document) specifies that the resulting partnership is purchasing the exiting partner's interest in the terminating partnership and the amount paid for the interest, the transaction will be treated as a sale of the exiting partner's interest to the resulting partnership. This treatment will apply even if the resulting partnership sends the consideration to the terminating partnership on behalf of the exiting partner, so long as the designated language is used in the relevant document.

In this situation, the exiting partner is treated as selling a partnership interest in the terminating partnership to the resulting partnership (and the resulting partnership is treated as purchasing the partner's interest in the terminating partnership) immediately prior to the merger. Immediately after the sale, the resulting partnership becomes a momentary partner in the terminating partnership. Consequently, the resulting partnership and ultimately its partners (determined prior to the merger) inherit the exiting partner's capital account in the terminating partnership and any section 704(c) liability of the exiting partner. If the terminating partnership has an election in effect under section 754 (or makes an election under section 754), the resulting partnership will have a special basis adjustment regarding the terminating partnership's property under section 743. The proposed regulations provide that the resulting partnership's basis adjustments under section 743 must be ultimately allocated solely to the partners who were partners in the resulting partnership immediately before the merger; the adjustments do not affect the common basis of the resulting partnership's assets.

*C. Merger as Part of a Larger Transaction*

The proposed regulations provide that if the merger is part of a larger series of transactions, and the substance of the larger series of transactions is inconsistent with following the form prescribed for the merger, the form may not be respected, and the larger series of transactions may be recast in accordance with their substance. An example illustrating the application of this rule is included in the proposed regulations.

*D. Measurement of Dollar Value of Assets*

As discussed above, the regulations currently provide that in a merger of partnerships, if the resulting partnership can be considered a continuation of more than one of the merging partnerships, the resulting partnership is the continuation of the partnership that is credited with the contribution of the greatest dollar value of assets to the resulting partnership. Commentators have questioned whether this rule refers to the gross or net value of the assets of a partnership. The proposed regulations provide that the value of assets of a partnership is determined net of the partnership's liabilities.

*E. Effective Date*

The regulations are proposed to apply to mergers occurring on or after the date final regulations are published in the **Federal Register**.

**Partnership Divisions**

**Background**

Section 708(b)(2)(B) provides that, in the case of a division of a partnership into two or more partnerships, the resulting partnerships (other than any

resulting partnership the members of which had an interest of 50 percent or less in the capital and profits of the prior partnership) are considered a continuation of the prior partnership. Section 1.708–1(b)(2)(ii) provides that any other resulting partnership is not considered a continuation of the prior partnership but is considered a new partnership. If the members of none of the resulting partnerships owned an interest of more than 50 percent in the capital and profits of the prior partnership, the prior partnership is terminated. Where members of a partnership that has been divided do not become members of a resulting partnership that is considered a continuation of the prior partnership, such partner's interest is considered liquidated as of the date of the division.

Section 708(b)(2)(B) and the applicable regulations do not prescribe a particular form for the division involving continuing partnerships. The IRS has not addressed in published guidance how the assets and liabilities of the prior partnership move into the resulting partnerships. Taxpayers generally have followed either the Assets-Over Form or the Assets-Up Form for partnership divisions.

Under the Assets-Over Form, the prior partnership transfers certain assets to a resulting partnership in exchange for interests in the resulting partnership. The prior partnership then immediately distributes the resulting partnership interests to partners who are designated to receive interests in the resulting partnership.

Under the Assets-Up Form, the prior partnership distributes certain assets to some or all of its partners who then contribute the assets to a resulting partnership in exchange for interests in the resulting partnership.

**Explanation of Provisions**

*A. Form of a Partnership Division*

As with partnership mergers, the IRS and Treasury recognize that different tax consequences can arise depending on the form of the partnership division. Because of the potential different tax results that could occur depending on the form followed by the partnership, the regulations propose to respect for Federal income tax purposes the form of a partnership division accomplished under laws of the applicable jurisdiction if the partnership undertakes the steps of either the Assets-Over Form or the Assets-Up Form. Thus, the same forms allowed for partnership mergers will be allowed for partnership divisions.

Generally, an entity cannot be classified as a partnership if it has only one member. This universally has been held to be the case in classifying transactions where interests in a partnership are transferred to a single person, so that the partnership goes out of existence. *McCauslen* v. *Commissioner,* 45 T.C. 588 (1966); Rev. Rul. 99–6, 1999–6 I.R.B. 6; Rev. Rul. 67–65, 1967–1 C.B. 168; Rev. Rul. 55–68, 1955–1 C.B. 372.

However, in at least one instance involving the contribution of assets by an existing partnership to a newly-formed partnership, regulations have provided that the momentary existence of the new partnership will be respected for Federal income tax purposes. See § 1.708–1(b)(1)(iv). Pursuant to the proposed regulations, under the Assets-Over Form of a partnership division, the prior partnership's momentary ownership of all the interests in a resulting partnership will not prevent the resulting partnership from being classified as a partnership on formation.

The example in current § 1.708–1(b)(2)(ii) indicates that when a partnership is not considered a continuation of the prior partnership under section 708(b)(2)(B) (partnership considered a new partnership under current § 1.708–1(b)(2)(ii)), the new partnership is created under the Assets-Up Form. The regulations propose to modify this result and provide examples illustrating that partnerships can divide and create a new partnership under either the Assets-Over Form or the Assets-Up Form.

Consistent with partnership mergers, if a partnership divides using a form other than the two prescribed, it will be treated as undertaking the Assets-Over Form.

These proposed regulations use four terms to describe the form of a partnership division. Two of these terms, prior partnership and resulting partnership, describe partnerships that exist under the applicable jurisdictional law. The prior partnership is the partnership that exists under the applicable jurisdictional law before the division, and the resulting partnerships are the partnerships that exist under the applicable jurisdictional law after the division. The other two terms, divided partnership and recipient partnership, are Federal tax concepts. A divided partnership is a partnership that is treated, for Federal income tax purposes, as transferring assets in connection with a division, and a recipient partnership is a partnership that is treated, for Federal income tax purposes, as receiving assets in connection with a division. The divided partnership must be a continuation of the prior partnership. Although the divided partnership is considered one continuing partnership for Federal income tax purposes, it may actually be two different partnerships under the applicable jurisdictional law (i.e., the prior partnership and a different resulting partnership that is considered a continuation of the prior partnership for Federal income tax purposes).

Finally, because in a formless division it generally will be unclear which partnership should be treated, for Federal income tax purposes, as transferring assets (*i.e.,* the divided partnership) to another partnership (*i.e.,* the recipient partnership) where more than one partnership is a continuation of the prior partnership, the proposed regulations provide that the continuing resulting partnership with the assets having the greatest fair market value (net of liabilities) will be treated as the divided partnership. This issue also is present where the partnership that, in form, transfers assets is not a continuation of the prior partnership, but more than one of the other resulting partnerships are continuations of the prior partnership. The same rule applies to these situations.

*B. Consequences under Sections 704(c)(1)(B) and 737*

Gain under sections 704(c)(1)(B) and 737 may be triggered when section 704(c) property or substituted section 704(c) property is distributed to certain partners. These rules often will be implicated in the context of partnership divisions.

Where a division is accomplished in a transaction that is taxed in accordance with the Assets-Over Form, the partnership interest in the recipient partnership will be treated as a section 704(c) asset to the extent that the interest is received by the divided partnership in exchange for section 704(c) property. Section 1.704–4(d)(1). Accordingly, the distribution of the partnership interests in the recipient partnership by the divided partnership generally will trigger section 704(c)(1)(B) where the interests in the recipient partnership are received by a partner of the divided partnership other than the partner who contributed the section 704(c) property to the divided partnership. In addition, section 737 may be triggered if a partner who contributed section 704(c) property to the divided partnership receives an interest in the recipient partnership that is not attributable to the section 704(c) property.

Where a division is accomplished under the Assets-Up Form, assets are distributed directly to the partners who will hold interests in the recipient partnership. The distribution could trigger section 704(c)(1)(B) or 737 depending on the identity of the

distributed asset and the distributee partner.

The regulations under section 737 provide an exception for certain partnership divisions. Section 737 does not apply when a transferor partnership transfers all the section 704(c) property contributed by a partner to a second partnership in a section 721 exchange, followed by a distribution of an interest in the transferee partnership in complete liquidation of the interest of the partner that originally contributed the section 704(c) property to the transferor partnership. Section 1.737–2(b)(2). This rule, however, may not apply to many partnership divisions because the original contributing partner often remains a partner in the divided partnership. No similar rule is provided under section 704(c)(1)(B).

In many instances, the application of sections 704(c)(1)(B) and 737 will be appropriate when a partnership divides under either the Assets-Over Form or the Assets-Up Form. Consider the following example: A, B, C, and D form a partnership. A contributes appreciated property X ($0 basis and $200 value), B contributes property Y ($200 basis and $200 value), and C and D each contribute $200 cash. The partnership subsequently divides into two partnerships using the Assets-Over Form, distributing interests in the recipient partnership in accordance with each partner's pro rata interest in the prior partnership. Property X remains in the prior partnership, and property Y is contributed to the recipient partnership. Under these facts, section 737 could be avoided if an exception were created for the distribution of the recipient partnership interests. If, subsequent to the division, half of property Y is distributed to A, section 737 would not be triggered because property X (the section 704(c) property) is no longer in the same partnership as property Y.

While the IRS and Treasury generally believe that it is appropriate to apply sections 704(c)(1)(B) and 737 in the context of partnership divisions, comments are invited on whether it would be appropriate to expand the exceptions to these sections in certain circumstances relating to divisive transactions.

*C. Division as Part of a Larger Transaction*

The proposed regulations provide the same rule for partnership divisions that applies to partnership mergers.

*D. Effective Date*

The regulations are proposed to apply to divisions occurring on or after the date final regulations are published in the **Federal Register**.

**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 on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and the Department of Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for May 4, 2000, beginning at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must submit timely written comments and must submit an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies) by April 13, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information: The principal author of these regulations is Mary Beth Collins, Office of Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

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

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

**Par. 2.** Section 1.708–1 is amended as follows:

1. Paragraph (b) is amended by removing paragraph (b)(2) and by redesignating each paragraph listed in the first column of the following table as the paragraph listed in the second column:

| Old paragraph | Redesignated paragraph |
|---|---|
| (b)(1)(i) | (b)(1) |
| (b)(1)(i)(*a*) | (b)(1)(i) |
| (b)(1)(i)(*b*) | (b)(1)(ii) |
| (b)(1)(ii) | (b)(2) |
| (b)(1)(iii) | (b)(3) |
| (b)(1)(iii)(*a*) | (b)(3)(i) |
| (b)(1)(iii)(*b*) | (b)(3)(ii) |
| (b)(1)(iv) | (b)(4) |
| (b)(1)(v) | (b)(5) |

2. Paragraphs (c) and (d) are added to read as follows:

**§ 1.708–1 Continuation of partnership.**

* * * * *

(c) *Merger or consolidation*—(1) *General rule.* If two or more partnerships merge or consolidate into one partnership, the resulting partnership shall be considered a continuation of the merging or consolidating partnership the members of which own an interest of more than 50 percent in the capital and profits of the resulting partnership. If the resulting partnership can, under the preceding sentence, be considered a continuation of more than one of the merging or

consolidating partnerships, it shall, unless the Commissioner permits otherwise, be considered the continuation of that partnership which is credited with the contribution of assets having the greatest fair market value (net of liabilities) to the resulting partnership. Any other merging or consolidating partnerships shall be considered as terminated. If the members of none of the merging or consolidating partnerships have an interest of more than 50 percent in the capital and profits of the resulting partnership, all of the merged or consolidated partnerships are terminated, and a new partnership results. The taxable years of such merging or consolidating partnerships which are considered terminated shall be closed in accordance with the provisions of section 706(c), and such partnerships shall file their returns for a taxable year ending upon the date of termination, *i.e.,* the date of merger or consolidation. The resulting partnership shall file a return for the taxable year of the merging or consolidating partnership that is considered as continuing. The return shall state that the resulting partnership is a continuation of such merging or consolidating partnership and shall include the names and addresses of the merged or consolidated partnerships. The respective distributive shares of the partners for the periods prior to and subsequent to the date of merger or consolidation shall be shown as a part of the return.

(2) *Form of a merger or consolidation*—(i) *Assets-over form.* When two or more partnerships merge or consolidate into one partnership under the applicable jurisdictional law without undertaking a form for the merger or consolidation, or undertake a form for the merger or consolidation that is not described in paragraph (c)(2)(ii) of this section, any merged or consolidated partnership that is considered terminated under paragraph (c)(1) of this section is treated as undertaking the assets-over form for Federal income tax purposes. Under the assets-over form, the merged or consolidated partnership that is considered terminated under paragraph (c)(1) of this section contributes all of its assets and liabilities to the resulting partnership in exchange for an interest in the resulting partnership; and, immediately thereafter, the terminated partnership distributes interests in the resulting partnership to its partners in liquidation of the terminated partnership.

(ii) *Assets-up form.* Despite the partners' transitory ownership of the terminated partnership's assets and liabilities, the form of a partnership merger or consolidation will be respected for Federal income tax purposes if the merged or consolidated partnership that is considered terminated under paragraph (c)(1) of this section distributes its assets and liabilities to its partners in liquidation of the partners' interests in the terminated partnership; and, immediately thereafter, the partners in the terminated partnership contribute the distributed assets and liabilities to the resulting partnership in exchange for interests in the resulting partnership.

(3) *Sale of an interest in the merging or consolidating partnership.* In a transaction characterized under the assets-over form, a sale of an interest in the terminated partnership to the resulting partnership that occurs as part of a merger or consolidation under section 708(b)(2)(A), as described in paragraph (c)(2)(i) of this section, will be respected as a sale of a partnership interest if the merger agreement (or similar document) specifies that the resulting partnership is purchasing interests from a particular partner in the merging or consolidating partnership and the consideration that is transferred for each interest sold. See section 741 and § 1.741–1 for determining the selling partner's gain or loss on the sale or exchange of the partnership interest.

(4) *Examples.* The following examples illustrate the rules in paragraphs (c)(1) through (3) of this section:

*Example 1.* Partnership AB, in whose capital and profits A and B each own a 50-percent interest, and partnership CD, in whose capital and profits C and D each own a 50-percent interest, merge on September 30, 1999, and form partnership ABCD. Partners A, B, C, and D are on a calendar year, and partnership AB and partnership CD are also on a calendar year. After the merger, the partners have capital and profits interests as follows: A, 30 percent; B, 30 percent; C, 20 percent; and D, 20 percent. Since A and B together own an interest of more than 50 percent in the capital and profits of partnership ABCD, such partnership shall be considered a continuation of partnership AB and shall continue to file returns on a calendar year basis. Since C and D own an interest of less than 50 percent in the capital and profits of partnership ABCD, the taxable year of partnership CD closes as of September 30, 1999, the date of the merger, and partnership CD is terminated as of that date. Partnership ABCD is required to file a return for the taxable year January 1 to December 31, 1999, indicating thereon that, until September 30, 1999, it was partnership AB. Partnership CD is required to file a return for its final taxable year, January 1 through September 30, 1999.

*Example 2.* (i) Partnership X, in whose capital and profits A owns a 40-percent interest and B owns a 60-percent interest, and partnership Y, in whose capital and profits B owns a 60-percent interest and C owns a 40-percent interest, merge on September 30, 1999. The dollar-value of the partnership X assets (net of liabilities) is $100X, and the dollar-value of the partnership Y assets (net of liabilities) is $200X. The merger is accomplished under state law by partnership Y contributing its assets and liabilities to partnership X in exchange for interests in partnership X, with partnership Y then liquidating, distributing interests in partnership X to B and C.

(ii) B, a partner in both partnerships prior to the merger, owns a greater than 50-percent interest in the resulting partnership following the merger. Accordingly, because the dollar-value of partnership Y's assets (net of liabilities) was greater than that of partnership X's, under paragraph (c)(1) of this section, X will be considered to terminate in the merger. As a result, even though, for state law purposes, the transaction was undertaken with partnership Y contributing its assets and liabilities to partnership X and distributing interests in partnership X to its partners, pursuant to paragraph (c)(2)(i) of this section, for Federal income tax purposes, the transaction will be treated as if partnership X contributed its assets to partnership Y in exchange for interests in partnership Y and then liquidated, distributing interests in partnership Y to A and B.

*Example 3.* (i) Partnership X and partnership Y merge when the partners of partnership X transfer their partnership X interests to partnership Y in exchange for partnership Y interests. Immediately thereafter, partnership X liquidates into partnership Y. The resulting partnership is considered a continuation of partnership Y, and partnership X is considered terminated.

(ii) The partnerships are treated as undertaking the assets-over form described in paragraph (c)(2)(i) of this section because the partnerships undertook a form that is not the assets-up form described in paragraph (c)(2)(ii) of this section. Accordingly, for Federal income tax purposes, partnership X is deemed to contribute its assets and liabilities to partnership Y in exchange for interests in partnership Y; and, immediately thereafter, partnership X is deemed to have distributed the interests in partnership Y to its partners in liquidation of their interests in partnership X.

*Example 4.* (i) A, B, and C are partners in partnership X. D, E, and F are partners in Partnership Y. Partnership X and partnership Y merge within the meaning of section 708(b)(2)(A), and the resulting partnership is considered a continuation of partnership Y. Partnership X is considered terminated. Under state law, partnerships X and Y undertake the assets-over form of paragraph (c)(2)(i) of this section to accomplish the partnership merger. C does not want to become a partner in partnership Y, and partnership X does not have the resources to buy C's interest before the merger. C, partnership X, and partnership Y enter into an agreement that specifies that partnership Y will purchase C's interest in partnership X for $150 immediately before the merger. As

part of the merger, partnership X receives from partnership Y $150 that will be distributed to C immediately before the merger, and interests in partnership Y in exchange for partnership X's assets and liabilities. Partnership X has made an election under section 754.

(ii) Because the merger agreement satisfies the requirements of paragraph (c)(3) of this section, C will be treated as selling its interest in partnership X to partnership Y for $150 immediately before the merger. See section 741 and § 1.741–1 to determine the amount and character of C's gain or loss on the sale or exchange of its interest in partnership X.

(iii) Because the merger agreement satisfies the requirements of paragraph (c)(3) of this section, partnership Y is considered to have purchased C's interest in partnership X for $150 immediately before the merger. See § 1.704–1(b)(2)(iv)(*l*) for determining partnership Y's capital account in partnership X. Partnership Y's adjusted basis of its interest in partnership X is determined under section 742 and § 1.742–1. To the extent any built-in gain or loss on section 704(c) property in partnership X would have been allocated to C (including any allocations with respect to property revaluations under section 704(b) (reverse section 704(c) allocations)), see section 704 and § 1.704–3(a)(7) for determining the built-in gain or loss or reverse section 704(c) allocations apportionable to partnership Y. Similarly, after the merger is completed, the built-in gain or loss and reverse section 704(c) allocations attributable to C's interest are apportioned to D, E, and F under section 704(c) and § 1.704-3(a)(7).

(iv) Because partnership X has an election under section 754 in effect, partnership Y, as a momentary partner in partnership X, will have a special basis adjustment regarding the basis of partnership X's property under section 743 and § 1.743–1. See section 743 and § 1.743–1 for determining the amount of the adjustment. After the merger, the adjustment is allocated solely to D, E, and F—the partners in partnership Y immediately before the merger.

(v) Under paragraph (c)(2)(i) of this section, partnership X contributes assets and liabilities attributable to the interests of A and B to partnership Y in exchange for interests in partnership Y; and, immediately thereafter, partnership X distributes the interests in partnership Y to A and B in liquidation of their interests in partnership X. At the same time, partnership X distributes assets to partnership Y in liquidation of partnership Y's interest in partnership X.

(5) *Prescribed form not followed in certain circumstances.* (i) If any transactions described in paragraph (c)(2) or (3) of this section are part of a larger series of transactions, and the substance of the larger series of transactions is inconsistent with following the form prescribed in such paragraph, the Commissioner may disregard such form, and may recast the larger series of transactions in accordance with their substance.

(ii) The following example illustrates the rule in paragraph (c)(5) of this section:

*Example.* A, B, and C are equal partners in partnership ABC. ABC holds no section 704(c) property. D and E are equal partners in partnership DE. B and C want to exchange their interest in ABC for all of the interests in DE. However, rather than exchanging partnership interests, DE merges with ABC by undertaking the assets-up form described in paragraph (c)(2)(ii) of this section, with D and E receiving title to the DE assets and then contributing the assets to ABC in exchange for interests in ABC. As part of a prearranged transaction, the assets acquired from DE are contributed to a new partnership, and the interests in the new partnership are distributed to B and C in complete liquidation of their interests in ABC. The merger and division in this example represent a series of transactions that in substance are an exchange of interests in ABC for interests in DE. Even though paragraph (c)(2)(ii) of this section provides that the form of a merger will be respected for Federal income tax purposes if the steps prescribed under the asset-up form are followed, and paragraph (d)(2)(i) of this section provides a form that will be followed for Federal income tax purposes in the case of partnership divisions, these forms will not be respected for Federal income tax purposes under these facts, and the transactions will be recast in accordance with their substance as a taxable exchange of interests in ABC for interests in DE.

(6) *Effective date.* This paragraph (c) is applicable to partnership mergers occurring on or after the date final regulations are published in the **Federal Register**.

(d) *Division of a partnership*—(1) *General rule.* Upon the division of a partnership into two or more partnerships, any resulting partnership (as defined in paragraph (d)(3)(iv) of this section) or resulting partnerships shall be considered a continuation of the prior partnership (as defined in paragraph (d)(3)(ii) of this section) if the members of the resulting partnership or partnerships had an interest of more than 50 percent in the capital and profits of the prior partnership. Any other resulting partnership will not be considered a continuation of the prior partnership but will be considered a new partnership. If the members of none of the resulting partnerships owned an interest of more than 50 percent in the capital and profits of the prior partnership, none of the resulting partnerships will be considered a continuation of the prior partnership and the prior partnership will be considered to have terminated. Where members of a partnership which has been divided into two or more partnerships do not become members of a resulting partnership which is considered a continuation of the prior partnership, such partner's interests shall be considered liquidated as of the date of the division. The resulting partnership that is regarded as continuing shall file a return for the taxable year of the partnership that has been divided. The return shall state that the partnership is a continuation of the prior partnership and shall set forth separately the respective distributive shares of the partners for the periods prior to and subsequent to the date of division.

(2) *Form of a division*—(i) *Assets-over form.* When a partnership divides into two or more partnerships under applicable jurisdictional law without undertaking a form for the division, or undertakes a form that is not described in paragraph (d)(2)(ii) of this section, the transaction will be characterized under the assets-over form for Federal income tax purposes.

(A) *Assets-over form where at least one resulting partnership is a continuation of the prior partnership.* In a division under the assets-over form where at least one resulting partnership is a continuation of the prior partnership, the divided partnership (as defined in paragraph (d)(3)(i) of this section) contributes certain assets and liabilities to a recipient partnership (as defined in paragraph (d)(3)(iv) of this section) or recipient partnerships in exchange for interests in such recipient partnership or partnerships; and, immediately thereafter, distributes the interests in such recipient partnership or partnerships to some or all of its partners in partial or complete liquidation of the partners' interests in the divided partnership.

(B) *Assets-over form where none of the resulting partnerships is a continuation of the prior partnership.* In a division under the assets-over form where none of the resulting partnerships is a continuation of the prior partnership, the prior partnership will be treated as contributing all of its assets and liabilities to new resulting partnerships in exchange for interests in the resulting partnerships; and, immediately thereafter, the prior partnership will be treated as liquidating by distributing the interests in the new resulting partnerships to the prior partnership's partners.

(ii) *Assets-up form*—(A) *Assets-up form where the partnership distributing assets is a continuation of the prior partnership.* Despite the partners' transitory ownership of some of the prior partnership's assets and liabilities, the form of a partnership division will be respected for Federal income tax purposes if the divided partnership, which by definition is a continuing partnership, distributes certain assets and liabilities to some or all of its partners in partial or complete liquidation of the partners' interests in

the divided partnership; and, immediately thereafter, such partners contribute the distributed assets and liabilities to a recipient partnership or partnerships in exchange for interests in such recipient partnership or partnerships.

(B) *Assets-up form where none of the resulting partnerships are a continuation of the prior partnership.* If none of the resulting partnerships are a continuation of the prior partnership, then despite the partners' transitory ownership of some or all of the prior partnership's assets and liabilities, the form of a partnership division will be respected for Federal income tax purposes if the prior partnership distributes certain assets and liabilities to some or all of its partners in partial or complete liquidation of the partners' interests in the prior partnership; and, immediately thereafter, such partners contribute the distributed assets and liabilities to a resulting partnership or partnerships in exchange for interests in such resulting partnership or partnerships. If the prior partnership does not liquidate under the applicable jurisdictional law, then with respect to the assets and liabilities that, in form, are not transferred to a new resulting partnership, the prior partnership will be treated as transferring these assets and liabilities to a new resulting partnership under the assets over form described in paragraph (d)(2)(i)(B) of this section.

(3) *Definitions*—(i) *Divided partnership*—For purposes of paragraph (d) of this section, the divided partnership is the partnership which is treated, for Federal income tax purposes, as transferring the assets and liabilities to the recipient partnership or partnerships, either directly (under the assets-over form) or indirectly (under the assets-up form). If the resulting partnership that, in form, transferred the assets and liabilities in connection with the division is a continuation of the prior partnership, then such resulting partnership will be treated as the divided partnership. If a partnership divides into two or more partnerships and only one of the resulting partnerships is a continuation of the prior partnership, then the resulting partnership that is a continuation of the prior partnership will be treated as the divided partnership. If a partnership divides into two or more partnerships without undertaking a form for the division that is recognized under paragraph (d)(2) of this section, or if the resulting partnership that had, in form, transferred assets and liabilities is not considered a continuation of the prior partnership, and more than one resulting partnership is considered a continuation of the prior partnership, the continuing resulting partnership with the assets having the greatest fair market value (net of liabilities) will be treated as the divided partnership.

(ii) *Prior partnership*—For purposes of paragraph (d) of this section, the prior partnership is the partnership subject to division that exists under applicable jurisdictional law before the division.

(iii) *Recipient partnership*—For purposes of paragraph (d) of this section, a recipient partnership is a partnership that is treated as receiving, for Federal income tax purposes, assets and liabilities from a divided partnership, either directly (under the assets-over form) or indirectly (under the assets-up form).

(iv) *Resulting partnership*—For purposes of paragraph (d) of this section, a resulting partnership is a partnership resulting from the division that exists under applicable jurisdictional law after the division. For example, where a prior partnership divides into two partnerships, both partnerships existing after the division are resulting partnerships.

(4) *Examples.* The following examples illustrate the rules in paragraphs (d)(1), (2), and (3) of this section:

*Example 1.* Partnership ABCD is in the real estate and insurance business. A owns a 40-percent interest, and B, C, and D each owns a 20-percent interest, in the capital and profits of the partnership. The partnership and the partners report their income on a calendar year. They agree to separate the real estate and insurance business as of November 1, 1999, and to form two partnerships; partnership AB to take over the real estate business, and partnership CD to take over the insurance business. Because members of resulting partnership AB owned more than a 50-percent interest in the capital and profits of partnership ABCD (A, 40 percent, and B, 20 percent), partnership AB shall be considered a continuation of partnership ABCD. Partnership AB is required to file a return for the taxable year January 1 to December 31, 1999, indicating thereon that until November 1, 1999, it was partnership ABCD. Partnership CD is considered a new partnership formed on November 1, 1999, and is required to file a return for the taxable year it adopts pursuant to section 706(b) and the applicable regulations.

*Example 2.* (i) Partnership ABCD owns properties W, X, Y, and Z, and divides into partnership AB and partnership CD. Under paragraph (d)(1) of this section, partnership AB is considered a continuation of partnership ABCD and partnership CD is considered a new partnership. Partnership ABCD distributes property Y to C and titles property Y in C's name. Partnership ABCD distributes property Z to D and titles property Z in D's name. C and D then contribute properties Y and Z, respectively, to partnership CD in exchange for interests in partnership CD. Properties W and X remain in partnership AB.

(ii) Under paragraph (d)(2)(ii) of this section, partnership ABCD will be treated as following the assets-up form for Federal income tax purposes.

*Example 3.* (i) Partnership ABCD owns three parcels of property: property X, with a value of $500; property Y, with a value of $300; and property Z, with a value of $200. A and B each own a 40-percent interest in the capital and profits of partnership ABCD, and C and D each own a 10 percent interest in the capital and profits of partnership ABCD. On November 1, 1999, partnership ABCD divides into three partnerships (AB1, AB2, and CD) by contributing property X to a newly formed partnership (AB1) and distributing all interests in such partnership to A and B as equal partners, and by contributing property Z to a newly formed partnership (CD) and distributing all interests in such partnership to C and D as equal partners in exchange for all of their interests in partnership ABCD.

(ii) Partnerships AB1 and AB2 both are considered a continuation of partnership ABCD, while partnership CD is considered a new partnership formed on November 1, 1999. Under paragraph (d)(2)(i)(A) of this section, partnership ABCD will be treated as following the assets-over form, with partnership ABCD contributing property X to partnership AB1 and property Z to partnership CD, and distributing the interests in such partnerships to the designated partners.

*Example 4.* (i) The facts are the same as in example 3, except that partnership ABCD divides into three partnerships by operation of state law, without undertaking a form.

(ii) Under the last sentence of paragraph (d)(3)(i) of this section, partnership AB1 will be treated as the resulting partnership that is the divided partnership. Under paragraph (d)(2)(i)(A) of this section, partnership ABCD will be treated as following the assets-over form, with partnership ABCD contributing property Y to partnership AB2 and property Z to partnership CD, and distributing the interests in such partnerships to the designated partners.

*Example 5.* (i) The facts are the same as in example 3, except that partnership ABCD divides into three partnerships by contributing property X to newly-formed partnership AB1 and property Y to newly-formed partnership AB2 and distributing all interests in each partnership to A and B in exchange for all of their interests in partnership ABCD.

(ii) Because resulting partnership CD is not a continuation of the prior partnership (partnership ABCD), partnership CD cannot be treated, for Federal income tax purposes, as the partnership that transferred assets (i.e., the divided partnership), but instead must be treated as a recipient partnership. Under the last sentence of paragraph (d)(3)(i) of this section, partnership AB1 will be treated as the resulting partnership that is the divided partnership. Under paragraph (d)(2)(i)(A) of this section, partnership ABCD will be treated as following the assets-over form, with partnership ABCD contributing property Y to partnership AB2 and property Z to

partnership CD, and distributing the interests in such partnerships to the designated partners.

*Example 6.* (i) Partnership ABCDE owns Blackacre, Whiteacre, and Redacre, and divides into partnership AB, partnership CD, and partnership DE. Under paragraph (d)(1) of this section, partnership ABCDE is considered terminated (and, hence, none of the resulting partnerships are a continuation of the prior partnership) because none of the members of the new partnerships (partnership AB, partnership CD, and partnership DE) owned an interest of more than 50 percent in the capital and profits of partnership ABCDE.

(ii) Partnership ABCDE distributes Blackacre to A and B and titles Blackacre in the names of A and B. A and B then contribute Blackacre to partnership AB in exchange for interests in partnership AB. Partnership ABCDE will be treated as following the assets-up form described in paragraph (d)(2)(ii)(B) of this section for Federal income tax purposes.

(iii) Partnership ABCDE distributes Whiteacre to C and D and titles Whiteacre in the names of C and D. C and D then contribute Whiteacre to partnership CD in exchange for interests in partnership CD. Partnership ABCDE will be treated as following the assets-up form described in paragraph (d)(2)(ii)(B) of this section for Federal income tax purposes.

(iv) Partnership ABCDE does not liquidate under state law so that, in form, the assets in new partnership DE are not considered to have been transferred under state law. Partnership ABCDE will be treated as undertaking the assets-over form described in paragraph (d)(2)(i)(B) of this section for Federal income tax purposes with respect to the assets of partnership DE. Thus, partnership ABCDE will be treated as contributing Redacre to partnership DE in exchange for interests in partnership DE; and, immediately thereafter, partnership ABCDE will be treated as distributing interests in partnership DE to D and E in liquidation of their interests in partnership ABCDE. Partnership ABCDE then terminates.

(5) *Prescribed form not followed in certain circumstances.* If any transactions described in paragraph (d)(2) of this section are part of a larger series of transactions, and the substance of the larger series of transactions is inconsistent with following the form prescribed in such paragraph, the Commissioner may disregard such form, and may recast the larger series of transactions in accordance with their substance.

(6) *Effective date.* This paragraph (d) is applicable to partnership divisions occurring on or after the date final regulations are published in the **Federal Register**.

**Par. 3.** Section 1.743–1 is amended by adding two sentences to the end of paragraph (h)(1).

**§ 1.743–1 Optional adjustment to basis of partnership property.**

* * * * *

(h) * * *

(1) * * * When a resulting partnership that is considered a continuation of a merged or consolidated partnership under section 708(b)(2)(A) has a basis adjustment in property held by the merged or consolidated partnership that is considered terminated under § 1.708–1(c)(1) (as a result of the resulting partnership acquiring an interest in such merged or consolidated partnership, see § 1.708–1(c)(3)), the resulting partnership will continue to have the same basis adjustments with respect to property distributed (see § 1.708–1(c)(4), Example 4(v)) by the terminated partnership to the resulting partnership, regardless of whether the resulting partnership makes a section 754 election. The portion of the resulting partnership's adjusted basis in its assets attributable to the basis adjustment with respect to the property distributed by the terminating partnership must be segregated and allocated solely to the partners who were partners in the resulting partnership immediately before the merger or consolidation.

* * * * *

**Par. 4.** Section 1.752–1 is amended as follows:

1. A sentence is added to the end of paragraph (f).

2. The current *Example* in paragraph (g) is redesignated as *Example 1.*

3. *Example 2* is added in paragraph (g).

**§ 1.752–1 Treatment of partnership liabilities.**

* * * * *

(f) * * * When two or more partnerships merge or consolidate under section 708(b)(2)(A), as described in § 1.708–1(c)(2)(i), increases and decreases in partnership liabilities associated with the merger or consolidation are netted by the partners in the terminating partnership and the resulting partnership to determine the effect of the merger under section 752.

(g) * * *

*Example 1.* * * *

*Example 2. Merger or consolidation of partnerships holding property encumbered by liabilities.* (i) B owns a 70 percent interest in partnership T. Partnership T's sole asset is property X, which is encumbered by a $900 liability. Partnership T's adjusted basis in property X is $600, and the value of property X is $1,000. B's adjusted basis in its partnership T interest is $420. B also owns a 20 percent interest in partnership S. Partnership S's sole asset is property Y, which is encumbered by a $100 liability. Partnership S's adjusted basis in property Y is $200, the value of property Y is $1,000, and B's adjusted basis in its partnership S interest is $40.

(ii) Partnership T and partnership S merge under section 708(b)(2)(A). Under section 708(b)(2)(A) and § 1.708–1(c)(1), partnership T is considered terminated and the resulting partnership is considered a continuation of partnership S. Partnerships T and S undertake the form described in § 1.708–1(c)(2)(i) for the partnership merger. Under § 1.708–1(c)(2)(i), partnership T contributes property X and its $900 liability to partnership S in exchange for an interest in partnership S. Immediately thereafter, partnership T distributes the interests in partnership S to its partners in liquidation of their interests in partnership T. B owns a 25 percent interest in partnership S after partnership T distributes the interests in partnership S to B.

(iii) Under paragraph (f) of this section, B nets the increases and decreases in its share of partnership liabilities associated with the merger of partnership T and partnership S. Before the merger, B's share of partnership liabilities was $650 (B had a $630 share of partnership liabilities in partnership T and a $20 share of partnership liabilities in partnership S immediately before the merger). B's share of S's partnership liabilities after the merger is $250 (25 percent of S's total partnership liabilities of $1,000). Accordingly, B has a $400 net decrease in its share of S's partnership liabilities. Thus, B is treated as receiving a $400 distribution from partnership S under section 752(b). Because B's adjusted basis in its partnership S interest before the deemed distribution under section 752(b) is $460 ($420 + $40), B will not recognize gain under section 731. After the merger, B's adjusted basis in its partnership S interest is $60.

* * * * *

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 00–14 Filed 1–10–00; 8:45 am]

BILLING CODE 4830–01–U

## 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 cancellation and rescheduling of public workshop.

**SUMMARY:** The Minerals Management Service (MMS) is giving notice that it is canceling the public workshop for Albuquerque, New Mexico, concerning the further supplementary proposed

rule. The MMS is rescheduling the workshop as described in this notice.

**DATES:** The workshop will be held in Lakewood, Colorado, on January 18, 2000, beginning at 1 p.m. and ending at 5 p.m., Mountain time.

**ADDRESSES:** The workshop will be held at the Minerals Management Service, Auditorium, Building 85, Denver Federal Center, Lakewood, Colorado 80225, telephone number (303) 231–3386.

**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 MMS published notice (64 FR 73458, December 30, 1999) of three public workshops concerning the further supplementary proposed rule on Federal oil valuation (64 FR 73820, December 30, 1999). However, due to scheduling conflicts with the workshop in Albuquerque, interested parties requested that MMS reschedule that workshop. In response to that request, MMS hereby cancels the workshop in Albuquerque and gives notice of a new workshop in Lakewood, Colorado, as described in the **DATES** and **ADDRESSES** sections of this notice. MMS is not making any changes to the workshops scheduled for Houston, Texas, or Washington, DC. 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: January 6, 2000.

**Lucy Querques Denett,**

*Associate Director for Royalty Management.*

[FR Doc. 00–640 Filed 1–10–00; 8:45 am]

**BILLING CODE 4310–MR–P**

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR PART 110

**[CGD11–99–009]**

**RIN 2115–AA98**

## Anchorage Regulation; San Francisco Bay, California

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend the regulations for the existing special anchorage area in Richardson Bay, adjacent to San Francisco Bay, California by modifying the explanatory note accompanying the designation of the special anchorage. This explanatory information is provided at the request of local authorities and is intended to facilitate safe navigation by calling mariners' attention to local regulations governing the anchorage area.

**DATES:** Comments must be received on or before March 13, 2000.

**ADDRESSES:** Comments may be mailed to Commanding Officer, Coast Guard Marine Safety Office San Francisco Bay, Bldg. 14, Coast Guard Island, Alameda, CA 94501, ATTN: LT Drew Cheney. The comments and other materials referenced in this notice will be available for inspection and copying at the Marine Safety Office. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Brian Tetreault, Vessel Traffic Management Section, Coast Guard Eleventh District/Pacific Area, Bldg. 50–6 Coast Guard Island, Alameda, CA 94501, telephone (510) 437–2951, email: btetreault@d11.uscg.mil.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments to the office listed under **ADDRESS** in this preamble. Persons submitting comments should include their names and addresses, identify the docket number for the regulations (CGD11–99–009), the specific section of the proposal to which their comments apply, and give reasons for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. The regulations may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the U.S. Coast Guard Marine Safety Office at the Address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The Coast Guard proposes to revise the ''Note'' accompanying the special anchorage regulations, 33 CFR 110.126a, for San Francisco Bay. The proposed regulations will amend the explanatory information provided regarding local authority and requirements.

### Discussion of Proposed Regulation

A special anchorage is an area where vessels less than 20 meters in length are not required to make sound signals while anchored or display anchor lights as would otherwise be required under the Navigation Rules. Richardson Bay was designated a special anchorage area in 1969, and the regulations were amended in 1980. The special anchorage designation is marked on the chart of the area and referenced in the Coast Pilot for the convenience of mariners. Local authorities also exercise jurisdiction over this water area and have enacted ordinances further regulating vessel activity. These local authorities have encountered confusion on the part of mariners about the applicable requirements and the concurrent exercise of authority by both federal and local entities. The Richardson Bay Regional Agency has asked the Coast Guard to update the explanatory note accompanying the Federal anchorage regulations regarding the existence of local authority and ordinances. The Coast Guard believes that providing accurate and current information regarding applicable authority and requirements would be in the best interest of safe and efficient navigation. The proposed amendment to this regulation does not alter the special

anchorage area designation or change the dimensions of the anchorage area.

**Regulatory Evaluation**

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

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*), the Coast Guard must consider whether this proposed rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' may include small businesses and not-for-profit organizations that are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000. For the same reasons set forth in the above Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule is not expected to have a significant economic impact on any substantial number of entities, regardless of their size.

**Assistance For Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rule making process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Brian Tetreault, at the address contained in the paragraph entitled **FOR FURTHER INFORMATION CONTACT**.

**Collection of Information**

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

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

**Environmental Assessment**

The Coast Guard has considered the environmental impact of this proposed regulation and concluded that under Chapter 2.B.2. of Commandant Instruction M16475.1C, Figure 2–1, paragraph (34)(f), it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

**Unfunded Mandates**

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this proposed rule will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected.

No state, local, or tribal government entities will be affected by this rule, so this rule will not result in annual or aggregate costs of $100 million or more. Therefore, the Coast Guard is exempt from any further regulatory requirements under the Unfunded Mandates Act.

**Taking of Private Property**

This proposed rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in section 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under E.O. 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 risk to safety that may disproportionately affect children.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.

**Proposed Regulation**

For the reasons set out in the preamble, the Coast Guard proposes to amend subpart A of part 110, Title 33, Code of Federal Regulations as follows:

## PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46; and 33 CFR 1.05–1(g).

**§ 110.126 [Amended]**

2. The ''Note'' following § 110.126a, is revised to read as follows:

* * * * *

**Note:** Mariners anchoring in the special anchorage area should consult applicable ordinances of the Richardson Bay Regional Agency and the County of Marin. These ordinances establish requirements on matters including the anchoring of vessels, placement of moorings, and use of anchored and moored vessels within the special anchorage area. Information on these local agency requirements may be obtained from the Richardson Bay Harbor Administrator.

Dated: December 10, 1999.

**T.H. Collins,**

*Vice Admiral, USCG, Commander, Eleventh Coast Guard District.*

[FR Doc. 00–586 Filed 1–10–00; 8:45 am]

**BILLING CODE 4910–15–U**

## DEPARTMENT OF EDUCATION

## 34 CFR Chapter VI

## Student Financial Assistance

**AGENCY:** Department of Education.

**ACTION:** Correction.

**SUMMARY:** On December 30, 1999, we published a document in the **Federal Register** (64 FR 73458 through 73460) announcing our intention to establish negotiated rulemaking committees under title IV of the Higher Education Act of 1965, as amended. The document included a tentative schedule of negotiated rulemaking sessions. The dates for the first negotiated rulemaking sessions for both Committee I and Committee II have changed. This document corrects the dates for the first negotiated rulemaking sessions.

**DATES:** The first negotiated rulemaking session for Committee I will be February 3–4 and the first negotiated rulemaking session for Committee II will be February 7–8.

**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.

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**Program Authority:** 20 U.S.C. 1098a.

Dated: January 5, 2000.

(Catalog of Federal Domestic Assistance Number does not apply.)

**Richard W. Riley,**

*Secretary of Education.*

[FR Doc. 00–549 Filed 1–10–00; 8:45 am]

**BILLING CODE 4000–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[085–1085a; FRL–6517–8]**

### Approval and Promulgation of Implementation Plans; State of Kansas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to approve State Implementation Plan (SIP) revisions submitted by the state of Kansas. These revisions include revising and renumbering regulatory definitions, streamlining opacity requirements, expanding testing of gasoline delivery vehicles, and methods for calculating actual emissions.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received in writing by February 10, 2000.

**ADDRESSES:** Comments may be mailed to Christopher D. Hess, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Mr. Hess at (913) 551–7213 or hess.christopher@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: November 29, 1999.

**Dennis Grams, P.E.,**

*Regional Administrator, Region VII.*

[FR Doc. 00–269 Filed 1–10–00; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AF56**

### Endangered and Threatened Wildlife and Plants; Notice of Reopening of Comment Period on the Proposed Rule To List the Alabama Sturgeon as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of reopening of comment period.

**SUMMARY:** We, the Fish and Wildlife Service, give notice that we are reopening the comment period on the proposed rule to list the Alabama sturgeon (*Scaphirhynchus suttkusi*) as endangered. We are reopening the comment period to enter into the record Dr. Stephen Fain's 1999 study, The Development of a DNA Procedure for the Forensic Identification of Caviar, and any comments we receive related specifically to the relationship of this study, as it pertains to the proposed listing of the Alabama sturgeon as endangered. We invite all interested parties to submit comments on this study as it relates to the proposed determination.

**DATES:** We will accept comments until February 10, 2000. We will consider any comments received by the closing date in the final decision on this proposal.

**ADDRESSES:** If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand-deliver comments to the Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Field Office, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. You may also comment via the Internet to paul—hartfield@fws.gov. See **SUPPLEMENTARY INFORMATION** for comment procedures.

To obtain a copy of the aforementioned study, you can download or print one from http://endangered.fws.gov/listing/index.htm (under Announcements) or contact Kelly Bibb at 404/679–7132 (phone) or 404/679–7081 (facsimile) to receive a faxed or mailed copy.

**FOR FURTHER INFORMATION CONTACT:** Paul Hartfield (see **ADDRESSES** section), 601/321–1125; facsimile 601/965–4340.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Alabama sturgeon is a small freshwater sturgeon that was historically found only in the Mobile River Basin of Alabama and Mississippi. The Alabama sturgeon's historic range once included about 1,600 kilometers (km) (1,000 miles (mi)) of the Mobile River system in Alabama (Black Warrior, Tombigbee, Alabama, Coosa, Tallapoosa, Mobile, Tensaw, and Cahaba rivers) and Mississippi (Tombigbee River). Since 1985, all confirmed captures of this fish have been from a short, free-flowing reach of the Alabama River below Miller's Ferry and Claiborne Locks and Dams in Clarke, Monroe, and Wilcox counties, Alabama. The decline of the Alabama sturgeon is attributed to overfishing, loss and fragmentation of habitat as a result of historical navigation-related development, and water quality degradation. Current threats primarily result from its small population numbers and its inability to offset mortality rates with reproduction and recruitment.

On March 26, 1999, we published a rule proposing endangered status for the

Alabama sturgeon in the **Federal Register** (64 FR 14676). Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*) requires that we hold a public hearing if it is requested within 45 days of the publication of the proposed rule. Sheldon Morgan, Chairman, Alabama-Tombigbee Rivers Coalition, requested a public hearing within the allotted time period. On May 25, 1999, we published a notice in the **Federal Register** announcing a public hearing and extending the comment period until July 5, 1999 (64 FR 28142). We held a public hearing on June 24, 1999, at the Montgomery Civic Center in Montgomery, Alabama. We published another extension of the comment period on July 12, 1999 (64 FR 37492). While the proposed rule was out for comment, we received a wide range of comments on numerous issues which will be addressed in our final determination. The purpose of reopening the comment period through February 10, 2000, is to enter into the record Dr. Stephen Fain's 1999 study, The Development of a DNA Procedure for the Forensic Identification of Caviar, and any comments we receive that address the relationship of this study to the proposed listing of the Alabama sturgeon as endangered.

**Public Comments Solicited**

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this study and its relation to the proposed rule. In making a final decision, we will take into consideration the comments we receive and their relationship to the proposed action. Such communications may lead to a final determination that differs from this proposal.

The previous comment period on this proposal closed on September 10, 1999. To allow all interested parties time to submit their comments for the record, we are reopening the comment period until February 10, 2000.

Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include ''Attention: [Alabama sturgeon]'' and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at the above address or by telephone at 601/965–4900. Finally, you may hand-deliver comments to the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. 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 comment. 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 or organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**References Cited**

Fain, S.R., J.P. Lemay, J. Shafer, R.M. Hoesch, and B.H. Hamlin. 1999. Unpublished report. National Fish and Wildlife Forensics Laboratory, Ashland, OR. 23 pp. with figures.

**Author**

The primary author of this notice is Paul Hartfield (see **ADDRESSES** section).

**Authority**

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: January 4, 2000.

**H. Dale Hall,**

*Acting Regional Director, Fish and Wildlife Service.*

[FR Doc. 00–564 Filed 1–10–00; 8:45 am]

**BILLING CODE 4310–55–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 226**

**[I.D. 110599D]**

**RIN 0648–AL82**

## Designated Critical Habitat: Reproposed Critical Habitat for Johnson's Seagrass; Notice of Public Hearing

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

**ACTION:** Proposed rule; notice of public hearing.

**SUMMARY:** NMFS has scheduled an additional public hearing to be held on the proposed designation of critical habitat for threatened Johnson's seagrass.

**DATES:** The public hearing will be held from 1:00 p.m. to 4:00 p.m. on January 31, 2000.

**ADDRESSES:** The public hearing will be held in the Annex Building of NMFS' Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL. A sign will be posted in the main lobby directing people to the building located to the left rear of the main building.

**FOR FURTHER INFORMATION CONTACT:** Layne Bolen, Panama City Laboratory, Protected Resources Division, NMFS, 850–234–6541 ext. 237, layne.bolen@noaa.gov, or Marta Nammack, Office of Protected Resources, NMFS, 301–713–1401, marta.nammack@noaa.gov.

**SUPPLEMENTARY INFORMATION:** On December 2, 1999 (64 FR 67536), NMFS published a reproposed rule to designate critical habitat for Johnson's seagrass under the Endangered Species Act. Public comments were solicited, a public hearing was announced, and the comment period was set to expire on January 3, 2000. NMFS extended the public comment period to February 2, 2000 (65 FR 111, January 3, 2000), in order to provide at least 60 days for public comment following publication in the **Federal Register**. NMFS has now scheduled an additional public hearing (see DATES and ADDRESSES).

Dated: January 6, 2000.

**Don Knowles,**

*Director, Office of Protected Resources.*

[FR Doc. 00–629 Filed 1–10–00; 8:45 am]

**BILLING CODE 3510–22–F**

# Notices

**Federal Register**

Vol. 65, No. 7

Tuesday, January 11, 2000

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

### Farm Service Agency

### Notice of Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Farm Service Agency's intention to request an extension and a revision to an approved information collection in support of the Disaster Assistance Program. The collection requirements have been revised to make clearer the purpose of determining an area eligible to receive emergency loans. The collection requirements have also been revised to amend the total burden hours reflected in the number of requests for Secretarial natural disaster assistance during the 1999 crop year.

**DATES:** Comments on this notice must be received on or before March 13, 2000, to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Comments may be sent to Diane Sharp, Director, Production, Emergencies, and Compliance Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202) 720–7641, e-mail Diane__Sharp@wdc.fsa.usda.gov.

**FOR FURTHER INFORMATION CONTACT:** Helen Smith, at the above address and phone number.

**SUPPLEMENTARY INFORMATION:**

*Title:* Disaster Assistance (General).

*OMB Control Number:* 0560–0170.

*Expiration Date of Approval:* December 31, 2000.

*Type of Request:* Extension and Revision of Currently Approved Information Collection.

*Abstract:* The information collected under OMB Number 0560–0170, as identified above, is needed for FSA to effectively administer the regulations relating to identifying disaster areas, thereby making qualified farmers and ranchers who have suffered weather-related physical and production losses in such areas, eligible for emergency loans. However, before emergency loans can become available, information needs to be collected to determine if the disaster areas meet the criteria of having a qualifying loss in order to be considered an eligible county. The information collection will be used to determine the county eligibility.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .4205 hour per response.

*Respondents:* Farmers and ranchers.

*Estimated Number of Respondents:* 2,454.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 1,032.

Comments are sought on these requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Diane Sharp, Director, Production, Emergencies, and Compliance Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202) 720–7641, e-mail Diane__Sharp@wdc.fsa.usda.gov.

Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection.

All comments will also become a matter of public record.

Signed at Washington, DC, on January 4, 2000.

**Keith Kelly,**

*Administrator, FSA.*

[FR Doc. 00–577 Filed 1–10–00; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Food Stamp Program: Agency Information Collection Activities: Proposed Collection; Comment Request; Disaster Food Stamp Assistance

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. This information collection is based on the Robert T. Stafford Disaster Relief and Emergency Assistance Act and Section 5(h) of the Food Stamp Act of 1977, as amended, which provide the Secretary of Agriculture with the authority to develop an emergency food stamp program to address the needs of families temporarily in need of food assistance after a disaster. The information collection under this notice is required for the establishment and operation of emergency food stamp assistance programs.

**DATES:** Written comments must be received on or before March 13, 2000.

**ADDRESSES:** Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who respond, including through the use of appropriate

automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Margaret Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. Comments may also be faxed to the attention of Ms. Batko at (703) 305–2486. The internet address is: Margaret.Batko@FNS.USDA.GOV. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 720.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Ms. Batko at (703) 305–2516.

**SUPPLEMENTARY INFORMATION:**

*Title:* Emergency Food Stamp Assistance for Victims of Disasters.

*OMB Number:* 0584–0336.

*Form Number:* Not a form.

*Expiration Date:* 1/31/2000.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act and Section 5(h) of the Food Stamp Act of 1977, as amended, the Secretary of Agriculture has the authority to develop an emergency food stamp program to address the temporary food needs of families following a disaster. The information collection under this notice is required to be provided by households in order to determine eligibility for emergency food stamp benefits as the result of a disaster.

The number of disasters that occur annually and the average number of households affected by disasters cannot be accurately predicted. In reviewing the number of disasters for the last four fiscal years, we found that although the number of disasters remained relatively constant, most disasters covered small geographic areas and affected small populations resulting in a decreased reporting burden. In 1996, there were six disasters with the number of disaster-affected households ranging from 143 to 186,488. In 1997 there were six disasters and the number of disaster-affected households ranged from 108 to 2,361. In 1998, there were eight disasters and the number of disaster-affected households ranged from 15 to 4,254. In 1999, there were three disasters, and the number of disaster-affected households ranged from 495 to 2,610. Based on this data we calculated an estimated burden of 26,401 hours. We wish to emphasize that although this estimate of burden hours represents a significant decline from our prior estimate of 48,114 hours, the number and magnitude of disasters cannot be accurately estimated, and that although the annual number of affected households (respondents) averaged 63,362 per year over the last four years, in 1992 and 1994, there were single disasters with 206,735 and 242,834 applicant households, respectively. We anticipate that disasters of this magnitude will occur in the future.

*Affected Public:* Food Stamp recipients; State and local governments.

*Estimated Number of Respondents:* 63,362.

*Estimated Time per Response:* 25 minutes.

*Estimated Total Annual Burden:* 26,401 hours.

Dated: November 23, 1999.

**George A. Braley,**

*Acting Administrator, Food and Nutrition Service.*

[FR Doc. 00–551 Filed 1–10–00; 8:45 am]

**BILLING CODE 3410–30–U**

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—Form FNS–209, Status of Claims Against Households

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. Sections 11, 13, and 16 of the Food Stamp Act of 1977 (the Act) are the bases for the information collected on Form FNS–209, Status of Claims Against Households. Section 11 of the Act requires that State agencies submit reports and other information that are necessary to determine compliance with the Act and its implementing regulations. Section 13 of the Act requires State agencies to establish claims and collect overpayments to households. Section 16 of the Act authorizes State agencies to retain a portion of what is collected. The FNS–209 is used as the mechanism for State agencies to report the claim establishment, collection and retention amounts.

**DATES:** Written comments must be submitted on or before March 13, 2000 to be assured consideration.

**ADDRESSES:** Send comments to Barbara Hallman, Chief, State Administration Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA, 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Daniel Wilusz, (703) 305–2391.

**SUPPLEMENTARY INFORMATION:**

*Title:* Status of Claims Against Households.

*OMB Number:* 0584–0069.

*Form Number:* FNS–209.

*Expiration Date:* December 31, 1999.

*Type of Request:* Extension of a currently approved collection with no change in burden hours.

*Abstract:* The Food Stamp Program regulations at 7 CFR 273.18 require that State agencies establish, collect and efficiently manage food stamp recipient claims. Section 273.18(i) requires State agencies to submit at the end of every quarter the completed Form FNS–209, Status of Claims Against Households. The information required for the FNS–209 report is obtained from a State accounting system responsible for establishing claims, sending demand letters, collecting claims, and managing other claim activity. In general, State agencies must report the following information on the FNS–209: the current outstanding aggregate claim balance; claims established; collections; any balance and collection adjustments;

and the amount to be retained for collecting non-agency error claims. The burden associated with establishing claims (demand letters) and the Treasury Offset Program, both of which are also used to complete the FNS–209, are already approved under OMB burden numbers 0584–0492 and 0584–0446 respectively.

The estimated annual burden is 742 hours. This is the same as the currently approved burden. This estimate includes the time it takes each State agency to accumulate and tabulate the data necessary to complete the report four times per year.

*Affected Public:* State governments.

*Estimated Number of Respondents:* 53.

*Estimated Time Per Response:* 3.5 hours.

*Estimated Total Annual Burden:* 742 hours.

Dated: January 3, 2000.

**Samuel Chambers, Jr.,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 00–587 Filed 1–10–00; 8:45 am]

BILLING CODE 3410–30–U

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Information Collection Activity; Comment Request

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

**DATES:** Comments on this notice must be received by March 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, D.C. 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

**SUPPLEMENTARY INFORMATION:**

*Title:* 7 CFR 1717, Subpart Y, Settlement of Debt Owed by Electric Borrowers.

*OMB Control Number:* 0572–0116.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The Rural Utilities Service (RUS) makes mortgage loans and loan guarantees to electric systems to provide and improve electric service in rural areas pursuant to the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) (RE Act). This information collection requirement stems from passage of P. L. 104–127, on April 4, 1996, which amended section 331(b) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*) to extend to RUS the Secretary of Agriculture's authority to settle debts with respect to loans made or guaranteed by RUS. Only those electric borrowers that are unable to fully repay their debts to the government and who apply to RUS for relief will be affected by this information collection.

The collection will require only that information which is essential for determining: the need for debt settlement; the amount of relief that is needed; the amount of debt that can be repaid; the scheduling of debt repayment; and, the range of opportunities for enhancing the amount of debt that can be recovered. The information to be collected will be similar to that which any prudent lender would require to determine whether debt settlement is required and the amount of relief that is needed. Since the need for relief is expected to vary substantially from case to case, so will the required information collection.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 3,000 hours per response.

*Respondents:* Not-for-profit institutions and other businesses.

*Estimated Number of Respondents:* 2.

*Estimated Number of Responses per Respondent:* 1.

*Estimate Total Annual Burden on Respondents:* 6,000 hours.

Copies of this information collection can be obtained from Bob Turner, Program Development and Regulatory Analysis, Rural Utilities Service at (202) 720–0696.

Comments are invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (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 those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, D.C. 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 5, 2000.

**Christopher A. McLean,**

*Acting Administrator, Rural Utilities Service.*

[FR Doc. 00–588 Filed 1–10–00; 8:45 am]

BILLING CODE 3410–15–P

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on January 26, 2000, 2 p.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 3407, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

**General Session**

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

**Closed Session**

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at

any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees—MS: 3876, Bureau of Export Administration, 15th St. & Pennsylvania Ave., NW, U.S. Department of Commerce, Washington, DC 20230.

A Notice of Determination to close meetings, or portions of meetings, of the PECSEA to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 25, 1999, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: January 5, 2000.

**Iain S. Baird,**

*Deputy Assistant Secretary for Export Administration.*

[FR Doc. 00–603 Filed 1–10–00; 8:45 am]

**BILLING CODE 3510–33–M**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–858]**

### Initiation of Antidumping Investigation: Citric Acid and Sodium Citrate From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** January 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sunkyu Kim, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2613.

### Initiation of Investigation

*The Applicable Statute and Regulations*

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (April 1999).

*The Petition*

On December 15, 1999, the Department received a petition filed in proper form by Archer Daniels Midland Company, Cargill, Incorporated, and Tate & Lyle Citric Acid, Inc. (collectively, the petitioners). On December 20, 1999, the Department requested further information on industry support from the petitioners. The Department received supplemental information in response to that request on December 27, 1999.

In accordance with section 732(b) of the Act, the petitioners allege that imports of citric acid and sodium citrate from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports pose a serious and imminent threat of material injury to an industry in the United States.

The Department finds that the petitioners filed the petition on behalf of the domestic industry because they are interested parties as defined in sections 771(9) (C) and (D) of the Act and have demonstrated sufficient industry support. *See* ''Determination of Industry Support for the Petition'' section, below.

*Scope of Investigation*

The scope of the investigation includes all grades and granulation sizes of citric acid and sodium citrate in any type of packaging and in either dry form or in any solution, including, but not limited to, solutions of water, alcohol and ether. The scope of the investigation includes the hydrous and anhydrous forms of citric acid and the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt. Sodium citrate includes both trisodium citrate and monosodium citrate which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively.

Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

During our review of the petition, we discussed the definition of the scope of the investigation with the petitioners to ensure that the definition accurately reflects the products for which they are seeking relief. As we discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding product coverage. *See* Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all parties to submit such comments by January 25, 2000. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230. This scope consultation period is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determination.

*Determination of Industry Support for the Petition*

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the term ''industry'' as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether the domestic industry has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory provision regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1] Section 771(10) of the Act defines

[1] *See Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 644 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass*

domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition. In this case, the petitioners claim that all citric acid and sodium citrate constitute one class or kind of merchandise.

Based on our analysis of the information and arguments presented to the Department, we have determined that, for purposes of initiation of this investigation, there is a single domestic like product which is defined in the ''Scope of Investigation'' section, above.

Moreover, the Department has determined that the petition and supplemental information contain adequate evidence of sufficient industry support. *See* January 4, 2000, Initiation Checklist (public version on file in the Central Records Unit of the Department of Commerce, Room B–099). The petitioners demonstrated that they account for all of the domestic production of citric acid; however they did not provide data on the total domestic production of sodium citrate. The Department is aware that U.S. companies other than the petitioners purchase citric acid and convert it into sodium citrate. If we conservatively estimate the maximum quantity of sodium citrate produced by non-petitioning U.S. companies, from imported citric acid and domestically-produced citric acid, the petitioners still account for more than 50 percent of the U.S. production of citric acid and sodium citrate. Therefore, the producers who support the petition account for more than 50 percent of the production of the domestic like product. *See* January 4, 2000, Initiation Checklist (public version on file in the Central Records Unit of the Department of Commerce, Room B–099).

We received a letter in opposition to the petition from Proctor & Gamble, Inc., which is both a domestic producer of the subject merchandise, as well as an importer of subject merchandise from the PRC. Because Proctor & Gamble, Inc. is an importer of the subject merchandise from the PRC, the Department may disregard Proctor & Gamble, Inc.'s position, in accordance with section 732(c)(4)(B)(ii) of the Act. The Department has disregarded Proctor & Gamble, Inc.'s opposition because, according to Proctor & Gamble, Inc., they are a major purchaser and user of domestic and imported citric acid and sodium citrate. However, even if the Department had considered Proctor & Gamble, Inc.'s opposition to the petition, the petitioners, as discussed above, have demonstrated that they account for more than 50 percent of the total production of the domestic like product. Accordingly, the Department determines that this petition is filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

*Export Price and Normal Value*

The following describes the allegations of sales at less than fair value upon which our decision to initiate this investigation is based. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

The petitioners identified 102 known or potential PRC producers of subject merchandise. The petitioners based export price (EP) on brokers' offers for the sale of PRC-origin anhydrous citric acid and sodium citrate in solution to U.S. purchasers. For citric acid, the petitioners made deductions from the starting price for a U.S. distributor mark-up, U.S. and home market freight expenses, international movement expenses, U.S. customs, processing and harbor fees, and a solution expense. For sodium citrate, the petitioners made the same deductions as for citric acid but did not make a deduction for solution expense. We adjusted the petitioners' calculation of EP for sodium citrate to include a deduction for solution expense because the starting price quoted was for sodium citrate in solution.

Because the PRC is considered a nonmarket economy (NME) country under section 771(18) of the Act, the petitioners based normal value (NV) on the factors of production valued in a surrogate country, in accordance with section 773(c) of the Act. For purposes of the petition, the petitioners selected India as the most appropriate surrogate market economy. The petitioners developed information on the representative factors of production for citric acid in the PRC from their knowledge of citric acid production in the PRC. For sodium citrate, the petitioners based the factors of production on their experience in manufacturing the product because the information available to them did not include the factors for sodium citrate production in the PRC.

The petitioners valued raw material inputs based on publicly available price data in India. The petitioners identified the major material input in the production of citric acid and sodium citrate as starch. The petitioners valued starch using the average Indian import value for a type of starch which most closely corresponds to the particular type of starch used by the Chinese producer, as published in *Chemical Weekly* on November 9, 1999. The petitioners also identified additional material inputs used in the production of citric acid and sodium citrate. The additional material inputs were valued using both *Chemical Weekly* and United Nations Trade Statistics publications. Where appropriate, the petitioners adjusted the values reported in *Chemical Weekly* to exclude sales and excise taxes. For starch and other raw materials, the petitioners increased the unit value to include estimated transportation costs. However, because the petitioners did not provide an appropriate surrogate value for costs associated with transporting inputs in the PRC, we adjusted the petitioners' normal value calculation by excluding freight costs associated with transporting raw material inputs.

To value energy inputs, the petitioners used publicly available prices in India, with the exception of one input. For this particular input, the petitioners relied on a U.S. producer's experience. However, because the petitioners did not provide an appropriate surrogate value for the cost of this input in the PRC, we adjusted the petitioners' normal value calculation by excluding this input's cost from the calculation.

For labor and packing materials, the petitioners estimated the consumption amounts based on their own experiences. The petitioners valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408 (c)(3). For packing materials, the petitioners used 1996–1997 Indian import values from the *Monthly Statistics of Foreign Trade of India.*

Where appropriate, the petitioners adjusted the factor values for inflation using either the Indian wholesale price index (WPI) or the U.S. WPI for the period April through June 1999, as published in the International Monetary Fund's *International Financial Statistics* (IFS Data). Additionally, the petitioners converted factors based on Indian rupees to U.S. dollars using an average Indian rupee to U.S. dollar exchange rate from the monthly average rates as

*Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

reported in the IFS Data for the period April through August 1999.

Finally, for factory overhead, selling, general, and administrative expenses (SG&A), and profit, the petitioners used publicly available financial statements of Indian metal and chemical producers as published by the Reserve Bank of India in 1997.

Based on comparisons of EP to NV, as adjusted by the Department, the petitioners estimate dumping margins ranging from 211.58 to 307.79 percent.

*Fair Value Comparisons*

Based on the data provided by the petitioners, there is reason to believe that imports of citric acid and sodium citrate from the PRC are being, or are likely to be, sold at less than fair value.

*Allegations and Evidence of Material Injury and Causation*

The petitioners allege that the U.S. industry producing the domestic like product is threatened with material injury by reason of imports of the subject merchandise sold at less than NV. The allegations of threat of injury and causation are supported by relevant evidence including business proprietary data from the petitioners and U.S. Customs import data. The Department assessed the allegations and supporting evidence regarding the threat of material injury and causation and determined that these allegations are sufficiently supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist (public version on file in the Central Records Unit of the Department of Commerce, Room B–099).

*Initiation of Antidumping Investigation*

We have examined the petition on citric acid and sodium citrate from the PRC and have found that it meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of citric acid and sodium citrate from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determination for the antidumping duty investigation by May 23, 2000.

*Distribution of Copies of the Petitions*

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the representatives of the government of the PRC. We will attempt to provide a copy of the public version of the petition to each exporter named in the petition (as appropriate).

*International Trade Commission Notification*

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

*Preliminary Determination by the ITC*

The ITC will determine by January 31, 2000, whether there is a reasonable indication that imports of citric acid and sodium citrate from the PRC are threatening to cause material injury to a U.S. industry. A negative ITC determination will result in the investigation being terminated; otherwise, the investigation will proceed according to statutory and regulatory time limits.

This notice is published in accordance with section 777(i)(1) of the Act.

Dated: January 4, 2000.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 00–638 Filed 1–10–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–820]**

### Certain Compact Ductile Iron Waterworks Fittings and Glands From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of first antidumping duty administrative review.

**SUMMARY:** On October 14, 1999, the Department of Commerce (''the Department'') published the preliminary results of the administrative review of the antidumping duty order on Certain Compact Ductile Iron Waterworks Fittings and Glands (''CDIW'') from the People's Republic of China (64 FR 55697). The review covers shipments to the United States by one exporter of the subject merchandise, Beijing Metals and Minerals Import and Export Corporation, (''BMMIEC''), during the period September 1, 1997, through August 31, 1998.

We gave interested parties an opportunity to comment on our preliminary results and received no comments. The final results remain unchanged from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled ''Final Results of Review.''

**EFFECTIVE DATE:** January 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lyman Armstrong or Paige Rivas, AD/CVD Enforcement Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3601 or (202) 482–0651 respectively.

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1999).

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 14, 1999, the Department published the preliminary results of the administrative review of the antidumping duty order on Certain Compact Ductile Iron Waterworks Fittings and Glands (''CDIW'') from the People's Republic of China (64 FR 55697). We invited interested parties to comment and received no comments. The Department has now completed this review in accordance with section 751 of the Act and section 351.213 of its regulations.

**Scope of Review**

The products subject to this antidumping duty order are: (1) Certain compact ductile iron waterworks (CDIW) fittings of 3 to 16 inches nominal diameter regardless of shape, including bends, tees, crosses, wyes, reducers, adapters, and other shapes, whether or not cement line, and whether or not covered with bitumen or similar substance, conforming to American Water Works Association/American National Standards Institute (AWWA/ANSI) specification C153/A21.53, and rated for water working pressure of 350 PSI; and (2) certain CDIW standard ductile iron glands for fittings in sizes 3 to 16 inches, conforming to AWWA/ANSI specification C111/A21.11 and rated for water working pressure of 350 PSI. All accessory packs (including accessory packs containing glands), are excluded from the scope of this order.

The types of CDIW fittings covered by this order are compact ductile iron mechanical joint waterworks fittings and compact ductile iron push-on joint waterwork fittings, both of which are used for the same application. CDIW fittings are used to join water main pressure pipes, valves, or hydrants in straight lines, and change, divert, divide, or direct the flow of raw and/or treated water in piping systems. CDIW fittings attach to the pipe, valve, or hydrant at a joint and are used principally for municipal water distribution systems. CDIW glands are used to join mechanical joint CDIW fittings to pipes.

CDIW fittings with nominal diameters greater than 16 inches, are specifically excluded from the scope of the order. Nonmalleable cast iron fittings (also called gray iron fittings) and full-bodied ductile fittings are also specifically excluded from the scope of this order. Nonmalleable cast iron fittings have little ductility and are generally rated only 150 to 250 PSI. Full-bodied ductile fittings have a longer body design than a compact fitting because in the compact design the straight section of the body is omitted to provide a more compact and less heavy fitting without reducing strength or flow characteristics. In addition, the full-bodied ductile fittings are thicker walled than the compact fittings.

Full-bodied fittings are made of either gray iron or ductile iron, in sizes of 3 to 48 inches, conform to AWWA/ANSI specification C110/C21.10, and are rated to a maximum of only 250 PSI. In addition, compact ductile iron flanged fittings are excluded from the scope of this order, as they have significantly different characteristics and uses than CDIW fittings.

CDIW fittings are classifiable under subheading 7307.19.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Standard ductile iron glands are classifiable under HTSUS subheading 7325.99.10.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

**Final Results of Review**

The final results remain unchanged from the preliminary results as the Department used the same methodology described in the preliminary results. As a result of our comparison of export price to normal value, we determine that the following weighted-average dumping margin exists:

| Manufacturer/Exporter | Margin |
|---|---|
| Beijing Metals and Minerals Import and Export Corporation. | .09 percent (*de minimis*). |

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we have calculated an importer-specific duty assessment rate by dividing the total amount of dumping margins calculated for sales to each importer by the total number of units of those same sales sold to that importer. The unit dollar amount will be assessed uniformly against each unit of merchandise of that specific importer's entries during the POR. In accordance with 19 CFR 351.106(c)(2), we also will instruct Customs to liquidate without regard to antidumping duties any entries for which the importer-specific antidumping duty assessment rate is *de minimis*, *i.e.*, less than 0.5 percent. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this antidumping duty administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) For BMMIEC, which has a separate rate, the cash deposit rate will be zero; (2) for any previously reviewed PRC and non-PRC exporter with a separate rate (including those companies for which we terminated the review), the cash deposit rate will be the company-specific rate established for the most recent period; (3) the cash deposit rate for all other PRC exporters will continue to be 127.38 percent, the PRC-wide rate established in the LTFV investigation; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 5, 2000.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 00–637 Filed 1–10–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–809]**

### Certain Cut-to-Length Carbon Steel Plate From Mexico: Extension of Time Limit

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limit for final results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on Certain Cut-to-Length Carbon Steel Plate From Mexico. The review covers one manufacturer/exporter of the subject merchandise, and the period of review August 1, 1997 through July 31, 1998.

**EFFECTIVE DATE:** January 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Killiam or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3019 or 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:** Under section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (the Department) may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 120 days after the date on which the notice of preliminary results was published in the **Federal Register**. In the instant case, the preliminary results were published in the **Federal Register** on September 7, 1999 (64 FR 48584) . The Department has determined that more time is needed to consider comments made by the parties in their October 22, 1999 case briefs and their October 27, 1999

rebuttal briefs. *See* Memorandum from Edward Yang to Robert S. La Russa, January 3, 1999. Therefore, pursuant to section 751(a)(3)(A) of the Act, because it is not practicable to complete this review within the original time limit, the Department is extending the time limit for the final results to no later than March 6, 2000.

Dated: January 4, 2000.

**Edward Yang,**

*Acting Deputy Assistant Secretary for Enforcement Group III.*

[FR Doc. 00–636 Filed 1–10–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–802]**

### Gray Portland Cement and Clinker From Mexico: Notice of Initiation of Antidumping Duty Changed-Circumstances Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of initiation of antidumping duty changed-circumstances review.

**SUMMARY:** In accordance with 19 CFR 351.216(b), Cementos de Chihuahua, S.A. de C.V., an interested party in this proceeding, requested a changed-circumstances review. In response to this request, the Department of Commerce is initiating a changed-circumstances review on gray portland cement and clinker from Mexico.

**EFFECTIVE DATE:** January 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Anne Copper or Davina Hashmi, Office 3, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0090 or (202) 482–5760, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR Part 351 (1998).

#### Background

In its November 24, 1999 letter, Cementos de Chihuahua, S.A. de C.V. (CDC), requested that the Department conduct an expedited changed-circumstances review pursuant to section 751(b)(1) of the Act. CDC states that, effective December 1, 1999, GCC Cementos, S.A. de C.V. (GCCC), will be the successor in interest to CDC due to a corporate reorganization. On December 13, 1999, the petitioners submitted a letter requesting that the Department reject CDC's request for an expedited review.

#### Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under number 2523.10. Gray portland cement has also been entered under number 2523.90 as ''other hydraulic cements.''

The HTS subheadings are provided for convenience and customs purposes only. Our written description remains dispositive as to the scope of the product coverage.

#### Initiation of Antidumping Duty Changed-Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed-circumstances review upon receipt of information concerning, or a request from an interested party of, an antidumping duty order which shows changed-circumstances sufficient to warrant a review of the order.

In its request for a changed-circumstances review, CDC indicated that, effective December 1, 1999, GCCC will be the successor in interest to CDC due to a corporate reorganization. In accordance with section 751(b)(1) of the Act and 19 CFR 351.216(b) and 351.221(b)(1), we are initiating a changed-circumstances review based upon the information contained in CDC's November 24, 1999, request for this review.

CDC also requested that the Department expedite the review process by issuing preliminary results in conjunction with the notice of initiation. However, CDC's request for review was not accompanied by any documentation supporting CDC's description of its corporate reorganization. In making a successor-in-interest determination, the Department examines several factors including, but not limited to, the following changes: (1) Management; (2) production facilities; (3) supplier relationships; (4) customer base. *See, e.g., Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) (*Canadian Brass*). Although CDC states that the corporate reorganization meets the standards established in cases such as *Canadian Brass*, CDC has not provided any supporting documentation relevant to the factors described above. Furthermore, on December 13, 1999, the petitioners submitted a letter objecting to the initiation of an expedited changed-circumstances review on the grounds that the sole basis for CDC's request consists of unsupported statements. Based upon these considerations, we will seek additional information concerning CDC's corporate reorganization. Accordingly, we conclude that it would be inappropriate to expedite this action pursuant to 19 CFR 351.221(c)(3)(ii) by issuing preliminary results prior to receiving such information. Therefore, we are not expediting this changed-circumstances review and are not issuing preliminary results at this time.[1]

We will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed-circumstances review, in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. The Department will issue its final results of review not later than 270 days after publication of this notice of initiation. All written comments must be submitted to the Department and served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

During the course of this changed-circumstances review, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including the merchandise subject to this changed-

[1] As the petitioners noted in their December 13 letter, the Department has rejected requests for expedited reviews previously under similar circumstances. *See Certain Welded Stainless Steel Pipe from Korea; Initiation of Changed Circumstances Antidumping Duty Administrative Review*, 62 FR 31789 (June 11, 1997); *Certain Welded Stainless Steel Pipe from Taiwan; Initiation of Changed Circumstances Antidumping Duty Administrative Review*, 62 FR 30567 (June 4, 1997).

circumstances review, will continue unless and until it is modified pursuant to the final results of this changed-circumstances review.

This notice is in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.221.

Dated: January 4, 2000.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 00–631 Filed 1–10–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–817]**

### Oil Country Tubular Goods From Mexico; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On September 9, 1999, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping order on oil country tubular goods (''OCTG'') from Mexico covering exports of this merchandise to the United States by one manufacturer, Tubos de Acero de Mexico, S.A. (''TAMSA''). Oil Country Tubular Goods from Mexico; Preliminary Results of Administrative Review (''Preliminary Results''), 64 FR 48983. We invited interested parties to comment on the Preliminary Results. We received comments from TAMSA and rebuttal comments from petitioners. We have now completed our final results of review and determine that the results have not changed.

**EFFECTIVE DATE:** January 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dena Aliadinov, John Drury, or Linda Ludwig, Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 7866, Washington, DC 20230; telephone (202) 482–2667 (Aliadinov), (202) 482–0195 (Drury), or (202) 482–3833 (Ludwig).

**SUPPLEMENTARY INFORMATION:**

#### Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (1998).

#### Background

The Department published a final determination of sales at less than fair value for OCTG from Mexico on June 28, 1995 (60 FR 33567), and subsequently published the antidumping order on August 11, 1995 (60 FR 41056). The Department published a notice of ''Opportunity to Request Administrative Review'' of the antidumping order for the 1997/1998 review period on August 11, 1998 (63 FR 42821). Upon receiving a request for an administrative review from TAMSA, we published a notice of initiation of the review on September 29, 1998 (63 FR 51893).

#### Scope of the Review

Imports covered by this review are oil country tubular goods, hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:
7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

#### Period of Review

The period of review (''POR'') is August 1, 1997 through July 31, 1998. The Department is conducting this review in accordance within section 751 of the Act, as amended.

#### Analysis of Comments Received

We invited parties to comment on the preliminary results of the review. We received comments from TAMSA and rebuttal comments from the petitioners. The following is a summary of these comments.

*Comment 1: EP/CEP*

TAMSA argues that the Department incorrectly treated its sole U.S. sale as a constructed export price (''CEP'') transaction in the preliminary results of this review. *See* Preliminary Results, 64 FR at 48984. Regarding whether sales should be classified as EP sales despite some involvement by a U.S. affiliate, the Department uses the following criteria: (1) Whether the merchandise was shipped directly to the unaffiliated buyer, without being introduced into the affiliated selling agent's inventory; (2) whether this is the customary sales channel between the parties; and (3) whether the affiliated selling agent located in the United States acts only as a processor of documentation and a communications link between the foreign producer and the unaffiliated buyer. *See, e.g.*, Notice of Final Determination of Sales at Less Than Fair Value: Newspaper Printing Presses From Germany, 61 FR 38175 (July 23, 1996).

TAMSA argues that the Department relied solely on the third criterion for its CEP determination, and did not properly address the first two criteria. TAMSA claims that its sale meets the first two criteria for indirect EP sales because the merchandise in question is not introduced into the physical inventory of the affiliated selling agent, and direct shipment to the customer is the customary commercial channel for sales of this merchandise. TAMSA also claims that it, in fact, meets the third criterion because its affiliated selling agent in the United States, Siderca Corp., had an ''ancillary'' role.

According to TAMSA, setting price is the only U.S. selling activity the existence of which would justify CEP treatment. Referring to Certain Corrosion-Resistant Carbon Steel Flat Products & Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews (''Canadian Steel''), 63 FR 12738 (March 16, 1998); Certain Welded Stainless Steel Pipe from Taiwan: Final Results of Administrative Reviews (''Taiwan Pipe''), 63 FR 38382, 38385 (July 16, 1998); Stainless Steel Wire Rod From Korea: Final Determination of Sales at Less Than Fair Value (''Korean Wire Rod''), 63 FR 40418 (July 29, 1998); and Notice of Final Determination of Sales at Less Than Fair Value: Beryllium Metal and High Beryllium Alloys From the Republic of Kazakhstan (''Beryllium Metal''), 62 FR 2648, 2649 (January 17, 1997), TAMSA points out that the Department categorized sales as EP sales when the affiliates in these cases had limited or no pricing authority. Additionally, TAMSA claims that *U.S. Steel Group* v. *United States*, 15 F. Supp. 2d 892 (CIT 1998) (''U.S. Steel Group'') strengthens its argument, because the Court's ruling in that case looked to the existence of sale or contract negotiations. TAMSA also relies upon *AK Steel* v. *United States* (''AK Steel''), 34 F. Supp. 2d 756, 762 (CIT 1998), in which the affiliate negotiated the initial price, but within certain limitations set by the exporter. TAMSA states that the Court in AK Steel upheld the Department's decision to treat the sales at issue as EP sales, even though the U.S. affiliate found customers, negotiated price based upon predetermined factors, and maintained contact with the customer. TAMSA concludes that the Department must therefore reconsider the nature of Siderca Corp.'s activities in the light of AK Steel.

TAMSA claims that information in its Section A questionnaire response supports its claim that it, and not Siderca Corp., has the authority to set price and sales terms and therefore that its U.S. sale meets the third criterion. *See* TAMSA November 4, 1998 Section A Response, at A–20–21. According to TAMSA, the Department does not have any facts to support its conclusion that Siderca Corp. brought the customer to TAMSA. On the contrary, TAMSA argues that Siderca Corp. acted merely as a communications link and processor of documentation.

TAMSA also disputes that the existence of a commercial agreement constitutes sufficient grounds for concluding that a transaction is a CEP sale. Citing Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review (''Dutch Steel''), 64 FR 11825 (March 10, 1999), TAMSA argues that Siderca Corp.'s selling functions are not sufficient for Commerce to classify its POR sale as a CEP sale. TAMSA supports its argument by stating that Siderca Corp. stopped its OCTG selling and marketing activities in the United States at or around the time of the antidumping order in this case, making the sales agency agreement ''meaningless.'' *See* TAMSA Supplemental Response, February 2, 1999, at 9–10.

The petitioners counter that TAMSA has not provided sufficient evidence for the Department to change its position, and that the respondent bears the burden of proving that all three EP criteria have been met. The petitioners state that Siderca Corp. may not have total autonomy in setting final sales terms, but its role in the sales process is not ''ancillary.''

With regard to U.S. Steel Group and AK Steel, the petitioners argue that the former supports CEP classification for TAMSA because Siderca had the freedom to negotiate prices, and the latter has limited relevance because the Department sought a remand to reconsider EP classification. Furthermore, the petitioners assert that, as was the case in U.S. Steel, Siderca Corp.'s additional selling functions—*i.e.*, taking title to the merchandise, using its insurance policy to cover shipment, etc.—add weight to the other factors in this case, supporting CEP classification.

The petitioners argue that TAMSA has not proven that Siderca Corp. did not play any role in determining price; therefore, even greater weight must be accorded to the sales agency agreement between TAMSA and Siderca Corp. TAMSA may have set the minimum price, according to the petitioners' analysis of the sales agency agreement, but Siderca played a substantial role in negotiating the price with the customer. The petitioners further assert that a U.S. affiliate does not need to make independent pricing decisions for its role to be more than ''incidental or ancillary.'' See Industrial Nitrocellulose from the United Kingdom: Final Results of Antidumping Duty Administrative Review (''Industrial Nitrocellulose''), 64 FR 6609, 6611 (February 10, 1999).

The petitioners maintain that signed contracts among parties are more important than internal communications, such as the e-mails relied upon by TAMSA. *See* Section A Response at Attachment A–10 (APO Version). The petitioners contend that the e-mails do not provide evidence that TAMSA authorized this sale or that this sale would have been made without Siderca Corp.'s contacts with the U.S. customer. Furthermore, the petitioners disagree with TAMSA's assertion that its sales and marketing agreement is not dispositive with respect to this case. In fact, according to the petitioners, Siderca Corp. has exclusive rights to market and sell TAMSA's product in the United States, demonstrating Siderca's pivotal, primary role.

Referring to Dutch Steel, the petitioners disagree with TAMSA's allegation that failure to solicit new customers invalidates the agency agreement. The petitioners state that TAMSA has not proven that its sale in the instant review was to the same customer as the sale in the previous review. Additionally, the petitioners disagree with TAMSA's claim that the agreement became ''meaningless'' because TAMSA discontinued OCTG exports to the United States after the antidumping order, and Siderca Corp. did not take part in OCTG selling or marketing activities for nearly two years. The petitioners argue that the sales and marketing agreement never ceased to exist and, in fact, was renewed after the antidumping order was issued. According to the petitioners, this proves that TAMSA continued to sell to the United States. Furthermore, Siderca Corp. received payment and compensation for its U.S. sale and maintained a sales staff for OCTG, according to the terms of the agreement.

The petitioners also claim that TAMSA does not meet criterion two because TAMSA only had one U.S. sale, making it difficult to determine the customary commercial channel. Moreover, the merchandise associated with the U.S. sale in this review was picked up by the customer at the port, and petitioners argue that this was not the customary commercial channel established in the sales agency agreement.

*Department's Position*

After careful examination of the record, and based upon our analysis using the three-pronged test discussed below, the Department has determined to treat TAMSA's U.S. sale as a CEP sale, as defined in section 772(b) of the Act. Pursuant to section 772 (a) and (b) of the Act, an EP sale is a sale of merchandise for export to the United States made by a foreign producer or exporter outside the United States prior to importation. A CEP sale is a sale made in the United States before or after

importation by or for the account of the exporter/producer or by a party affiliated with the exporter or producer. In determining whether the sales activity of a U.S. affiliate rises to such a level that CEP methodology is warranted, the Department has examined the following criteria: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer (rather than being introduced into the inventory of the U.S. affiliate), (2) whether this was the customary commercial channel between the parties involved, and (3) whether the function of the U.S. affiliate is limited to that of a ''processor of sales-related documentation'' and a ''communication link'' with the unaffiliated U.S. buyer. *See, e.g.*, Canadian Steel, 63 FR at 12738. Unless *all three* criteria are met, a sale made by the U.S. affiliate will not be attributed to the exporting affiliated party and, therefore, considered an indirect EP sale.

Because the third criterion is not met in this case, we need not address the first two criteria. Our examination of the record with respect to this administrative review indicates that the fact pattern for sales to the United States is substantially similar to the pattern for sales in the previous administrative review, in which we found that sales involving Siderca Corp. were CEP sales.

Under the selling agreement between TAMSA and Siderca Corp., Siderca Corp. is the exclusive selling agent for TAMSA products in the United States and other parts of the world, and has certain rights affecting price for any sales under the agreement. In exchange for providing marketing and selling functions, and for providing other services, Siderca Corp. is entitled to receive compensation under the agreement. The record indicates that Siderca Corp. did receive, in connection with this sale, the compensation provided for under the agreement.

In addition, Siderca Corp. played the primary role in generating this sale by bringing the customer to TAMSA. The record shows that Siderca Corp. has a working relationship with the United States customer. Conversely, TAMSA itself appears to have little, if any, contact outside of Mexico with regard to the sale of its products in the United States. Indeed, under the agreement, TAMSA is precluded from soliciting or negotiating sales directly in the United States.

The judicial cases TAMSA relies upon do not support its position. Contrary to TAMSA's claim, the opinion in U.S. Steel does not suggest that the Department should classify the sale in this case as an EP sale. The Court's decision to uphold Commerce's CEP classification in that case was not based solely on the evidence that the U.S. affiliate negotiated the final sale price consistent with a floor price set by the exporter. Instead, the Court also considered the fact that the U.S. affiliate had ''flexibility'' to make decisions as to price. In this case, as well, the binding sales agreement indicates that Siderca Corp. had the exclusive right and flexibility to negotiate the price. Thus, by analogy to U.S. Steel Corp., CEP classification is also appropriate in this OCTG case.

The Court's opinion in AK Steel also does not compel the Department to adopt an EP classification for the sale in this OCTG review. Although the Court in that case denied the Department's request for a remand to reconsider its classification of certain sales as EP sales, the Court did not find that the facts of that case demanded an EP classification. Instead, the AK Steel Court held that, prior to making its determination, ''Commerce may have been free to assess the evidence differently than it did.'' 34 F. Supp. 2d at 761. The principle of finality of administrative decisions requires that once a final agency decision is made, it cannot be changed unless the decision was erroneous when made. Noting that nothing in the record showed that the U.S. sales agents were free to negotiate prices, the Court held only that (although Commerce might have reached a different conclusion), ''it was not an error'' to classify the sales as EP sales. Id. Furthermore, the facts of this OCTG case weigh more heavily in favor of a CEP classification than did those in the case underlying *AK Steel,* because in this case the administrative record does contain evidence that the U.S. subsidiary was authorized to negotiate prices.

The administrative cases relied upon by TAMSA also do not support its claim that the sale in this case should be classified as an EP sale. For example, although both this case and the Dutch Steel case involve a sales agency agreement, the Dutch producer, Hoogovens, maintained direct communication links with its U.S. customers, often without its affiliate, HSUSA. Hoogovens' ''U.S. customers communicated directly with Hoogovens regarding post-sale price adjustments for quality defects.'' *See Dutch Steel,* 64 FR at 11829. In that case, ''the preponderance of selling functions involved in U.S. sales occurred in the Netherlands.'' *Id.* 64 FR at 11828. In this OCTG case, in contrast, the preponderance of selling functions were performed in the United States by Siderca Corp. While HSUSA had no authority to negotiate prices, Siderca Corp. had the authority to negotiate prices through its selling agreement. The agreement places the rights and responsibilities of selling and marketing TAMSA products in the United States squarely on Siderca Corp.

TAMSA's reliance on Canadian Steel, Taiwan Pipe, Korean Wire Rod, and Beryllium Metal is also misplaced. Sales at issue in those cases were deemed to be EP sales because the U.S. affiliates were not free to solicit sales, negotiate contracts or prices, or provide customer support. Siderca Corp., in contrast, was authorized to perform all of the above functions on behalf of TAMSA as well as resolving any disputes regarding the status of the order, delivery or quality, or any other customer issues.

The Department's position in the Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Spain (''Wire Rod from Spain''), 63 FR at 40394 (July 29, 1998), also supports the conclusion that TAMSA's sale is best classified as a CEP sale. In that case, the Department treated the U.S. sales as CEP sales under a similar fact pattern. Specifically, Acerinox's authority to negotiate and accept sales terms, as well as its authority to initiate contact with U.S. customers, contradicted the parent company's claim that the U.S. affiliate's activities were ancillary. Thus, the Department classified these sales as CEP sales.

Finally, although TAMSA claims that the contract was meaningless during this period of review, and that an e-mail interchange included in its submission shows that TAMSA was responsible for setting the price of this sale, there is record evidence showing that the contract remains in effect. Siderca Corp. retained its obligations under the agreement (e.g., maintaining a sales staff) and was substantially involved in the sales process for this sale. Based on the facts of the case, and their similarity to previous cases concerning the issue of whether a sale should be classified as CEP or EP, the Department has classified TAMSA's sale to the United States as a CEP sale for these final results.

*Comment 2*

TAMSA states that, in testing the home market sales database for below-cost sales, the Department should not compare home market sales prices that are unadjusted for inflation with costs of production that are adjusted for inflation.

Petitioners did not comment.

*Department's Position*

We agree with respondent and have changed the program for the final results. Circumstances do not warrant using the Department's high inflation methodology in this review. Therefore, we have deleted the inflation adjustment to costs of production.

*Comment 3*

TAMSA asserts that the Department's antidumping duty calculation program contained an error in line 1693. According to TAMSA, the Department underestimated selling expenses, leading to overestimated levels of profit from U.S. sales and underestimated total expenses. TAMSA requests that the Department include performance bond costs on certain home market sales when calculating home market direct selling expenses.

Petitioners did not comment.

*Department's Position*

We agree with respondent and have changed the program for the final results. The program now includes BONDH, a variable for performance bond costs, in the home market direct selling expenses calculation.

**Final Results of the Review**

As a result of this review, we determine that the following weighted-average dumping margin exists:

CIRCULAR WELDED NON-ALLOY STEEL PIPES AND TUBES

| Producer/manufacturer/exporter | Weighted-average margin |
|---|---|
| TAMSA | 0.00 |

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirement will be effective upon publication of this notice of final results of review for all shipments of oil country tubular goods from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751 (a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate for that firm as stated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this review, the cash deposit rate will be 23.79 percent, the ''all others'' rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO accordance with 19 CFR 351.306 of the Department's regulations. Timely written 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.

This administrative review and this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 4, 2000.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

[FR Doc. 00–633 Filed 1–10–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–835]**

### Oil Country Tubular Goods From Japan: Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of extension of time limits for final results of antidumping duty administrative review.

**EFFECTIVE DATE:** January 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Gilgunn, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0648.

**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1998).

**Extension of Time Limit for Preliminary Results**

The Department of Commerce has received a request to conduct an administrative review of the antidumping duty order on oil country tubular goods from Japan. The Department initiated this antidumping administrative review for Sumitomo Metal Industries Ltd. on September 29, 1998 (63 FR 51893) and for Okura and Company on October 29, 1998 (63 FR 58009). The review covers the period August 1, 1997 through July 31, 1998.

Because of the complexity of certain issues, it is not practicable to complete these reviews within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limit for the final results to March 5, 2000 (*see Memorandum from Joseph A. Spetrini to Robert S. LaRussa, ''Extension of Time Limit of the Administrative Antidumping Duty Review of Oil Country Tubular Goods from Japan'').* This extension of time limit is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 4, 2000.

**Edward Yang,**

*Acting Deputy Assistant Secretary for AD/CVD Enforcement III.*

[FR Doc. 00–635 Filed 1–10–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–828]**

### Silicomanganese From the People's Republic of China: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** January 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Timothy Finn at (202) 482–0065 or James Terpstra at (202) 482–3965, Office of AD/CVD Enforcement 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

**Information**

*Statutory Time Limits*

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the Date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

*Background*

On January 25, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on silicomanganese from the People's Republic of China, covering the period December 1, 1997 through November 30, 1998 (64 FR 3682). On November 8, 1999, we published the preliminary results of review (64 FR 60784). In our notice of preliminary results, we stated our intention to issue the final results of this review no later than March 7, 2000.

*Extension of Final Results of Review*

We determine that it is not practicable to complete the final results of this review within the original time limit. Therefore we are extending the time limits for completion of the final results until no later than May 6, 2000. *See* Decision Memorandum from Holly A. Kuga to Robert S. LaRussa, dated December 17, 1999, which is on file in the Central Records Unit, Room B–099 of the main Commerce Building.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: January 5, 2000.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 00–632 Filed 1–10–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–808]**

### Certain Stainless Steel Wire Rod From India; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results and partial rescission of antidumping duty administrative review.

**SUMMARY:** In response to a request by Viraj Group, Ltd. (''Viraj''), respondent, the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on stainless steel wire rod (''SSWR'') from India. The period of review (''POR'') is December 1, 1997, through November 30, 1998.

We have preliminarily determined that respondent Viraj has made sales below normal value (''NV''). If these preliminary results are adopted in our final results of this administrative review, we will instruct the U.S. Customs service to assess antidumping duties on all appropriate entries. We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument.

**EFFECTIVE DATE:** January 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Stephen Bailey or Rick Johnson, AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0413 (Bailey) or (202) 482–3818 (Johnson).

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (''the Act'') by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all references to the Department's regulations are to the provisions codified at 19 CFR Part 351 (1998).

**Background**

On October 20, 1993, the Department published in the **Federal Register** the antidumping duty order on certain stainless steel wire rod from India (58 FR 54110). On December 8, 1998, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this antidumping duty order (63 FR 67646).

On December 29, 1998, Mukand, Ltd. (''Mukand''), Panchmahal Steel, Ltd. (''Panchmahal'') and Viraj requested an administrative review of the antidumping duty order on certain stainless steel wire rods from India. In accordance with 19 CFR 351.221(b), we published a notice of initiation of the review of Panchmahal and Viraj on January 25, 1999 (64 FR 3682), and published a notice of initiation of the review of Mukand on February 22, 1999 (64 FR 8542). The review of Mukand was initiated at a later date due to an inadvertent omission in the January 25, 1999 **Federal Register** notice. Pursuant to 19 CFR 351.213(d)(1), on February 23, 1999, Mukand and Panchmahal timely withdrew their requests for review.

Respondent Viraj submitted its Section A questionnaire response on March 24, 1999, and its Sections B & C questionnaire responses on April 19, 1999.

On May 11, 1999, petitioners submitted a sales-below-cost allegation. This allegation was supplemented on July 2, 1999. Based on the request by petitioners, on July 23, 1999, the Department initiated a sales-below-cost investigation of stainless steel wire rod by Viraj. On August 30, 1999, respondent Viraj submitted its response to the Section D questionnaire. The Department, however, considered this response to be insufficient and requested Viraj to re-submit its Section D questionnaire response, which it did on October 14, 1999.

On August 31, 1999, due to the reasons set forth in the *Extension of Time Limit for the Preliminary Results of Antidumping Administrative Review: Certain Stainless Steel Wire Rod from*

*India,* the Department extended the due date for the preliminary results. In accordance with section 751(a)(3)(A) of the Act, the Department extended the due date for the notice of preliminary results the maximum 120 days allowable, from the original due date of September 2, 1999, to January 3, 2000.

On November 4, 1999, Viraj asked to withdraw its request for this review. Pursuant to 19 CFR 351.213(d)(1), if a respondent withdraws its request for an administrative review within 90 days of the date of publication of the initiation of the review, the Department will rescind the review. The Department may extend the time limit if it decides that it is reasonable to do so. In this case, Viraj's request for rescission has not been granted because the request was filed after the 90 day deadline had passed (the administrative review was initiated on January 25, 1999), and we do not find that it is otherwise reasonable to do so (*see* Partial Rescission of Review, below, for details).

From December 6–11, 1999, the Department conducted a sales and cost verification of Viraj at its production facilities in Tarapur, India. The results of this verification are contained in the sales and cost verification reports for Viraj, public versions of which are on file in the Department's Central Records Unit, Room B–099 of the Main Commerce Building.

**Scope of the Review**

Imports covered by this review are shipments of SSWR from India. SSWR are products which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

**Partial Rescission of Review**

Pursuant to 19 CFR 351.213(d)(1) of the Department's regulations, a party that requests an administrative review may withdraw such request within 90 days of the date of publication of the notice of initiation of the administrative review. As noted above in the ''Background'' section, because Mukand and Punchmahal have timely withdrawn their requests for review, the Department is rescinding the review with respect to these two companies. This rescission of administrative review and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 351.213(d)(1). By contrast, Viraj did not withdraw its request for an administrative review in a timely manner. Although under section 351.213(d)(1) the Department may extend the deadline for withdrawing a request for review, in this case Viraj did not ask for recission of the review until after the Department had expended substantial resources in conducting the review. In adopting section 351.213(d)(1) the Department explained that we would take into consideration how much time and effort had been devoted to a review in deciding whether to permit an untimely withdrawal of request for review. *Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27317 (1997). In this particular case, the Department has solicited and received multiple questionnaire responses and supplemental responses from respondent, and, as discussed above, has initiated a sales-below-cost investigation. Therefore, we have continued with this review with respect to Viraj.

**Product Comparisons**

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the ''Scope of the Review'' section, above, and sold in the comparison market during the POR, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Because there were no contemporaneous sales of identical or similar foreign like product in the comparison market to compare to U.S. sales, we compared U.S. sales to constructed value (''CV'').

**Date of Sale**

While the Department normally will use the date of invoice as the date of sale, we have determined in this case that the purchase order date better reflects the date on which Viraj established the material terms of sale. In this case, Viraj stated in its April 19, 1999 questionnaire response that the material terms of sale are set at order date. This claim was confirmed at verification. *See Memorandum to the File: Certain Stainless Steel Wire Rod from India—Antidumping Administrative Review 12/01/97 through 11/30/98—Verification of Viraj Impoexpo's (''VIL'') and Viraj Alloys (''VAL'') Sales (''Sales Verification Report''),* at page 5 (January 3, 2000). Although by using the order date as date of sale the U.S. sales fall outside of the POR, the Department has the discretion to consider U.S. sales which fall outside of the POR in its analysis. In accordance with the Department's practice, we reviewed sales of merchandise shipped to the United States during the POR.

**Affiliation**

Viraj is composed of three different companies, two of which are involved in the production and sale of subject merchandise. Viraj Forgings Ltd., which produces steel forgings, is not involved in the production or sale of SSWR. Viraj Alloys, Ltd. (''VAL'') produces steel billets which are transferred to Tata SSL, Ltd. (''Tata''), an unaffiliated Indian steel company, which is subcontracted to roll the billets as a tolling operation. VAL then sells the rolled billets to Viraj Impoexpo, Ltd. (''VIL''), which anneals and pickles a certain percentage of the rolled billets into SSWR and subsequently exports the subject merchandise.

**Normal Value Comparisons**

To determine whether sales of subject merchandise to the United States were made at less than normal value, we compared the Export Price (''EP'') to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice.

**Export Price**

For calculation of the price to the United States, we used EP, in accordance with section 772(a) of the Act, because the subject merchandise was first sold by Viraj to an unaffiliated purchaser in the United States prior to importation and CEP treatment was not otherwise indicated. The Department calculated EP for Viraj based on packed, delivered prices to customers in the United States. We made deductions from the starting price for movement expenses (foreign inland freight, ocean freight, insurance, and brokerage and handling) in accordance with section 772(c)(2) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section

772(c)(1)(B) of the Act. For a further discussion of duty drawback, *see Sales Verification Report,* at pages 11–12, January 3, 2000. As discussed above in the ''Date of Sale'' section, we used order date as the date of sale.

**Normal Value**

After testing (1) home market viability and (2) whether comparison market sales were at below-cost prices, we calculated NV as noted in the ''Price-to-CV Comparisons'' section of this notice.

*1. Comparison Market Viability*

Viraj had no sales of the subject merchandise in the home market during the POR. Moreover, the only market outside the United States to which Viraj sold the foreign like product during the POR was Turkey. In order to determine whether there is a sufficient volume of sales in Turkey to serve as a viable basis for calculating NV, we compared Viraj's volume of third country sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B)(ii) of the Act. Because Viraj's aggregate volume of third country sales to Turkey was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we based our NV analysis on the prices at which the foreign like product was first sold for consumption in Turkey.

*2. Cost of Production Analysis*

On May 11, 1999, petitioners filed an allegation that Viraj made third country sales at prices that were below the cost of production (''COP''), and supplemented this allegation on July 2, 1999. Our analysis of the allegation indicated that there were reasonable grounds to believe or suspect that Viraj had sold SSWR in the third country market at prices less than the COP. Accordingly, on July 23, 1999, pursuant to section 773(b) of the Act, we initiated a COP investigation to determine whether sales were made at prices less than the COP.

We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Viraj's cost of materials and fabrication for the foreign like product, including the cost of the tolling operation performed by Tata, plus an amount for third country selling, general and administrative expenses (''SG&A''), including interest expenses, and packing costs, with the following exceptions.

*1. Billet-Major Input*

In its original section D questionnaire response, dated August 30, 1999, VIL reported that it purchases the billets used in the production of SSWR from VAL (after Tata further processes the billets). Because the billets are produced by VAL, an affiliate of VIL, and because the billets are a major input in the production of SSWR sold by VIL, the major input rule should be applied to value the billets that VIL obtained from VAL (*see Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta From Italy,* 64 FR 6615, 6621 (February 10, 1999)). The major input rule of section 773(f)(3) of the Act provides that the Department may value inputs obtained from affiliated parties at the highest of the transfer price, market price, or the affiliated supplier's costs. *See,* 19 CFR Section 351.407(b). In this instance, the Department found at verification that the transfer price is identical to the market price and above VAL's cost of production. *See Memorandum to the File: Certain Stainless Steel Wire Rod from India-Antidumping Administrative Review 12/01/97 through 11/30/98—Verification of Viraj Impoexpo's (''VIL'') and Viraj Alloys (''VAL'') Cost of Production (''Cost Verification Report'')* at page 8 (January 3, 2000). Therefore, we are valuing input billets at the transfer price, as reported in verification exhibit 15 of the *Cost Verification Report.*

*2. Fixed Overhead Costs*

At verification, the Department determined that Viraj did not include the account items ''Material Handling Charges'' (*i.e.,* freight expenses) and ''Repairs to Plant & Machinery'' in its calculation of fixed overhead costs. *See Cost Verification Report* at page 11. Because these expenses relate to the production of subject merchandise, we have determined that they should be included as fixed overhead costs. Accordingly, we have recalculated the ratio of fixed overhead costs to the cost of goods sold and adjusted the total cost of manufacture. *See Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for Viraj (''Analysis Memorandum'')* at page 5.

*3. Variable Overhead Costs*

At verification, the Department found a minor error by Viraj in its calculation of the variable overhead costs for light diesel oil. Based on this finding, we have revised Viraj's reported variable overhead cost. *See Analysis Memorandum* at page 5.

*4. General and Administrative (''G&A'') Expenses*

At verification, the Department found that Viraj improperly included selling expenses in its calculation of G&A expenses. Therefore, for purposes of these preliminary results, we have recalculated the G&A factor. *See Analysis Memorandum* at page 4.

*5. Interest Expenses*

At verification, the Department found that in addition to reporting bank charges as a direct selling expense in its Section B & C response, Viraj reported banking charges in its calculation of net interest expense. Therefore, for purposes of these preliminary results, we have excluded banking charges from the calculation of net interest expense. Additionally, at verification we found that Viraj deducted from net interest expense an amount for interest usance charges. Because these charges were not reported by Viraj in its U.S. or home market sales file as a direct selling expense, we preliminarily find that these interest usance charges should be included in Viraj's net interest expense. *See Analysis Memorandum* at page 5.

*6. Packing*

At verification, the Department found that Viraj calculated its POR packing cost based on the sample cost of packing materials during the POR, and requested that Viraj recalculate packing expenses based on the weighted-average POR cost of packing materials. For purposes of these preliminary results, we have used the recalculated packing expense as explained in the *Sales Verification Report* at page 10.

B. Test of Third Country Market Sales Prices

We compared the weighted-average COP figures to third country market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales were made at prices below COP. In determining whether to disregard third country market sales made at prices less than the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the third country market prices, less any applicable movement charges.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C), where more than 20 percent of respondent's sales of a given product

were at prices less than the COP, we disregard any below-cost sales of that product because we determined that the below-cost sales were made in ''substantial quantities.'' As a result of our COP test, we preliminarily determine to disregard certain below-cost sales during the POR. However, as mentioned above, because there were no contemporaneous comparison market matches, we have not used Viraj's third country sales as the basis for normal value.

**Calculation of Constructed Value**

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV because there were no contemporaneous sales of the foreign like product in the comparison market. We calculated CV in accordance with section 773(e)(1) of the Act based on the sum of respondent's cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COP included in the calculation of CV as noted above, in the ''Calculation of COP'' section of the notice. In accordance with section 773(e)(2)(A) of the Act and 19 CFR 351.405(b)(1), we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country.

**Level of Trade**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, the U.S. LOT is the level of the starting-price sale, which is usually from exporter to importer. As discussed above, all of Viraj's sales to the U.S. were EP sales.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In the present review, Viraj did not request a level of trade (LOT) adjustment. To ensure that no such adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the U.S. and third country market, including the selling functions, classes of customers, and selling expenses.

In both the third country comparison market and the United States, Viraj reported one LOT and one distribution system with one class of customer (distributors). Viraj stated that it manufactures the merchandise after receipt of a final confirmed order and sells directly to its customers in the comparison market and in the United States on a CIF basis. Viraj reported that it uses a forwarding agent for sales to the United States but that in all other aspects it performs identical selling functions in both the third country comparison market and the United States. These selling functions include soliciting inquiries from customers, negotiating with customers, and procurement of export orders. Further, Viraj reported that it did not provide other sales-related services on any of its sales, such as inventory maintenance, technical advice, warranty services, or advertising. Therefore, we preliminarily conclude that Viraj performs identical selling functions in the comparison market and the United States and that a LOT adjustment is not warranted.

**Price-to-CV Comparisons**

For price-to-CV comparisons, we made a circumstance-of-sale adjustment by deducting third country market direct selling expenses (*i.e.*, imputed credit and banking charges) and adding U.S. direct selling expenses (*i.e.*, imputed credit and banking charges). For computing credit expenses, it is the Department's normal practice to use an interest rate applicable to loans in the same currency as that in which the sales are denominated (*see, e.g., Analysis for the preliminary determination in the investigation of stainless steel plate in coils from Korea—Pohang Iron & Steel Company*, 63 FR 59535 (November 4, 1998). We note that while all sales to the United States are denominated in U.S. dollars, the short-term interest rate used by Viraj was derived from loans denominated in rupees. Therefore, we have not accepted Viraj's reported credit expense for its U.S. sales and have instead calculated an imputed credit expense for these sales using the U.S. weighted-average effective rate on commercial and industrial loans over one month and under one year made by all commercial banks. The Federal Reserve calculates this rate quarterly. Loan rates were collected from the four quarters corresponding to the POR and then weight-averaged by the amount of loans made in each quarter. All calculations are shown at Appendix I of the *Analysis Memorandum*.

Additionally, at verification, we found that for its U.S. sales, Viraj did not include banking charges in the field ''Other Direct Selling Expenses'' as stated in its supplemental response, dated June 25, 1999, at page 3. *See Sales Verification Report* at page 10. Therefore, for purposes of these preliminary results, we have used the information obtained at verification to determine banking charges for the sales in issue. *See Analysis Memorandum*, at page 5.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following weighted-average dumping margin exists for Viraj for the period December 1, 1997, through November 30, 1998:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| Viraj | 2.76 |

The Department will disclose calculations performed in connection with this preliminary determination within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Issues raised in the hearing will be limited to those raised in the case briefs. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice in the **Federal Register**; rebuttal briefs may be submitted not later than five days thereafter. The Department will publish the final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of this review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties on the merchandise subject to

review. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service. In accordance with 19 CFR 351.212(b), if applicable, we will calculate an importer-specific ad valorem duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) For Viraj, a deposit equal to the above margin will be required; (2) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will continue to be 48.80 percent, the ''All Others'' rate made effective by the original investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 3, 2000.

**Richard W. Moreland,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–634 Filed 1–10–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–054, A–588–604]**

### Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof From Japan; Antidumping Duty Administrative Reviews; Time Limits

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Extension of Time Limits.

**SUMMARY:** The Department of Commerce (the Department) is extending the time limits for the final results of the 1997–1998 administrative reviews of the antidumping duty order (A–588–604) and finding (A–588–054) on tapered roller bearings from Japan. These reviews cover three manufacturers/exporters and one reseller/exporter of the subject merchandise to the United States and the period October 1, 1997 through September 30, 1998.

**EFFECTIVE DATE:** January 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Deborah Scott at (202) 482–2657 or Robert James at (202) 482–0649, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** Because it is not practicable to complete these reviews within the normal statutory time limit, the Department is extending the time limits for completion of the final results until Monday, February 28, 2000 in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended. See Memorandum dated January 4, 2000 from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the main Commerce building.

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: January 4, 2000.

**Edward Yang,**

*Acting Deputy Assistant Secretary, AD/CVD Enforcement Group III.*

[FR Doc. 00–639 Filed 1–10–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on February 29, 2000. The meeting will be from noon to 4 p.m. in the Main Conference Room on the sixth floor at the office of Milliken & Company, 1045 6th Avenue, New York, New York.

The Committee provides advice and guidance to Department officials on the identification and surmounting of barriers to the expansion of textile exports, and on methods of encouraging textile firms to participate in export expansion.

The Committee functions solely as an advisory body in accordance with the provisions of the Federal Advisory Committee Act.

The meeting will be open to the public with a limited number of seats available. For further information or copies of the minutes, contact William Dawson at (202) 482-5155.

Dated: January 6, 2000.

**Troy H. Cribb,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–605 Filed 1–10–00; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 010300B]**

### Mid-Atlantic Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Mid-Atlantic Fishery Management Council and its Comprehensive Management Committee, Demersal Committee, Monkfish Committee, Law Enforcement Committee, Committee Chairmen, and Executive Committee will hold a public meeting.

**DATES:** The meeting will be held on Tuesday, January 25, 2000 to Thursday, January 27, 2000. See SUPPLEMENTARY INFORMATION for specific dates and times.

**ADDRESSES:** The meeting will be held at the Holiday Inn Select, 480 King Street, Old Town Alexandria, VA; telephone: 703–549–6080.

*Council address*: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

**FOR FURTHER INFORMATION CONTACT:** Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

**SUPPLEMENTARY INFORMATION:**

*January 25, 2000, 10:00 a.m. until noon*–the Comprehensive Management Committee will meet.

*1:00 p.m. until 5:00 p.m.*—the Demersal Committee will meet.

*Wednesday January 26, 2000, 8:00 a.m. - 9:30 a.m.*—the Council will meet to hear the SAW 30 Report.

*9:30 a.m. until noon*—the Monkfish Committee will meet.

*11:00 a.m. until noon*—the Law Enforcement Committee will meet.

1:00 p.m. until 4:00 p.m.—the Committee Chairmen will meet.

*4:00 p.m. until 5:00 p.m.*—the Executive Committee will meet.

*Thursday, January 27, 2000, 8:00 a.m. until 1:00 p.m.*—the Council will meet.

Agenda items for this meeting are: Discuss the development of workshops for 2000 including a workshop on summer flounder discards; discuss the development of a conservation equivalency amendment for summer flounder; discuss the development of an amendment to review allocation of annual total allowable catch (TAC) and discards and revise summer period state by state quotas for scup; possible review and comment on **Federal Register** notice on 2000 specifications for summer flounder, scup, and black sea bass; discussion of disapproved portions of Sustainable Fisheries Act (SFA) amendment for summer flounder, scup, and black sea bass; discussion of other measures that would be included in amendments to summer flounder, scup, and black sea bass; review stock assessment on surfclams and Atlantic mackerel; discuss and recommend area adjustments through the amendment process for the Monkfish Fishery Management Plan; discuss and finalize procedures for enforcement recognition; develop the annual work plan for Council committees for year 2000.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, these issues may not be the subject of formal Council 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.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: January 6, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–628 Filed 1–10–00; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Record of Decision for the Disposal and Reuse of Naval Hospital Philadelphia, Pennsylvania

**SUMMARY:** The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C) (1994), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR Parts 1500–1508, hereby announces its decision to dispose of Naval Hospital Philadelphia, which is located in Philadelphia, PA.

Navy analyzed the impacts of the disposal and reuse of Naval Hospital Philadelphia in an Environmental Impact Statement (EIS), as required by NEPA. The EIS analyzed three reuse alternatives and identified the Philadelphia Naval Hospital Community Reuse Plan (Reuse Plan), approved by the City of Philadelphia on June 17, 1999, and described in the EIS as the Naval Hospital Reuse Plan Alternative, as the Preferred Alternative.

The Preferred Alternative proposed to use the Naval Hospital property for residential purposes and for commercial activities and to develop public parks and recreational areas. The City of Philadelphia is the Local Redevelopment Authority (LRA) for the Naval Hospital. Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR 176.20(a).

Navy intends to dispose of Naval Hospital Philadelphia in a manner that is consistent with the Reuse Plan. Navy has determined that the proposed mixed land use will meet the goals of achieving local economic redevelopment, creating new jobs, and providing additional housing, while limiting adverse environmental impacts and ensuring land uses that are compatible with adjacent property. This Record of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entity and the local zoning authority.

**Background**

Under the authority of the Defense Authorization Amendments and Base Closure and Realignment Act, Public Law 100–526, 10 U.S.C. 2687 note (1994), the 1988 Defense Secretary's Commission on Base Realignment and Closure recommended the closure of Naval Hospital Philadelphia. This recommendation was approved by the Secretary of Defense, Frank Carlucci, and accepted by the One Hundred First Congress in 1989. The Naval Hospital closed on September 30, 1991.

Naval Hospital Philadelphia is situated on 49 acres in the southern part of the City of Philadelphia. The property is oriented along the east-west axis with a rectangular border. The property is bounded on the north by Hartranft Street; on the east by Broad Street; on the South by Pattison Avenue; and on the west by 20th Street. There are residential neighborhoods north of the Naval Hospital property; a sports stadium complex composed of Veterans Stadium, First Union Spectrum, and First Union Center located east and southeast of the hospital; Franklin D. Roosevelt Park located south and southwest of the hospital; and former Navy family residences known as Capehart Housing to the west of the hospital.

This Record of Decision addresses the disposal and reuse of the entire Naval Hospital property, which is surplus to the needs of the Federal Government. The surplus property, covering 49 acres, contains 56 buildings that provide about 687,000 square feet of space. The 15-story main Hospital building (Building 1) and its wings (Buildings 2 and 3) were built in 1935 and account for about half of the Hospital's floor space. Nearly all of the remaining 53 structures are one-story buildings.

Navy published a Notice of Intent in the **Federal Register** on March 23, 1994, announcing that the Navy would prepare an EIS for the disposal and reuse of Naval Hospital Philadelphia. On April 6, 1994, Navy held a public scoping meeting at the Holy Spirit Roman Catholic Church in Philadelphia, and the scoping period concluded on April 29, 1994. On July 8, 1994, Navy

reopened the scoping comment period for an additional 14 days.

Navy distributed the Draft EIS (DEIS) to Federal, State, and local agencies, elected officials, interested parties, and the general public on February 24, 1995, and commenced a 45-day public review and comment period. During this period, Federal, State, and local agencies, community groups and associations, and interested persons submitted oral and written comments concerning the DEIS. On March 22, 1995, Navy held a public hearing at Holy Spirit Church to receive comments on the DEIS.

After the public comment period for the DEIS concluded, Navy developed additional alternatives for the disposal and reuse of the Navy Hospital and prepared a Supplemental Draft Environmental Impact Statement (Supplemental DEIS). Navy distributed the Supplemental DEIS to Federal, State, and local agencies, elected officials, interested parties, and the general public on October 11, 1996, and commenced a 45-day public review and comment period. During this period, Federal, State, and local agencies, community groups and associations, and interested persons submitted oral and written comments concerning the Supplemental DEIS.

Navy's responses to the public comments on the Supplemental DEIS were incorporated in the Final EIS (FEIS), which was distributed to the public on October 29, 1999, for a review period that concluded on November 29, 1999. During the period between conclusion of the comment period for the Supplemental DEIS and distribution of the FEIS, Navy engaged in the consultations concerning cultural resources prescribed by section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f (1994). Navy concluded these consultations in August 1999. Navy received one letter commenting on the FEIS.

**Alternatives**

NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this surplus Federal property. In the FEIS, Navy analyzed the environmental impacts of three reuse alternatives. Navy also evaluated a ''No Action'' alternative that would leave the property in caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety.

On August 10, 1993, the Mayor's Commission on Defense Conversion adopted the Philadelphia Navy Hospital Community Reuse Plan. Navy identified this initial reuse plan as the Preferred Alternative in the DEIS dated February 1995 and in the Supplemental DEIS dated September 1996. In mid-1999, the City of Philadelphia modified the 1993 reuse plan by changing the mix of proposed uses to provide for the development of administrative and training facilities for the Philadelphia Eagles, a professional football team, at the eastern end of the property. To accommodate these facilities, the City eliminated the 120-bed nursing home proposed in 1993 and reduced the amount of property to be used for parks and recreational activities from 30 acres to seven acres. The Philadelphia City Planning Commission approved these modifications to the 1993 reuse plan on June 17, 1999.

The Reuse Plan approved in 1999 and identified in the FEIS as the Preferred Alternative proposed a mix of land uses. The Preferred Alternative would use about 15 acres for residential purposes; 27 acres for the Eagles complex; and seven acres for parks and recreational activities. It will be necessary to demolish nearly all of the buildings, including the main Hospital building and its wings (Buildings 1, 2, and 3), and to replace the property's utility distribution systems to support the Reuse Plan's proposed redevelopment of the site.

In the western half of the property, the Preferred Alternative proposed to build a townhouse residential complex on 15 acres that would provide about 150 new townhouses. On seven acres east of the residential complex, this Alternative would develop a park and recreational area to be incorporated in the adjacent Roosevelt Park and build a parking lot with a capacity of 1,000 vehicles to serve Roosevelt Park and the adjacent sports stadium complex.

In the eastern half of the property, the Preferred Alternative would develop the Philadelphia Eagles administrative and training complex on about 27 acres. This complex would consist of a building with 104,000 square feet of space for administrative offices, training activities, and a sports medicine and rehabilitation center; three outdoor practice football fields; one indoor practice football field covered by a fabric bubble; a maintenance garage; and a 200-vehicle parking lot. A commercial medical care provider would manage the rehabilitation facility in partnership with the Eagles, and the facility would also be available for use by the public.

Navy analyzed a second ''action'' alternative, described in the FEIS as the Main Building Reuse Alternative. This Alternative would retain the main Hospital building and wings (Buildings 1, 2, and 3) and demolish the other structures on the Naval Hospital property.

In the center of the property, the main Hospital building and its two wings would be converted into a residential complex composed of about 150 apartments. North of the Hospital wings, the Main Building Reuse Alternative would build 100 townhouses on about ten acres.

On about 15 acres at the western end of the property, the Main Building Reuse Alternative would develop parks and recreational areas to be incorporated in Roosevelt Park. On about 11 acres at the eastern end of the property, this Alternative would develop a parking area with a capacity of 1,100 vehicles to serve Roosevelt Park and the adjacent sports stadium complex.

Navy analyzed a third ''action'' alternative, described in the FEIS as the Retail Alternative. Under this Alternative, all of the Naval Hospital buildings would be demolished to permit the development of a commercial retail center. This Alternative would also develop parks and recreational areas similar in size and purpose to the Main Building Reuse Alternative.

In the center of the property, the Retail Alternative proposed to develop a retail complex covering 23 acres. This complex would consist of two retail buildings that would each provide 100,000 square feet of space; fast food restaurants with 10,000 square feet of space; and a parking lot with a capacity of 750 vehicles to serve the retail stores.

On about 15 acres at the western end of the property, the Retail Alternative would develop parks and recreational areas to be incorporated in Roosevelt Park. On about 11 acres at the eastern end of the property, this alternative would develop another parking area with a capacity of 1,100 vehicles to serve Roosevelt Park and the adjacent sports stadium complex.

**Environmental Impacts**

Navy analyzed the direct, indirect, and cumulative impacts of the disposal and reuse of this surplus Federal property. The EIS addressed impacts of the Preferred Alternative, the Main Building Reuse Alternative, the Retail Alternative, and the ''No Action'' Alternative for each alternative's effects on land use and zoning, socioeconomics, community facilities and services, transportation, air quality, noise, infrastructure, cultural resources, natural resources, and petroleum and hazardous substances. This Record of Decision focuses on the impacts that would likely result from

implementation of the Reuse Plan, identified in the FEIS as the Preferred Alternative.

The Preferred Alternative would not have any significant impact on land use and would result in land uses that are compatible with existing and planned uses in the surrounding community. Indeed, the Naval Hospital property is zoned to permit the proposed redevelopment.

The sports medicine and rehabilitation facility would be available to the public. The proposed expansion of Roosevelt Park would serve residents of the surrounding community by providing additional recreational resources closer to their homes. The proposed parking lot adjacent to Roosevelt Park would accommodate the parking requirements generated by those visiting Roosevelt Park and the nearby sports stadium complex.

The Preferred Alternative would not have any impact on the socioeconomics of the surrounding area. It proposed to build 150 new townhouses that would provide housing for 480 people. This additional housing would increase the population projected to live in south Philadelphia in the full buildout year, 2002, by about 0.3 percent.

The Preferred Alternative would not likely add a large number of new jobs to the region, because the Philadelphia Eagles already maintains administrative, training, and medical facilities in south Philadelphia. The Eagles would, however, move 150 direct jobs generating $70 million in direct payroll earnings to the proposed facility on the eastern half of the property. By the year 2002, this alternative would create about 10 direct jobs and 421 indirect jobs that would generate about $0.4 million in direct payroll earnings and $88 million in indirect earnings. The Preferred Alternative would generate about $1.17 million annually in property tax revenue.

The Preferred Alternative would not have any significant impact on community services. By the year 2002, the Preferred Alternative would generate an increase of about 119 school-age children living in the area. This would increase the projected number of school-age children in south Philadelphia about 0.44 percent. Property tax revenues would increase as property previously owned by the Federal Government became taxable and these revenues could be used to support local schools.

The proposed redevelopment of Naval Hospital Philadelphia would not increase the demand on fire, rescue, and police protection services in south Philadelphia. By the year 2002, the population in this part of the city will be five percent less than it was in the year 1990, and this area already has adequate fire, rescue, and police protection services. Additionally, implementation of the Preferred Alternative would increase local government revenues by expanding the property tax base. These revenues could be used to fund fire, rescue, and police protection services.

Implementation of the Preferred Alternative would increase the amount of parks and open space in south Philadelphia. Under this alternative, the expansion of Roosevelt Park would provide additional recreational resources for residents of south Philadelphia. It would also provide additional parking for those visiting Roosevelt Park and the adjacent sports stadium complex.

The Preferred Alternative would not have a significant impact on transportation. By the year 2002, this alternative would generate about 2,000 average daily trips, a decrease of 1,850 average daily trips from the conditions that prevailed when the Naval Hospital was active. The Naval Hospital property has not generated a substantial number of average daily trips since it was placed in caretaker status in 1993. Thus, compared with the ''No Action'' Alternative, the Preferred Alternative would increase the amount of traffic in the area.

Implementation of the Preferred Alternative would cause a minor delay at the intersection of Broad Street and Pattison Avenue. However, this delay would not affect the operation of the intersection and would not have a significant impact on transportation. There is adequate public transportation in south Philadelphia to support the proposed redevelopment of the Naval Hospital property.

The Preferred Alternative would not have any significant impact on air quality. The Naval Hospital property is located in a severe nonattainment area for ozone as regulated by the Clean Air Act, 42 U.S.C. 7401–7671q (1994). Ozone, commonly known as smog, is produced when volatile organic compounds and nitrogen oxides react in the atmosphere. The Naval Hospital property is in attainment for all other common air pollutants regulated under the Clean Air Act. However, emissions of one common air pollutant, carbon monoxide (CO), would increase under the Reuse Plan.

Carbon monoxide is produced by the burning of fossil fuels. As a result of vehicular traffic moving to and from the property, the annual emissions of CO would increase slightly under the Reuse Plan. Nevertheless, there would not be any violation of the national standards governing emissions of carbon monoxide.

The impact on air quality from sources of stationary emissions, such as heating units, would depend upon the nature and extent of activities conducted on the property. Developers of future facilities will be responsible for obtaining the required air permits and for complying with Federal, State, and local laws and regulations governing air pollution. The temporary impacts on air quality resulting from construction activities would not be significant.

Section 176(c) of the Clean Air Act, 42 U.S.C. 7506 (1994), requires Federal agencies to review their proposed activities to ensure that these activities do not hamper local efforts to control air pollution. Section 176(c) prohibits Federal agencies from conducting activities in air quality areas such as Philadelphia that do not meet one or more of the national standards for ambient air quality, unless the proposed activities conform to an approved implementation plan. The U.S. Environmental Protection Agency regulations implementing section 176(c) recognize certain categorically exempt activities. Conveyance of title to real property and certain leases are categorically exempt activities. 40 CFR 93.153(c)(2) (xiv) and (xix). Therefore, the disposal of Naval Hospital Philadelphia will not require Navy to conduct a conformity determination.

The Preferred Alternative would not have any significant impact on noise. No substantial change in ambient noise levels would occur as a result of the increased vehicular traffic. In fact, at none of the six sites analyzed would the increase in noise be perceptible to the human ear, *i.e.*, greater than three decibels. The existing noise levels in the vicinity of the Naval Hospital are typical of an urban neighborhood and are already high.

The Preferred Alternative would not have any significant impact on the capacity of the region's utility systems. The Reuse Plan's projected daily demand for potable water would amount to less than one percent of the City's excess water supply; therefore, there would not be any significant impact on the supply of potable water.

The proposed redevelopment of the Naval Hospital property would not have a significant impact on the City's wastewater treatment capacity. The Reuse Plan would require about 0.047 million gallons per day of treatment capacity, which is substantially less

than the City's excess capacity of about 12 million gallons per day.

The Preferred Alternative would generate less solid waste than Navy did when the Naval Hospital was operational. Since the City has adequate disposal capacity, no significant impact is likely to occur from the disposal of solid waste.

Implementation of the Preferred Alternative would result in demolition of most of the buildings on the property. As a result, it would be necessary to build new utility distribution systems to serve the new facilities.

The Preferred Alternative would have a significant impact on cultural resources. Pursuant to section 106 of the National Historic Preservation Act of 1966 (NHPA), 16 U.S.C. 470f (1994), Navy conducted a cultural resource survey and determined that the Naval Hospital property is eligible for listing as a historic district on the National Register of Historic Places. In a letter dated February 28, 1994, the Pennsylvania State Historic Preservation Officer (SHPO) affirmed the SHPO's previous determination of the Naval Hospital's eligibility in 1987. Implementation of the Preferred Alternative would result in demolition of all structures on the property with the consequent adverse effect on the historic district.

In accordance with section 106 of NHPA, Navy initiated consultation with the Advisory Council on Historic Preservation (ACHP) in August 1997, to determine the appropriate mitigation for loss of the historic district. Despite substantial efforts, Navy and the ACHP did not reach agreement on ways to reduce or avoid adverse effects on the historic district. Thus, Navy concluded that further consultation under section 106 would not be productive. In a letter dated April 2, 1999, Navy informed the ACHP of its intent to terminate the section 106 consultation process.

In a letter dated July 9, 1999, the ACHP provided its final comments to the Secretary of the Navy and made three recommendations. First, the ACHP recommended that Navy convey the property to the City of Philadelphia on the condition that the City issue a request for proposals to redevelop the property in a way that would preserve the main Hospital buildings. Second, the ACHP recommended that Navy complete recordation of the Naval Hospital property before conveying it. Third, the ACHP recommended that Navy reevaluate its policy that discourages conveying historic base closure property with a restrictive preservation covenant when that restriction would conflict with local redevelopment plans for the property.

The Secretary of the Navy responded to the ACHP's recommendations in a letter dated August 6, 1999, stating that Navy will not convey the property with a preservation covenant but will complete recordation of the Naval Hospital property before conveying it. The Secretary also stated that Navy's policy concerning disposal of historic base closure property seeks to strike a balance between historic preservation concerns and local redevelopment and zoning considerations. With this letter, Navy concluded the Section 106 process.

The Preferred Alternative would not have any significant impact on upland vegetation and wildlife. The existing vegetation on the property consists largely of maintained lawns and ornamental and naturally occurring trees and shrubs. The proposed redevelopment would preserve many of the mature trees.

Navy determined that there were no Federally-listed threatened or endangered species, as defined by the Endangered Species Act of 1973, 16 U.S.C. 1531–1544 (1994), on the Naval Hospital property. Therefore, the disposal and reuse of Naval Hospital Philadelphia would not have any adverse effect on Federally-listed threatened or endangered species. In a letter dated September 28, 1995, the United States Fish and Wildlife Service concurred in Navy's determination.

Implementation of the Preferred Alternative would reduce the amount of impervious surface on the property from 34 acres to 15 acres. As a result, the amount of stormwater runoff would also decrease. Stormwater must be managed in accordance with Federal, State, and local laws and regulations, and the acquiring entity will be responsible for building adequate drainage facilities.

Implementation of the Preferred Alternative would not have any impact on floodplains. The Naval Hospital property does not lie within 100-year or 500-year floodplains.

The Preferred Alternative would not have any significant impact on the environment as a result of the use of petroleum products or the use or generation of hazardous substances by the acquiring entity. Hazardous materials used and hazardous wastes generated by the Reuse Plan will be managed in accordance with Federal and State laws and regulations.

Implementation of the Preferred Alternative would not have any impact on existing environmental contamination at the Naval Hospital. Navy will inform future property owners about the environmental condition of the property and may, when appropriate, include restrictions, notifications, or covenants in deeds to ensure the protection of human health and the environment in light of the intended use of the property.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 3 CFR 859 (1995), requires that Navy determine whether any low-income and minority populations will experience disproportionately high and adverse human health or environmental effects from the proposed action. Navy analyzed the impacts on low-income and minority populations pursuant to Executive Order 12898. The FEIS addressed the potential environmental, social, and economic impacts associated with the disposal of Naval Hospital Philadelphia and reuse of the property under the various proposed alternatives. Minority and low-income populations residing within the region would not be disproportionately affected. Indeed, the indirect employment opportunities, housing, and recreational resources generated by the Reuse Plan would have beneficial effects.

Navy also analyzed the impacts on children pursuant to Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks, 3 CFR 198 (1998). Under the Preferred Alternative, the largest concentration of children would be present in the residential and recreational areas. The Preferred Alternative would not pose any disproportionate environmental health or safety risks to children.

**Mitigation**

Implementation of Navy's decision to dispose of Naval Hospital Philadelphia does not require Navy to implement any mitigation measures beyond those discussed here. Navy will take certain other actions to implement existing agreements and regulations. These actions were treated in the FEIS as agreements or regulatory requirements rather than as mitigation. Before conveying any property at Naval Hospital Philadelphia, Navy will complete recordation of the property to mitigate adverse impacts to the Naval Hospital historic district.

The FEIS identified and discussed those actions that will be necessary to mitigate impacts associated with reuse and redevelopment of the Navy Hospital property. The acquiring entity, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible

for implementing necessary mitigation measures.

**Comments Received on the FEIS**

Navy received comments on the FEIS from one private citizen. These comments concerned issues already discussed in the FEIS and do not require further clarification.

**Regulations Governing the Disposal Decision**

Since the proposed action contemplates a disposal under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. 2687 note (1994), Navy's decision was based upon the environmental analysis in the FEIS and application of the standards set forth in the DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR Part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR Parts 174 and 175.

Section 101–47.303–1 of the FPMR requires that disposals of Federal property benefit the Federal Government and constitute the ''highest and best use'' of the property. Section 101–47.4909 of the FPMR defines the ''highest and best use'' as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The ''highest and best use'' determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historic considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations, and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the ''highest and best use'' of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of the DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth in part 101–47 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of base closure property closed under the DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by Section 2905(b)(4) of the DBCRA, may Navy apply disposal procedures other than those in the FPMR.

In section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by base closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In Section 2903(c) of Public Law 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under Section 2905(b)(2)(E) of the DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in section 174.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the LRA's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, as reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, section 175.7(d)(3) of the DoD of the DoD Rule provides that the LRA's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484 (1994), as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR Sec. 101–47.303–2); by negotiated sale (FPMR Sec. 101–47.304–9); and by competitive sale (FPMR 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property. The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid, are left to the Federal agency's discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

**Conclusion**

The LRA's proposed reuse of Naval Hospital Philadelphia, reflected in the Reuse Plan, is consistent with the requirements of the FPMR and Section 174.4 of the DoD Rule. The LRA has determined in its Reuse Plan that the property should be used for various purposes including residential, commercial, park and recreational. The property's location and physical characteristics as well as the current uses of adjacent property make it appropriate for the proposed uses.

The Reuse Plan responds to local economic conditions, promotes economic recovery from the impact of the closure of the Naval Hospital, and is consistent with President Clinton's Five-Part Plan for Revitalizing Base Closure Communities, which emphasizes local economic redevelopment and creation of new jobs as the means to revitalize these communities. 32 CFR Parts 174 and 175, 59 FR 16,123 (1994).

Although the ''No Action'' Alternative has less potential for causing adverse environmental impacts, this Alternative would not take advantage of the property's location and physical characteristics or the current uses of adjacent property. Additionally, it would not foster local economic redevelopment of the Naval Hospital property.

The acquiring entity, under the direction of Federal, State, and local

agencies with regulatory authority over protected resources, will be responsible for adopting practicable means to avoid or minimize environmental harm that may result from implementing the Reuse Plan.

Accordingly, Navy will dispose of Naval Hospital Philadelphia in a manner that is consistent with the City of Philadelphia's Reuse Plan for the property.

Dated: December 21, 1999.

**William J. Cassidy, Jr.,**

*Deputy Assistant Secretary of the Navy (Conversion and Redevelopment).*

[FR Doc. 00–642 Filed 1–10–00; 8:45 am]

**BILLING CODE 3810–FF–M**

## DEPARTMENT OF ENERGY

**[Docket Nos. EA–102–C, EA–155–A, EA–163–A, EA–167–A, EA–169–A, EA–217 and EA–218]**

## Applications to Export Electric Energy; Enron Power Marketing, Inc.; Consolidated Edison Solutions, Inc.; Duke Energy Trading and Marketing, L.L.C.; PG&E Energy Trading-Power, L.P.; Commonwealth Edison Company; and Entergy Power Marketing Corp.

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of Applications.

**SUMMARY:** Enron Power Marketing, Inc. (EPMI), PG&E Energy Trading-Power, L.P. (PGET-Power), and Entergy Power Marketing Corp. (EPMC) have applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act. Consolidated Edison Solutions, Inc. (Solutions), Duke Energy Trading and Marketing, L.L.C. (DETM), Commonwealth Edison (ComEd), and Entergy Power Marketing Corp. (EPMC) have applied for authority to transmit electric energy from the United States to Canada.

**DATES:** Comments, protests or requests to intervene must be submitted on or before February 10, 2000.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–6667.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

The Office of Fossil Energy (FE) of the Department of Energy (DOE) has received applications from the following companies for authorization to export electric energy to Mexico using the international electric transmission facilities owned and operated by Central Power and Light Company, Comision Federal de Electricidad (the national electric utility of Mexico), El Paso Electric Company, and San Diego Gas and Electric:

| Applicant | Application date | Docket No. |
|---|---|---|
| EPMI | 12/27/99 | EA–102–C |
| PGET-Power | 12/30/99 | EA–167–A |
| EPMC | 1/3/00 | EA–217 |

In Docket EA–102–C, EPMI seeks a 5-year renewal of export authority previously granted in Order EA–102–B. That Order will expire on February 2, 2000.

In Docket EA–167–A, PGET-Power seeks a 2-year renewal of the export authority previously granted in Order EA–167. That Order will expire on February 25, 2000.

EPMC is a power marketer that does not own or control any electric generation, transmission or distribution facilities. In Docket EA–217, EPMC requests authority to export electric energy to Mexico on its own behalf. The electric energy that EPMC proposes to export would be purchased from electric utilities and federal power marketing agencies in the United States.

FE has also received applications from the following companies for authorization to export electric energy to Canada using the international electric transmission facilities owned and operated by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power & Light, Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corp., Northern States Power, and Vermont Electric Transmission Company.

| Applicant | Application date | Docket No. |
|---|---|---|
| Solutions | 12/7/99 | EA–155–A |
| DETM | 12/23/99 | EA–163–A |
| ComEd | 12/21/99 | EA–169–A |
| EPMC | 1/3/00 | EA–218 |

In Docket EA–155–A, Solutions seeks a 5-year renewal of the export authority previously granted in Order EA–155. That Order will expire on January 23, 2000. Order EA–155 was originally issued to ProMark Energy, Inc. On October 23, 1998, ProMark notified DOE that it had changed its name to Consolidated Edison Solutions, Inc.

In Docket EA–163–A, DETM seeks a 5-year renewal of the export authority previously granted in Order EA–163. That Order will expire on January 28, 2000.

In Docket EA–169–A, ComEd seeks a 2-year renewal of export authority previously granted in Order EA–169. That Order will expire on February 19, 2000.

EPMC is a power marketer that does not own or control any electric generation or transmission facilities and does not have a franchised service area. In Docket EA–218, EPMC has applied for authorization to export electric energy to Canada as a power marketer. The electric energy that EPMC proposes to export would be purchased from electric utilities and federal power marketing agencies in the United States.

**Procedural Matters**

Any person desiring to become a party to any of these proceedings or to be heard by filing comments or protests to these applications should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's rules of practice and procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on EPMI's request to export should be clearly marked with Docket EA–102–C. Additional copies should be filed directly with Christi L. Nicolay, Enron Corp., 1400 Smith Street, Houston, TX 77251–1188 and Allan W. Anderson, Jr., Law Office, 4812 W Street, NW, Washington, DC 20007.

Comments on PGET-Power's request to export should be clearly marked with Docket EA–167–A. Additional copies are to be filed directly with Sanford L. Hartman, Assistant General Counsel, PG&E Energy Trading—Power, L.P., 7500 Old Georgetown Road, Suite 1300, Bethesda, MD 20814–6161.

Comments on EPMC's request to export to Mexico should be clearly marked with Docket EA–217. Comments on EPMC's request to export to Canada should be clearly marked with Docket EA–218. Additional copies are to be filed directly with Buddy Broussard,

Staff Attorney, Entergy Power Marketing Corp., 10055 Grogan's Mill Road, Suite 500, The Woodlands, TX 77380.

Comments on Solutions' request to export should be clearly marked with Docket EA–155–A. Additional copies are to be filed directly with:

Richard Staines, Consolidated Edison Solutions, Inc., 701 Westchester Avenue, Suite 320E, White Plaines, NY 10604; and

Steven J. Ross, Steptoe & Johnson, LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036.

Comments on DETM's request to export should be clearly marked with Docket EA–163–A. Additional copies are to be filed directly with:

Kris Errickson, Legal/Regulatory Coordinator, Duke Energy Trading and Marketing, One Westchase Center, 10777 Westheimer Street, Suite 650, Houston, TX 77042;

Christine M. Pallenik, Managing Counsel, Duke Energy Trading and Marketing, 4 Triad Center, Suite 1000, Salt Lake City, UT 84180; and

Gordon J. Smith, Esq., John & Hengerer, 1200 17th Street, NW, Suite 600, Washington, DC 20036.

Comments on ComEd's request to export should be clearly marked with Docket EA–169–A. Additional copies are to be filed directly with:

Peter Thornton, Esq., Senior Counsel, Commonwealth Edison Company, 125 South Clark Street, Room 1535, Chicago, IL 60603; and

James H. McGrew, Esq., Bruder, Gentile & Marcoux, 1100 New York Avenue, NW, Suite 510 East, Washington, DC 20005–3934.

A final decision will be made on these applications after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 and determinations are made by the DOE that the proposed actions will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select ''Electricity'' from the ''Regulatory Info'' menu, and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on January 5, 2000.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 00–592 Filed 1–10–00; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Record of Decision for the Surplus Plutonium Disposition Final Environmental Impact Statement

**AGENCY:** Department of Energy.

**ACTION:** Record of decision.

**SUMMARY:** In November 1999, the Department of Energy (DOE or the Department), in accordance with the National Environmental Policy Act (NEPA), issued the Surplus Plutonium Disposition Final Environmental Impact Statement (SPD EIS)(DOE/EIS–0283). The SPD EIS was the culmination of a process started on May 22, 1997, when DOE published a Notice of Intent (NOI) in the **Federal Register** (62 FR 28009) announcing its decision to prepare an EIS that would tier from the analysis and decisions reached in connection with the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic EIS (Storage and Disposition PEIS)(DOE/EIS–0229). Accordingly, the Surplus Plutonium Disposition Draft Environmental Impact Statement (SPD Draft EIS) (DOE/EIS–0283–D) was prepared and issued in July 1998. It identified the potential environmental impacts of reasonable alternatives for the proposed siting, construction, and operation of three facilities for the disposition of up to 50 metric tons of surplus plutonium, as well as a No Action Alternative. These three facilities would accomplish pit [1] disassembly and conversion, plutonium conversion and immobilization, and mixed oxide (MOX) [2] fuel fabrication. The SPD Draft EIS also analyzed the potential impacts of fabricating a limited number of MOX fuel assemblies, referred to as lead assemblies, for testing in a reactor before starting full production of MOX fuel, and the potential impacts of examining the lead assemblies after irradiation.

For the alternatives that included MOX fuel fabrication, the SPD Draft EIS described the potential environmental impacts of using from three to eight commercial nuclear reactors to irradiate MOX fuel. The potential impacts were based on a generic reactor analysis included in the Storage and Disposition PEIS that used actual reactor data and a range of potential site conditions. In May 1998, DOE initiated a procurement process to obtain MOX fuel fabrication and reactor irradiation services. In March 1999, DOE awarded a contract to Duke Engineering & Services, COGEMA Inc., and Stone & Webster (known as DCS) to provide the requested services. Full implementation of the base contract was contingent upon the successful completion of the NEPA process. A Supplement to the SPD Draft EIS (DOE/EIS–0283–S) was issued in April 1999, which analyzed the potential environmental impacts of using MOX fuel in six specific reactors named in the DCS proposal. Those reactors are: Catawba Nuclear Station Units 1 and 2 in South Carolina, McGuire Nuclear Station Units 1 and 2 in North Carolina, and North Anna Power Station Units 1 and 2 in Virginia. The SPD Final EIS addresses the comments received during the public review process for the SPD Draft EIS and the Supplement to the draft.

The Department has decided to implement a program to provide for the safe and secure disposition of up to 50 metric tons of surplus plutonium as specified in the Preferred Alternative in the Surplus Plutonium Disposition Final Environmental Impact Statement. The fundamental purpose of the program is to ensure that plutonium produced for nuclear weapons and declared excess to national security needs (now and in the future) is never again used for nuclear weapons. Specifically, the Department has decided to use a hybrid approach for the disposition of surplus plutonium. This approach allows for the immobilization of approximately 17 metric tons of surplus plutonium and the use of up to 33 metric tons of surplus plutonium as MOX fuel. The Department has selected the Savannah River Site in South Carolina as the location for all three disposition facilities. Based upon this selection, the Department will authorize DCS to fully implement the base contract. In addition, the Department has selected the Los Alamos National Laboratory in New Mexico as the location for lead assembly fabrication and Oak Ridge National Laboratory in Tennessee as the site for post-irradiation examination of lead assemblies.

As previously stated in the Storage and Disposition PEIS Record of Decision (62 FR 3014, January 21, 1997), the use of MOX fuel in existing reactors will be undertaken in a manner that is consistent with the United States' policy objective on the irreversibility of the

[1] A nuclear weapon component.

[2] A physical blend of uranium oxide and plutonium oxide.

nuclear disarmament process and the United States' policy discouraging the civilian use of plutonium. To this end, implementing the MOX alternative will include government ownership and control of the MOX fuel fabrication facility at a DOE site, and use of the facility only for the surplus plutonium disposition program. There will be no reprocessing or subsequent reuse of spent MOX fuel. The MOX fuel will be used in a once-through fuel cycle in existing reactors, with appropriate arrangements, including contractual or licensing provisions, limiting use of MOX fuel to surplus plutonium disposition.

**EFFECTIVE DATE:** The decisions set forth in this Record of Decision are effective upon publication of this document, in accordance with DOE's National Environmental Policy Act Implementing Procedures and Guidelines (10 CFR Part 1021) and the Council on Environmental Quality regulations implementing NEPA (40 CFR Parts 1500–1508).

**ADDRESSES:** Copies of the SPD EIS and this Record of Decision may be obtained by placing a call to an answering machine or facsimile machine at a toll free number (1–800–820–5156), or by mailing a request to: Bert Stevenson, NEPA Compliance Officer, Office of Fissile Materials Disposition, U.S. Department of Energy, Post Office Box 23786, Washington, DC 20026–3786.

The full SPD EIS, including the 54-page Summary, and this Record of Decision are available on the Office of Fissile Materials Disposition's web site. The address is http://www.doe-md.com. The full SPD EIS is also available on DOE's NEPA web site at *http://tis.ch.doe.gov/nepa.*

**FOR FURTHER INFORMATION CONTACT:** Questions concerning the plutonium disposition program can be submitted by calling or faxing them to the same toll free number (1–800–820–5156), or by mailing them to Mr. Bert Stevenson at the above address. Comments may also be submitted electronically by using the Office of Fissile Materials Disposition's web site. The address is http://www.doe-md.com.

For general information on the DOE NEPA process, please contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, 202–586–4600 or 1–800–472–2756.

**SUPPLEMENTARY INFORMATION:**

## Background

The United States and Russia are working together to reduce the threat of nuclear weapons proliferation worldwide by disposing of surplus plutonium in a safe, secure, environmentally acceptable and timely manner. Comprehensive disposition actions are needed to ensure that surplus plutonium is converted to proliferation-resistant forms. In September 1993, President Clinton issued the Non-proliferation and Export Control Policy in response to the growing threat of nuclear weapons proliferation. Further, in January 1994, President Clinton and Russia's President Yeltsin issued a Joint Statement Between the United States and Russia on Non-Proliferation of Weapons of Mass Destruction and the Means of Their Delivery. In accordance with these policies and statements, the focus of U.S. non-proliferation efforts is to ensure the safe, secure, long-term storage and disposition of surplus weapons-usable plutonium and highly enriched uranium (HEU). In July 1998, the United States and Russia signed a 5-year agreement to provide the scientific and technical basis for decisions concerning how surplus plutonium will be managed and a statement of principles with the intention of removing approximately 50 metric tons [3] of plutonium from each country's stockpile. The Department is pursuing both the immobilization and mixed oxide (MOX) fuel approaches to surplus plutonium disposition, which include the siting, construction, operation, and deactivation of three facilities at one or two of four DOE candidate sites:

1. A facility for disassembling pits (a weapons component) and converting the recovered plutonium, as well as plutonium metal from other sources, into plutonium dioxide suitable for disposition. Candidate sites for this facility are the Hanford Site (Hanford) near Richland, Washington; Idaho National Engineering and Environmental Laboratory (INEEL) near Idaho Falls, Idaho; the Pantex Plant (Pantex) near Amarillo, Texas; and the Savannah River Site (SRS) near Aiken, South Carolina.

2. A facility for immobilizing surplus plutonium for eventual disposal in a geologic repository pursuant to the Nuclear Waste Policy Act. This facility would include a collocated capability for converting non-pit plutonium materials into plutonium dioxide suitable for immobilization. The immobilization facility would be located at either Hanford or SRS.

3. A MOX fuel fabrication facility for fabricating plutonium dioxide into MOX fuel. Candidate sites for this facility are Hanford, INEEL, Pantex, and SRS. Also part of the proposed action are MOX lead assembly [4] activities at five candidate DOE sites: Argonne National Laboratory—West (ANL–W) at INEEL; Hanford; Lawrence Livermore National Laboratory (LLNL) in Livermore, California; Los Alamos National Laboratory (LANL) near Los Alamos, New Mexico; and SRS. The Department would fabricate a limited number of MOX fuel lead assemblies for testing in reactors before starting full production of MOX fuel under the proposed MOX fuel program. Post-irradiation examination activities would be performed at one of two sites, ANL–W or Oak Ridge National Laboratory (ORNL) in Oak Ridge, Tennessee.

In March 1999, DOE awarded a multi-phase contract to Duke Engineering & Services, COGEMA Inc., and Stone & Webster (collectively known as DCS) for the design, licensing, construction, operation, and eventual deactivation of the MOX fuel fabrication facility and for irradiating the MOX fuel. Full implementation of the base contract was contingent upon the successful completion of the National Environmental Policy Act (NEPA) process. The contract includes future provisions to use MOX fuel in six specific reactors: Catawba Nuclear Station Units 1 and 2 in South Carolina, McGuire Nuclear Station Units 1 and 2 in North Carolina, and North Anna Power Station Units 1 and 2 in Virginia.

DOE is aware that a decision to use surplus plutonium in MOX fuel could be perceived as a change in U.S. civilian fuel cycle policy. In fact, however, such a decision would not represent a change in policy. The United States does not encourage the civilian use of plutonium, and does not itself engage in reprocessing for the purposes of either nuclear explosives or nuclear power generation. Disposition of excess plutonium, regardless of the specific option chosen, will not change this basic fuel cycle policy.

## NEPA Process

### *Surplus Plutonium Disposition Draft EIS*

In December 1996, the Department published the Storage and Disposition PEIS. That PEIS analyzes the potential environmental consequences of alternative strategies for the long-term storage of weapons-usable plutonium and highly enriched uranium and the disposition of weapons-usable

[3] Some materials are already in a final disposition form (*i.e.,* irradiated fuel) and will not require further action before disposal.

[4] A MOX lead assembly is a prototype reactor fuel assembly that contains MOX fuel.

plutonium that has been or may be declared surplus to national security needs.[5] The Record of Decision (ROD) for the Storage and Disposition PEIS, issued on January 14, 1997, outlines DOE's decision to pursue an approach to plutonium disposition that would make surplus weapons-usable plutonium inaccessible and unattractive for weapons use. DOE's disposition strategy, consistent with the Preferred Alternative analyzed in the Storage and Disposition PEIS, allows for both the immobilization of some (and potentially all) of the surplus plutonium, and use of some of the surplus plutonium as MOX fuel in existing domestic, commercial reactors. The disposition of surplus plutonium would also involve disposal of both the immobilized plutonium and the MOX fuel (as spent nuclear fuel) in a potential geologic repository.[6]

On May 22, 1997, DOE published a Notice of Intent (NOI) in the **Federal Register** (FR) announcing its decision to prepare an EIS that would tier from the analysis and decisions reached in connection with the PEIS discussed above. The follow-on EIS, the Surplus Plutonium Disposition Environmental Impact Statement, addresses the extent to which each of the two plutonium disposition approaches (immobilization and MOX) would be implemented, and analyzes candidate sites for plutonium disposition facilities, as well as alternative technologies for immobilization.[7] In July 1998, DOE issued the SPD Draft EIS. That draft included a description of the potential environmental impacts of using from three to eight commercial nuclear reactors to irradiate MOX fuel. The potential impacts were based on a generic reactor analysis presented in the Storage and Disposition PEIS. In March 1999, DOE awarded a contract, contingent on completion of the NEPA process, for MOX fuel fabrication and irradiation services, that identified the specific reactors that would be used to irradiate the MOX fuel. After this contract award, DOE issued a Supplement to the SPD Draft EIS (Supplement) (April 1999) that describes the potential environmental impacts of using MOX fuel at the three proposed reactor sites. These site-specific analyses have been incorporated into the SPD Final EIS.

*Alternatives Considered*

The SPD EIS analyzes the potential environmental impacts associated with implementing pit disassembly and conversion of the recovered plutonium and clean plutonium metal at four candidate sites; conversion and immobilization of plutonium from non-pit sources at two candidate sites, and MOX fuel fabrication activities at four candidate sites. The SPD EIS also evaluates immobilizing plutonium in ceramic or glass forms, and compares the can-in-canister approach with the homogenous ceramic immobilization and vitrification approaches that were evaluated in the Storage and Disposition PEIS. As part of the MOX option, the SPD EIS also evaluates the potential impacts of fabricating MOX fuel lead assemblies (for test irradiation in domestic, commercial nuclear power reactors) at five candidate DOE sites, the impacts of subsequent post-irradiation examination of the lead assemblies at two candidate DOE sites, and the impacts of irradiating MOX fuel in domestic, commercial reactors.

Fifteen surplus plutonium disposition alternatives and the No Action Alternative are evaluated in the SPD EIS. These action alternatives are organized into 11 sets of alternatives, reflecting various combinations of facilities and candidate sites, as well as the use of new or existing buildings.

Each of the 15 alternatives includes a pit conversion facility, but the need for additional facilities in each alternative varies depending on the amount of plutonium to be immobilized. Eleven alternatives involve the hybrid approach of immobilizing 17 metric tons of surplus plutonium and using 33 metric tons for MOX fuel, and therefore require all three facilities. Four alternatives involve immobilizing all 50 metric tons, and therefore include only a pit conversion facility and an immobilization facility. The No Action Alternative does not involve disposition of surplus weapons-usable plutonium, but instead addresses continued storage of the plutonium in accordance with the Storage and Disposition PEIS Record of Decision (ROD), with the exception that DOE is now considering leaving the repackaged surplus pits in Zone 4 at Pantex for long-term storage in lieu of Zone 12 as originally planned.

Immobilization Technology Alternatives

The Storage and Disposition PEIS discusses several immobilization technologies, including the homogenous ceramic and vitrification alternatives that were evaluated in detail, as well as variants of those alternatives, which include the ceramic and glass can-in-canister approaches and a homogenous approach using an adjunct melter. The ROD for the Storage and Disposition PEIS states that DOE would make a determination on the specific technology on the basis of ''the follow-on EIS.'' The SPD EIS is that follow-on EIS, and it identifies the ceramic can-in-canister approach as the preferred immobilization technology.

In order to bound the estimate of potential environmental impacts associated with ceramic and glass immobilization technologies, the Storage and Disposition PEIS analyzes the construction and operation of vitrification and ceramic immobilization facilities that employ a homogenous approach. These facilities are based on generic designs that do not involve the use of existing facilities or specific site locations. These generic designs allow for surplus plutonium to be immobilized in a homogenous form, either within a ceramic matrix and formed into disks, or vitrified as borosilicate glass logs.

In order to support a decision on the immobilization technology and form, the SPD EIS evaluates the potential environmental impacts of the ceramic and glass can-in-canister technologies, and compares those impacts with the impacts of the homogenous facilities evaluated in the Storage and Disposition PEIS. Hanford and SRS are the candidate sites for immobilization based on their existing plans for a high-level waste vitrification facility.

MOX Fuel Fabrication Alternatives

Alternatives that involve the fabrication of MOX fuel include the use of the fuel in existing domestic, commercial nuclear power reactors. The environmental impacts of using MOX fuel in these reactors are evaluated generically in the Storage and Disposition PEIS. When the SPD Draft EIS was published, the specific reactors were not known; therefore, the generic analysis from the Storage and Disposition PEIS was incorporated by reference in the SPD Draft EIS.

In May 1998, DOE initiated a procurement process to obtain MOX fuel fabrication and irradiation services. In compliance with its NEPA regulations in 10 CFR 1021.216, DOE requested that each offeror provide, as

[5] DOE addressed the disposition of surplus highly enriched uranium in a separate environmental impact statement, the Disposition of Surplus Highly Enriched Uranium Final Environmental Impact Statement, issued in June 1996, with the Record of Decision issued in July 1996.

[6] The Nuclear Regulatory Commission has reviewed DOE's plans to phase immobilized material into the potential geologic repository, and has agreed that with adequate canister and package design features, the immobilized plutonium waste forms can be made acceptable for disposal in the repository.

[7] The SPD EIS also analyzes a No Action Alternative, *i.e.,* the possibility of disposition not occurring but, instead, continuing to store surplus plutonium in accordance with the Storage and Disposition PEIS ROD.

part of its proposal, environmental information specific to its proposed MOX facility design and the domestic, commercial reactors proposed to be used for irradiation of the fuel. That information was analyzed by the Department to identify potential environmental impacts of the proposals, and DOE's analysis was documented in an Environmental Critique prepared pursuant to 10 CFR 1021.216(g). That analysis was considered by the selection official as part of the award decision. DOE awarded a contract (contingent on completion of the NEPA process) to the team of Duke Engineering & Services, COGEMA Inc., and Stone & Webster (DCS) in March 1999 to provide the requested services. These services include design, licensing, construction, operation, and eventual deactivation of the MOX fuel fabrication facility, as well as irradiation of the MOX fuel in six domestic, commercial reactors. The reactors proposed by DCS are Duke Power Company's Catawba Nuclear Station, Units 1 and 2; and McGuire Nuclear Station, Units 1 and 2; and Virginia Power Company's North Anna Power Station, Units 1 and 2. Under the contract, no construction, fabrication, or irradiation of MOX fuel is authorized until the SPD EIS ROD is issued. Such site-specific activities, and DOE's exercise of contract options to allow those activities, would be contingent on decisions in this ROD.

Because the Environmental Critique contains proprietary information, it was not made available to the public. However, as provided in 10 CFR 1021.216(h), an Environmental Synopsis of the Environmental Critique was provided to the U.S. Environmental Protection Agency, made available to the public, and incorporated into the SPD EIS. Sections of the SPD EIS were revised or added to include reactor-specific information and were issued as a Supplement to the SPD Draft EIS. A Notice of Availability was published in the **Federal Register** on May 14, 1999 (64 FR 264019), providing a 45-day public comment period on the Supplement.[8] This Supplement was distributed to the local reactor communities, to stakeholders who received the SPD Draft EIS, and others as requested.

Under the hybrid alternatives, DOE could produce up to 10 MOX fuel assemblies for testing in domestic, commercial reactors before commencement of full-scale MOX fuel fabrication, although it is likely that only two lead assemblies would be needed.[9] These lead assemblies would be available for irradiation to support NRC licensing and fuel qualification efforts. Potential impacts of MOX fuel lead assembly fabrication are analyzed for three of the candidate sites for MOX fuel fabrication (Hanford, ANL—W at INEEL, and SRS), and two additional sites, LANL and LLNL. Pantex was not considered for lead assembly fabrication because it does not currently have any facilities capable of MOX fuel fabrication. Post-irradiation examination of the lead assemblies would be conducted, if required, to support NRC licensing activities. Two potential sites for this activity are analyzed in the SPD EIS: ANL—W and Oak Ridge National Laboratory (ORNL). As discussed previously, DOE's preferred locations for lead assembly fabrication and post-irradiation examination are LANL and ORNL, respectively.

The Department also considered a No Action Alternative, as required by NEPA. In the No Action Alternative, surplus weapons-usable plutonium in storage at various DOE sites would remain at those locations. The vast majority of pits would continue to be stored at Pantex, and the remaining plutonium in various forms would continue to be stored at Hanford, INEEL, LLNL, LANL, Rocky Flats Environmental Technology Site (RFETS), and SRS.

*Materials Analyzed*

There are eight general categories used to describe the 50 metric tons of surplus plutonium analyzed in the SPD EIS, which represent the physical and chemical nature of the plutonium. Two of the categories—clean metal (including pits) and clean oxide—could either be fabricated into MOX fuel or immobilized. The remaining six categories of material—impure metals, plutonium alloys, impure oxides, uranium/plutonium oxides, alloy reactor fuel, and oxide reactor fuel—would be immobilized.

**Preferred Alternative**

As previously noted, DOE's Preferred Alternative for the disposition of surplus weapons-usable plutonium is analyzed as Alternative 3 in the SPD Final EIS. The Preferred Alternative encompasses the following:

Pit Disassembly and Conversion at SRS (new construction)

Construct and operate a new pit conversion facility at SRS to disassemble nuclear weapons pits and convert the plutonium metal to a declassified oxide form suitable for international inspection and disposition using either the immobilization or the MOX/reactor approach. SRS is preferred for the pit conversion facility because the site has extensive experience with plutonium processing, and the pit conversion facility would complement existing missions and take advantage of existing infrastructure.

Immobilization at SRS (new construction and the Defense Waste Processing Facility) [10]

Construct and operate a new immobilization facility at SRS using the ceramic can-in-canister technology. This technology would immobilize plutonium in a ceramic form, seal it in cans, and place the cans in canisters filled with borosilicate glass containing intensely radioactive high-level waste at the existing Defense Waste Processing Facility (DWPF). This preferred can-in-canister approach at SRS would complement existing missions, take advantage of existing infrastructure and staff expertise, and enable DOE to use an existing facility (*i.e.,* DWPF).

Implementation of the can-in-canister approach would require the availability of sufficient quantities of high-activity radionuclides from SRS high-level waste to DWPF. Due to problems experienced with the In-Tank Precipitation process for separating high-activity radionuclides from liquid high-level waste, DWPF is currently operating with sludge feed, not liquid high-level waste. A thorough search for alternatives to the In-Tank Precipitation process has identified two viable processes (ion exchange and small tank precipitation) for separating the high-activity fraction from the liquid high-level waste and sending this fraction to DWPF. Extensive laboratory and bench scale testing has been conducted on both of these processes. Test results indicate that either process is capable of separating the high-activity radionuclides from the high-level waste and feeding those radionuclides to DWPF, although further research and development is necessary.[11] DOE is

[8] On June 15, 1999, DOE held a public meeting in Washington, D.C., to receive comments on the Supplement to the SPD Draft EIS.

[9] The potential impacts of fabricating 10 lead assemblies and irradiating 8 of them were analyzed in the SPD EIS. Should fewer lead assemblies than analyzed be fabricated or irradiated, the potential impacts would be less than those described in the SPD EIS.

[10] The Savannah River Site was previously designated to be part of DOE's preferred alternative for immobilization in the Notice of Intent issued in May 1997.

[11] The National Research Council (the Council) is also evaluating a replacement technology for the In-Tank Precipitation process. The Council's study

Continued

preparing a supplemental EIS on the proposed replacement of the In-Tank Precipitation process at SRS (NOI at 64 FR 8558, February 22, 1999). Designation of a preferred process and construction of a pilot scale plant for scale-up of the preferred process are the next steps planned to resolve this issue.

In addition to these alternatives, the Department is analyzing the potential environmental impacts of another action alternative, direct grout, in light of technical and cost considerations. Under the direct grout alternative, the cesium component of the high-activity radionuclides would be entombed in grout rather than remain in the high-activity fraction provided to DWPF for vitrification and eventual disposal in a geologic repository. Therefore, the direct grout alternative would not provide the radiation barrier needed for surplus plutonium disposition using the can-in-canister technology at SRS. However, a DOE waste management requirement (DOE Manual 435.1, Radioactive Waste Management, Section II.B.2) provides that, for direct grout material to be disposed of as now being analyzed, ''key radionuclides would have to be removed to the maximum extent that is technically and economically practical.'' This criterion would not be met in the event that any other action alternative is determined to be viable after further evaluation. Therefore, DOE regards the direct grout alternative as reasonable only if all of the other action alternatives analyzed in the supplemental EIS prove not to be viable.

In summary, although a specific method for providing the high-level waste needed for the can-in-canister immobilization alternatives for surplus plutonium disposition has not been determined, DOE is confident that an acceptable technical solution will be available at SRS. The ceramic can-in-canister approach would involve slightly lower environmental impacts than the homogenous approach. The ceramic can-in-canister approach would involve better performance in a potential geologic repository and provide greater proliferation resistance than the glass can-in-canister approach.

MOX Fuel Fabrication at SRS (new construction)

Construct and operate a new MOX facility at SRS and produce MOX fuel containing surplus weapons-usable plutonium for irradiation in existing domestic, commercial reactors. SRS is preferred for the MOX facility because this activity would complement existing missions and take advantage of existing infrastructure and staff expertise.

Lead Assembly Fabrication at LANL

Based on consideration of the capabilities of the candidate sites and input from the contractor team chosen for the MOX approach, DOE prefers LANL for lead assembly fabrication. LANL is preferred because it already has fuel fabrication facilities that would not require major modifications, and has existing site infrastructure and staff experience. Additionally, the surplus plutonium dioxide needed to fabricate the lead assemblies would already be on site (no transportation required).

Post-Irradiation Examination at ORNL

If post-irradiation examination is necessary for the purpose of qualifying the MOX fuel for commercial reactor use, DOE prefers to perform that task at ORNL. ORNL has the existing facilities and staff expertise needed to perform post-irradiation examination as a matter of its routine activities; no major modifications to facilities or processing capabilities would be required. In addition, ORNL is about 500 kilometers (km) from the reactor site that would irradiate the fuel (one of the reactors located at the McGuire Nuclear Station in North Carolina).

**Environmental Impacts of Preferred Alternative**

Chapter 4 and certain appendices of the SPD Final EIS analyze the potential environmental impacts of the surplus plutonium disposition alternatives in detail. The SPD Final EIS also evaluates the maximum impacts that would result at each of the potential disposition sites. Based on the analyses in the SPD Final EIS, including public comments on the SPD Draft EIS, the areas with impacts of most interest are as follows:

Disposition Facilities During Construction

Socioeconomics At its peak in 2003, construction of the three new surplus plutonium disposition facilities at SRS under this alternative would require 1,968 construction workers and should generate another 1,580 indirect jobs in the region. As the total employment increase of 3,548 direct and indirect jobs represents only 1.3 percent of the projected regional economic area (REA) workforce, it should have no major impact on the REA. Moreover, construction under the Preferred Alternative should have little impact on the community services currently offered in the region of influence. In fact, it should help offset the 20 percent reduction in SRS's total workforce otherwise projected for the years 1997–2005.

*Facility Accidents.* The construction of new surplus plutonium disposition facilities at SRS could result in worker injuries or fatalities. DOE-required industrial safety programs would be in place to control the risks. Given the estimated 6,166 person-years of construction labor and standard industrial accident rates, approximately 610 cases of nonfatal occupational injury or illness and less than one fatality could be expected. As all construction would be in non-radiological areas, no radiological accidents should occur.

*Cultural Resources.* During conduct of the cultural resources impacts analysis for the Preferred Alternative, it was determined that construction of surplus plutonium disposition facilities at SRS could produce impacts on archaeological resources requiring mitigation. Archaeological investigations performed for the surplus plutonium disposition program discovered five archaeological sites in the proposed construction area. At least two of these sites have been recommended by DOE to the South Carolina State Historic Preservation Officer (SHPO) as eligible for nomination to the National Register of Historic Places. It appears that these sites were occupied during several different prehistoric periods, including the Late Woodland (A.D. 800–1000) and Mississippian (A.D. 1000–1600) Periods. These periods are poorly understood in the Central Savannah River Area. Therefore, these sites could contribute significantly to a better understanding of the Late Woodland and Mississippian Periods in this part of North America. Potential adverse impacts on these sites could be mitigated through either avoidance or data recovery. DOE currently plans to mitigate impacts by avoiding these sites.

Disposition Facilities During Operations

*Socioeconomics.* After construction, startup, and testing of the new SRS facilities in 2007, an estimated 1,120 new workers would be required to operate them. This level of employment should generate an additional 2,003 indirect jobs in the region. As the total employment requirement of 3,123 direct and indirect jobs represents 1 percent of the projected REA, it should have no major impact on the REA. Moreover, these jobs would have little impact on community services currently offered in

committee issued an interim report in October 1999. This committee recommends further research and development for the ion exchange and small tank precipitation alternatives, and for caustic side solvent extraction, a third process that would separate high-activity radionuclides that could be sent to DWPF.

the region of influence. In fact, they should help offset the reduction in SRS's total workforce otherwise projected for the years 1997–2010 of 33 percent.

*Facility Accidents* (Impact to the public and workers). The most severe consequences of a design basis accident for the pit conversion facility would be associated with a tritium release; the most severe consequences for the immobilization and MOX facilities would be from a nuclear criticality. Bounding radiological consequences for the Maximally Exposed Individual (MEI)[12] are from the tritium release, which would result in a dose of 0.028 rem, corresponding to a latent cancer fatality (LCF) probability of $1.4\times10^{-5}$. A nuclear criticality of $10^{19}$ fissions would result in an MEI dose of 0.0016 rem from an accident at the immobilization facility and 0.016 rem from an accident at the MOX facility. Consequences of the tritium release accident for the general population in the environs of SRS would include an estimated 0.050 LCF. The frequency of either a tritium release or a criticality accident is estimated to be between 1 in 10,000 and 1 in 1,000,000 per year.

The combined radiological effects from total collapse of all three facilities in the beyond-design-basis earthquake would be approximately 18 LCFs. It should be emphasized that a seismic event of sufficient magnitude to collapse these facilities would likely cause the collapse of other DOE facilities, and would almost certainly cause widespread failure of homes, office buildings, and other structures in the surrounding area. The overall impact of such an event must therefore be seen in the context not only of the potential radiological impacts of these other facilities, but of hundreds, possibly thousands, of immediate fatalities from falling debris. The frequency of such an earthquake is estimated to be between 1 in 100,000 and 1 in 10,000,000 per year.

Surplus plutonium disposition operations at SRS could result in worker injuries and fatalities. DOE-required industrial safety programs would be in place to control the risks. Given the estimated employment of 11,535 person-years of labor and the standard DOE occupational accident rates, approximately 420 cases of nonfatal occupational injury or illness and 0.31 fatality could be expected for the duration of operations. If a criticality occurred, workers within tens of meters could receive very high to fatal radiation exposures from the initial burst. The dose would strongly depend on the magnitude of the criticality, the distance from the criticality, and the amount of shielding provided by the structures and equipment between the workers and the accident.

*Transportation.* In all, approximately 2,500 shipments of radioactive materials would be carried out by DOE under the Preferred Alternative. The total distance traveled on public roads by trucks carrying radioactive materials would be 4.3 million kilometers.

The maximum foreseeable offsite transportation accident under this alternative (probability of occurrence: greater than 1 in 10 million per year) is a shipment of plutonium pits from one of DOE's storage locations to the pit conversion facility with a most severe (severity category VIII) accident in a rural population zone under neutral (average) weather conditions. If this accident were to occur, it could result in a dose of 87 person-rem to the public for an LCF risk of 0.044 and 96 rem to the hypothetical MEI for an LCF risk of 0.096. (The MEI, a hypothetical member of the general public, receives a larger dose than the public as a whole because it is unlikely that a person would be in position, and remain in position, to receive this hypothetical maximum dose.) No fatalities would be expected to occur. The probability of more severe accidents—*e.g.,* less favorable weather conditions at the time of accident, or occurrence in a more densely populated area'was also evaluated, and estimated as lower than 1 chance in 10 million per year.

The total transportation accident risk was estimated by summing the risks (which takes account of both the probability and consequence of each type of accident) to the affected population from all hypothetical accidents. For the Preferred Alternative, that risk is as follows: a radiological dose to the population of 7 person-rem, resulting in a total population risk of 0.004 LCF; and traffic accidents resulting in 0.053 traffic fatality.

## Irradiating MOX Fuel at Reactor Sites[13]

The environmental impacts described below are based on using a partial MOX core (*i.e.,* up to 40 percent MOX fuel) instead of a low enriched uranium (LEU) core at the Catawba Nuclear Station near York, South Carolina; the McGuire Nuclear Station near Huntersville, North Carolina; and the North Anna Power Station near Mineral, Virginia.

*Reactor Accidents.* There are differences in the expected risk of reactor accidents from the use of MOX fuel compared to the use of low enriched uranium fuel. The change in consequences to the surrounding population due to the use of MOX fuel is estimated to range from $9.0\times10^{-4}$ fewer to $6.0\times10^{-2}$ additional LCFs for design basis accidents, and from 7.0 fewer to 1,300 additional LCFs for beyond-design-basis accidents (16,900 versus 15,600 LCFs in the worst accident analyzed). Also, some of the beyond-design-basis accidents could result in prompt fatalities should they occur. The estimated increase in prompt fatalities due to MOX fuel being used during one of these accidents would range from no change to 28 additional fatalities (843 versus 815 prompt fatalities). As a result of these changes in projected consequences, there would be a change in the risk to the public associated with these accidents. The change in risk (in terms of an LCF or prompt fatality) to the surrounding population within 80 km (50 mi) of the proposed reactors is projected to range from a decrease of 6 percent to an increase of 3 percent in the risk of additional LCFs from design basis accidents, and from a decrease of 4 percent to an increase of 14 percent in the risk of additional prompt fatalities and LCFs from beyond-design-basis accidents.

The risk to the MEI would also change with the use of MOX fuel. Using MOX fuel during one of the design basis accidents evaluated is expected to change the MEI's chance of incurring an LCF from a decrease of 10 percent to an increase of 3 percent. The change in risk to the MEI of a prompt fatality or LCF as a result of using MOX fuel during one of the beyond-design-basis accidents evaluated is expected to range from a 1 percent increase to a 22 percent increase. In the most severe accident evaluated, an interfacing systems loss-of-coolant accident (ISLOCA), it is projected that the MEI would receive a fatal dose of radiation regardless of whether the reactor was using MOX fuel or LEU fuel at all of the proposed sites.

Beyond-design-basis accidents, if they were to occur, would be expected to result in major impacts to the reactors and the surrounding communities and environment, regardless of whether the

[12] The MEI is the hypothetical off-site person who has the highest exposure. This individual is assumed to be located at the point of maximum concentration of contaminants 24 hours a day, 7 days a week, for the period of operations under analysis.

[13] The operators of the proposed reactors have indicated that little or no new construction would be needed to support the irradiation of MOX fuel at the sites. As a result, land use; visual, cultural, and paleontological resources; geology and soils; and site infrastructure would not be affected by any new construction or other activities related to MOX fuel use. Nor would there be any effect on air quality and noise, ecological and water resources, or socioeconomics.

reactor were using an LEU or partial MOX core. However, there is less than one chance in a million per year that a beyond-design-basis accident would actually happen, so the risk from these accidents is estimated to be low.

Lead Assembly and Post-Irradiation Examination Activities

The analysis of the potential impacts of conducting the lead assembly activities and post-irradiation examination indicates that little or no new construction or operational changes would be needed to support these activities. As a result, land use; visual, cultural, and paleontological resources; geology and soils; and site infrastructure would not be affected by any new construction or other activities related to lead assembly fabrication or post-irradiation examination. Nor would there be any effect on air quality and noise, ecological and water resources, or socioeconomics.

**Avoidance and Minimization of Environmental Harm**

For the Preferred Alternative, at SRS, storm water management and erosion control measures will be employed during construction of the disposition facilities. Cultural resources impacts will be mitigated either by avoidance or data recovery. Initial indications are the disposition facilities can be located in an area that will avoid disturbing known cultural resource areas.

During operation of the disposition facilities, radiation doses to individual workers will be kept at a minimum by maintaining comprehensive badged monitoring and ''as low as reasonably achievable'' (ALARA) programs during worker rotations. The storage facilities in the disposition buildings will be designed and operated in accordance with contemporary DOE orders and/or NRC regulations to reduce risks to workers and the public.

From a non-proliferation standpoint, the highest standards for safeguards and security will be employed during transportation, storage (*i.e.,* the stored weapons standard [14]) and disposition. DOE will coordinate the transport of surplus plutonium and fresh MOX fuel with State officials, consistent with contemporary policy. Although the actual routes will be classified, they will be selected to circumvent populated areas where ever possible, maximize the use of interstate highways, and avoid bad weather. DOE will coordinate emergency preparedness plans and responses with involved states through liaison programs. The packaging, vehicles, and transport procedures being used are specifically designed and tested to prevent radiological release under all credible accident scenarios. The NRC regulates safeguards and security at facilities it licenses commensurate with the type of facility and type and amount of fissile or radioactive material present. Commercial nuclear power reactors have stringent regulations to prevent sabotage or diversion of special nuclear materials. Physical protection and safeguards and security will be ensured at the reactor sites by continued implementation of NRC requirements.

**Environmentally Preferable Alternatives**

The environmentally preferable alternative is the No Action Alternative. Under this alternative, surplus weapons-usable plutonium materials in storage at various DOE sites would remain at those locations. The vast majority of pits would continue to be stored at Pantex, and the remaining plutonium in various forms would continue to be stored at Hanford, INEEL, LLNL, LANL, RFETS, and SRS. The No Action Alternative would not satisfy the purpose and need for the proposed action because DOE's disposition decisions in the Storage and Disposition PEIS ROD would not be implemented. That ROD announced that, consistent with the Preferred Alternative in the Storage and Disposition PEIS, DOE had decided to reduce, over time, the number of locations where the various forms of plutonium are stored, through a combination of storage and disposition alternatives. Implementation of much of this decision requires the movement of surplus materials to disposition facility locations. Without disposition facilities, only pits that have been moved from RFETS to Pantex would be relocated in accordance with the Storage and Disposition PEIS ROD. All other surplus materials would continue to be stored indefinitely at their current locations, with the exception that DOE is considering leaving the repackaged surplus pits in Zone 4 at Pantex for long-term storage instead of zone 12 as originally planned. An appropriate environmental review will be conducted when the specific proposal for this change has been determined (*e.g.,* whether additional magazines need to be air-conditioned). The analysis in the SPD EIS assumes that the surplus pits are stored in Zone 12 in accordance with the ROD for the Storage and Disposition PEIS.

Among the ''action'' alternatives analyzed in the SPD EIS, the environmentally preferable action alternative is the 50–Metric-Ton Immobilization Alternative with the Immobilization and Pit Conversion facilities located at SRS. This alternative would involve immobilizing all 50 metric tons of surplus plutonium at SRS. Under this alternative, only two facilities, the pit conversion facility and the immobilization facility, would be needed to accomplish the surplus plutonium disposition mission. Both the pit conversion and immobilization facilities would be new construction near the area currently designated for the Actinide Packaging and Storage Facility in F-Area. In addition, the canister receipt area at DWPF in S-Area would be modified to accommodate receipt and processing of the canisters transferred from the immobilization facility for filling with vitrified high-level waste. The pit conversion and immobilization facilities would be the same as those described for the Preferred Alternative, except that all the plutonium dioxide produced in the pit conversion facility would be transferred to the immobilization facility. To accommodate the additional 33 metric tons of plutonium that would be received from the pit conversion facility, the immobilization facility would be operated at a higher throughput (5 metric tons per year rather than 1.7 metric tons per year), and the operating workforce at the immobilization facility would be increased.

**Comparison of Preferred Alternative to Other Alternatives**

The Preferred Alternative requires the construction and operation of three new facilities; some minor modifications to, and work at, two existing DOE facilities; and use of existing domestic, commercial nuclear reactors for MOX fuel irradiation. The other hybrid alternatives would require the same facilities and activities; the immobilization-only alternatives would require the construction and operation of only two facilities. The environmentally preferable alternative, which is the No Action Alternative, does not involve construction or operation of any facilities, or use of new or existing facilities, other than those currently in use for the continued storage of the surplus plutonium. Furthermore, no transportation would be involved for the No Action

[14] The ''Stored Weapons Standard'' for weapons-usable fissile materials storage was initially defined in Management and Disposition of Excess Weapons Plutonium, National Academy of Sciences, 1994. DOE defines the Stored Weapons Standard as follows: The high standards of security and accounting for the storage of intact nuclear weapons should be maintained, to the extent practical, for weapons-usable fissile materials throughout dismantlement, storage, and disposition.

Alternative, and continued storage under this alternative would not affect any key environmental resource area at any of the seven storage locations. However, there would be doses to workers and the general population (and associated health effects) throughout the storage period at all of these locations. At SRS, the health effects from 50 years of storage under the No Action Alternative would be lower than those associated with implementation of the Preferred Alternative. Nonetheless, the Preferred Alternative would still contribute to the dose and associated health effects at locations where supporting activities like lead assembly fabrication and post-irradiation examination would occur.

The environmentally preferable action alternative, which is an immobilization-only alternative, would require the construction and operation of two, rather than three, facilities. For all of the key environmental resource areas except transportation and worker dose, the potential impacts of the Preferred Alternative are greater than for the environmentally preferable action alternative, although for most of the resource areas, the difference is less than 20 percent. The estimated LCFs and traffic fatalities are higher for the environmentally preferable action alternative, although both are well below one LCF. Worker dose is the same for both the preferred and the environmentally preferable action alternatives.

Relative ranking of the Preferred Alternative to other action alternatives varies by resource area. For all alternatives evaluated in the SPD EIS, the incremental concentrations of criteria air pollutant concentrations would be less than 2 percent of the applicable regulatory standard. The relative ranking of Preferred Alternative to the other action alternatives varies with the specific pollutant; for some, the Preferred Alternative ranks higher, for others, lower. The Preferred Alternative produces more, by approximately 5 to 25 percent, regulated waste than any of the other action alternatives.

All of the action alternatives would generate employment opportunities at each of the proposed facilities. In general, the Preferred Alternative requires the greatest number of construction and operation workers of all the action alternatives. However, for one alternative, approximately 5 percent more construction workers would be needed. The amount of land that would be disturbed for implementing any of the alternatives is relatively small. The Preferred Alternative requires the most land disturbance, and could potentially affect cultural resource areas at SRS. However, as previously discussed in this ROD, DOE currently plans to mitigate impacts by avoiding sites that are eligible or potentially eligible for the National Register of Historic Places. SRS is the only candidate site at which cultural resource issues involving the proposed action have been identified. The action alternative with the least amount of land disturbance uses existing facilities at Hanford.

Because of the location of the proposed facilities relative to other activities at the sites, radiation doses would be received by construction workers at both INEEL and SRS. Doses to workers from construction and operation activities for each of the action alternatives could result in approximately 2.0 LCFs, with essentially no difference among any of the alternatives. There will be no dose (and therefore, no LCFs) to the general population for any of the action alternatives during construction of the proposed facilities. Although there is a small population dose associated with each of the action alternatives, no LCFs are expected to occur in the general population from routine operations for any of the alternatives. The most severe nonreactor design basis accident postulated for the Preferred Alternative, and all but one other action alternative, is a design basis fire in the pit conversion facility resulting in a tritium release. The resulting dose is highest for the Preferred Alternative, however, the associated dose would not be expected to result in any LCFs in the general population. None of the action alternatives is expected to result in traffic fatalities from nonradiological accidents or LCFs from radiological exposures or vehicle emissions. Impacts estimated for routine operations and postulated accidents at the reactor sites would be identical for all the hybrid alternatives.

**Comments on Surplus Plutonium Disposition Final EIS**

After issuing the SPD Final EIS, the Department received two letters. All of the issues raised in these letters have been covered in the body of the SPD Final EIS and in the Comment Response Document. The first letter contained a single comment requesting that the decision on a location for the lead assembly work retain the flexibility to allow doing the work at SRS. Based on consideration of the capabilities of the candidate sites and input from the team chosen for the MOX approach, the Department has decided to use LANL for fabrication of MOX fuel rods for use in fabrication of lead assemblies. LANL was selected because it already has facilities that will not require major modifications for fuel rod fabrication, and takes advantage of existing infrastructure and staff experience. Additionally, the surplus plutonium dioxide needed to fabricate the MOX fuel rods for lead assemblies will already be on site.

The second letter contained numerous comments that opposed the use of MOX fuel in commercial power reactors. The commentor believes that the selection process of DCS and the commercial reactors was not opened to sufficient public scrutiny. The commentor repeated an earlier request that the Department hold additional public meetings in the vicinity of the three reactor sites before closing the public comment period, and that all information on the MOX project, including data submitted by DCS, DOE's Environmental Critique, and ORNL's data on expected radionuclide activities in MOX fuel, be made available to the public. During the public comment period on the Supplement to the SPD Draft EIS, which included specific reactor analyses, DOE held a public hearing in Washington, D.C., on June 15, 1999, and invited comments. While no additional hearings were held on the Supplement, other means were provided for the public to express their concerns and provide comments: mail; a toll-free telephone and fax line; and the Office of Fissile Materials Disposition Web-site. Also, at the invitation of South Carolina State Senator Phil Leventis, DOE attended and participated in a public hearing held on June 24, 1999, in Columbia, South Carolina.

Most of the information in DOE's Environmental Critique was included in the Environmental Synopsis released for public review; only proprietary and business-sensitive information was removed. The Duke, COGEMA, and Stone & Webster (DCS) team provided DOE with analyses of the environmental and computer modeling data, and population projections, but not the input data. The ratio of low-enriched uranium fuel to MOX fuel, provided by the Oak Ridge National Laboratory, is contained in the SPD Final EIS. Because the accident calculations are voluminous, they are not included in the SPD EIS. The calculations contain all of the input parameters including the MACCS2 computer files. Principal input parameters, such as accident source terms and population distributions, are included in the EIS.

The same commentor expressed concern that experience with the use of MOX fuel in the United States, as well

as internationally, is limited. The fabrication of MOX fuel and its use in commercial reactors has been accomplished in Western Europe. DOE would draw upon this experience in its disposition of the U.S. surplus plutonium. Electricite de France reactors in France have seen little or no impact from the use of MOX fuel on radionuclide releases in effluents. No change would be expected from normal operations, given that MOX fuel performs as well as LEU fuel and the fission products are retained within the fuel cladding. FRAGEMA's (a subsidiary of COGEMA and FRAMATOME) experience with fabricating MOX fuel indicates a fuel rod fission product leak rate of less than one-tenth of 1 percent. FRAGEMA has provided 1,253 MOX fuel assemblies, containing more than 300,000 fuel rods, for commercial reactor use. There have been no failures and leaks have occurred in only 3 assemblies (a total of 4 rods). All leaks occurred as a result of debris in the reactor coolant system and occurred in 1997 or earlier. French requirements for debris removal were changed in 1997 to alleviate these concerns. Since that time, there have been no leaks in MOX fuel rods. Further, as discussed in response DCR009–1 of the Comment Response Document, NRC would evaluate license applications and monitor the operations of the commercial reactors to ensure adequate margins of safety.

The commentor was also concerned that human and technical errors may lead to safety hazards at the reactors if MOX fuel is used. Particular safety issues were identified at McGuire, North Anna and Catawba (*e.g.,* ice condenser problems and corrosion of service water pipes and auxiliary feedwater pipes). While the Department acknowledges that there are differences in the use of MOX fuel compared to LEU fuel, these differences are not expected to decrease the safety of the reactors. NRC has not considered it necessary to restrict operation of any of the other reactors in the United States that use ice condenser containments. All of the factors discussed by the commentor were evaluated by the proposed reactor licensees to ensure that the reactors, including those with ice condensers, can continue to operate safely using MOX fuel, and these factors will continue to be evaluated. Before any MOX fuel is used in the United States, NRC would have to perform a comprehensive safety review that would include information prepared by the reactor plant operators as part of their license amendment applications.

Another issue raised by the same comentor concerned the stability of plutonium compared to uranium and the alleged reduction in the ability to control the chain reaction when plutonium is added to the reactor in the form of MOX fuel. Differences between MOX fuel and uranium fuel are well characterized and can be accommodated through fuel and core design. All of the factors discussed by the commentor were evaluated by the proposed reactor licensees to ensure that the reactors can continue to operate safely using MOX fuel and will continue to be evaluated. Initial evaluations indicate that partial MOX fuel cores have a more negative fuel Doppler coefficient at hot zero power and hot full power, relative to LEU fuel cores for all times during the full cycle. These evaluations also indicate that partial MOX cores have a more negative moderator coefficient at hot zero power and hot full power, relative to LEU fuel cores for all times during the full cycle. These more negative temperature coefficients would act to shut the reactor down more rapidly during a heatup transient.

The commentor expressed concern that higher energy neutrons from plutonium are more likely to strike reactor parts such as the stainless steel containment vessel and degrade the metal parts of the reactor, resulting in embrittlement problems. Reactor vessel embrittlement is a condition in which the fast neutron fluence from the reactor core reduces the toughness (fracture resistance) of the reactor vessel metal. Analyses performed for the Department indicate that the core average fast flux in a partial MOX fuel core is comparable, within 3 percent, to the core average fast flux for a uranium fuel core. All of the reactors identified for the MOX mission have a comprehensive program of reactor vessel analysis and surveillance in place to ensure that NRC reactor vessel safety limits are not exceeded.

The commentor was also concerned that the use of MOX fuel would result in additional harmful radiation exposure to the public during a failure of the reactor containment structure. The commentor noted a study by the Nuclear Control Institute estimating that the risk to the public near McGuire or Catawba of contracting a deadly cancer following a severe accident will increase by nearly 40 percent when the plants start using plutonium fuel. DOE believes NCI's analysis overestimates the risk of using MOX fuel for two reasons. NCI's analysis did not account for the plutonium polishing step which has been added to the MOX fuel fabrication process. This step eliminates nearly all of the americium from fresh MOX fuel, which significantly reduces the actinide inventory. In addition, NCI performed a generic reactor analysis while DOE performed plant specific analyses.

Analyses of a 40 percent weapons-grade MOX core indicate there would be approximately two times more americium-241 and plutonium-239, and slightly less than one and a half times the curium-242 than a reactor using LEU fuel. There are differences in the expected risk of reactor accidents from the use of MOX fuel. Some accidents would be expected to result in lower consequences to the surrounding population, and lower risks, while others would be expected to result in higher consequences and higher risks. There is an increase in risk, about 3 percent, for the large-break loss-of-coolant accident (the bounding design basis accident). The largest increase in risk for beyond-design-basis accidents is approximately 14 percent for an interfacing systems loss-of-coolant accident at North Anna. In the unlikely event that this beyond-design-basis accident were to occur, the expected number of LCFs would increase from 2,980 to 3,390 with a partial MOX core and prompt fatalities would increase from 54 to 60. Both of these accidents have an extremely low probability of occurrence. At North Anna, the likelihood of a large-break loss-of-coolant accident occurring is estimated at 1 chance in 48,000 per year and the likelihood of an interfacing systems loss-of-coolant accident occurring is estimated at 1 chance in 4.2 million per year.

Another issue raised by the commentor concerned timely and adequate emergency response to a MOX fuel accident due to limited resources of volunteer first responders. The subject of emergency response and subsequent cleanup of an accident that involves the release of nuclear materials is a topic of continuing discussion and planning between DOE and State, local, and tribal officials. Prior to any shipment of hazardous material, a transportation plan will be developed which includes details of emergency preparedness, security, and coordination of DOE with local emergency response authorities. Any additional training or equipment needed would be provided as part of the planning process. In addition, DOE maintains eight regional coordinating offices across the country, staffed 24 hours per day, 365 days per year to offer advice and assistance. Radiological Assistance Program teams are available to provide field monitoring, sampling, decontamination, communication, and other services.

As described in Appendix L of the SPD EIS, DOE anticipates that transportation required for the disposition of surplus plutonium would be done through DOE's Safe Secure Transport system. Since the establishment of the DOE Transportation Safeguards Division in 1975, the Safe Secure Transport system has transported DOE-owned cargo over more than 151 million kilometers (91 million miles) with no accidents causing a fatality or release of radioactive material.

**Other Considerations**

*Cost Reports*

To assist in the preparation of this ROD, DOE's Office of Fissile Materials Disposition prepared two cost reports. The first is Cost Analysis in Support of Site Selection for Surplus Weapons-Usable Plutonium Disposition (DOE/MD–0009; July 1998). This report provides site-specific cost information and analyses to support the selection of a preferred siting alternative for the alternatives considered in the SPD EIS. The second report is Plutonium Disposition Life Cycle Costs and Cost-Related Comment Resolution Document (DOE/MD–0013; November 1999). This report provides full life cycle costs for the Preferred Alternative as stated in the SPD EIS. It also contains the Department's responses to cost related comments submitted during the public review of the SPD Draft EIS.

Cost Analysis in Support of Site Selection

The summary costs listed below do not include the costs that would be the same, independent of where the facility is sited. Therefore, the costs are not full life cycle costs. The costs are presented in constant year 1997 dollars. Cost estimates for each of the required disposition facilities (Pit Disassembly and Conversion; MOX Fuel Fabrication; and Immobilization), including the additional supporting infrastructure, were created for each candidate site and were aggregated into two cost categories (1) design and construction and (2) operational. The cost estimates are considered to have an accuracy of plus or minus 40 percent for design, construction, and decommissioning, and an accuracy of plus or minus 20 percent for operations.

*Hybrid Alternatives (Alternatives 2 through 10 in the SPD EIS).* The estimated costs to design and construct the required facilities range from $1.21 billion to $1.40 billion, and estimated operational costs range from $1.40 billion to $1.58 billion. The total costs for the hybrid alternatives range from $2.67 billion to $2.93 billion. The total cost of the hybrid alternatives would be reduced by the value of the MOX fuel provided to the participating reactors; at the time of this estimate the total cost after credit for the ''fuel offset'' was $1.71 billion to $2.01 billion.[15]

*Immobilization-Only Alternatives (Alternatives 11 and 12 in the SPD EIS).* The estimated costs to design and construct the required facilities range from $0.73 billion to $0.89 billion and the operational costs range from $0.97 billion to $1.0 billion. The Immobilization Only Alternatives range from $1.71 billion to $1.90 billion. The cost of the alternatives differ by approximately ten percent, well within the uncertainty of the cost estimates.

Life Cycle Cost for the Preferred Alternative

The summary cost listed below is the cost for the Preferred Alternative. The cost includes the cost of siting, construction, and operation of plutonium disposition facilities at DOE's Savannah River Site, as well as the cost associated with the irradiation of the MOX fuel in commercial reactors. In addition, the cost includes such costs as sunk (already spent) funds, and costs for developing and demonstrating the plutonium disposition technologies, transporting the plutonium and plutonium disposition products, start-up and deactivation and decommissioning of the three facilities. The costs are based upon the Cost Analysis in Support of Site Selection for Surplus Weapons-Usable Plutonium Disposition, DOE/MD–0009, July 22, 1998.

The total cost of implementing the Preferred Alternative is estimated to be $4.07 billion in constant year 2000 dollars. The increase in cost over the 1998 estimate is primarily attributable to addition of life cycle costs specifically omitted from the 1998 cost report, technical program changes, specifically the increased size of the immobilization facility and the addition of the polishing step to the MOX fuel fabrication process, plus other cost changes (*e.g.,* inflation).

*Nonproliferation Assessment*

To assist in the development of this ROD, DOE's Office of Arms Control and Nonproliferation, with support from the Office of Fissile Materials Disposition, prepared a report, Nonproliferation and Arms Control Assessment of Weapons-Usable Fissile Material Storage and Plutonium Disposition Alternatives (DOE/NN–0007, January 1997). The report was issued in draft form in October 1996, and following a public comment period, was issued in final form in January 1997. It analyzes the nonproliferation and arms reduction implications of the alternatives for storage of plutonium and HEU, and disposition of excess plutonium. It is based in part on a Proliferation Vulnerability Red Team Report (SAND97–8203. UC–700, October 1996) prepared for the Office of Fissile Materials Disposition by Sandia National Laboratory. The assessment describes the benefits and risks associated with each option. Some of the ''options'' and ''alternatives'' discussed in the Nonproliferation Assessment are listed as ''variants'' (such as can-in-canister) in the Storage and Disposition Final PEIS. The following paragraphs discuss key conclusions of the report, as modified to meet current conditions.

Disposition of U.S. Excess Plutonium

Each of the alternatives for disposition of excess weapons plutonium that meets the Spent Fuel Standard [16] would, if implemented appropriately, offer major nonproliferation and arms reduction benefits compared to leaving the material in storage in directly weapons-usable form. Taking into account the likely impact on Russian disposition activities, the no-action alternative appears to be by far the least desirable of the plutonium disposition options from a non-proliferation and arms reduction perspective.

Carrying out disposition of excess U.S. weapons plutonium, using alternatives that ensured effective non-proliferation controls and resulted in forms meeting the Spent Fuel Standard, would:

- Reduce the likelihood that current arms reductions would be reversed, by significantly increasing the difficulty, cost, and observability of returning this plutonium to weapons;
- Increase international confidence in the arms reduction process,

[15] The MOX Fuel Fabrication Facility would produce nuclear fuel that will displace LEU fuel that utilities would otherwise purchase. The value of this fuel, deemed the MOX fuel offset, is estimated to be $920 million.

[16] ''Spent Fuel Standard'' is a term coined by the National Academy of Sciences (NAS, 1994, Management and Disposition of Excess Weapons Plutonium, National Academy Press, Washington, D.C., pg 12) and modified by DOE (glossary from Office of Fissile Materials Disposition web site at *http://www.doe-md.com)* denoting the main objective of alternatives for the disposition of surplus plutonium: that such plutonium be made roughly as inaccessible and unattractive for weapons use as the much larger and growing stock of plutonium in civilian spent fuel.

strengthening political support for the non-proliferation regime and providing a base for additional arms reductions, if desired;

• Reduce long-term proliferation risks posed by this material by further helping to ensure that weapons-usable material does not fall into the hands of rogue states or terrorist groups; and

• Lay the essential foundation for parallel disposition of excess Russian plutonium, reducing the risks that Russia might threaten U.S. security by rebuilding its Cold War nuclear weapons arsenal, or that this material might be stolen for use by potential proliferators.

Choosing the ''no-action alternative'' of leaving U.S. excess plutonium in storage in weapons-usable form indefinitely, rather than carrying out disposition:

• Would represent a clear reversal of the U.S. position seeking to reduce excess stockpiles of weapons-usable materials worldwide;

• Would make it impossible to achieve disposition of Russian excess plutonium;

• Could undermine international political support for non-proliferation efforts by leaving open the question of whether the United States was maintaining an option for rapid reversal of current arms reductions; and

• Could undermine progress in nuclear arms reductions.

The benefits of placing U.S. excess plutonium under international monitoring and then transforming it into forms that met the Spent Fuel Standard would be greatly increased, and the risks of these steps significantly decreased, if Russia took comparable steps with its own excess plutonium on a parallel track. The two countries need not use the same plutonium disposition technologies. However, as the 1994 NAS committee report concluded, options for disposition of U.S. excess weapons plutonium will provide maximum nonproliferation and arms control benefits if they:

• Minimize the time during which the excess plutonium is stored in forms readily usable for nuclear weapons;

• Preserve material safeguards and security during the disposition process, seeking to maintain to the extent possible the same high standards of security and accounting applied to stored nuclear weapons (the Stored Weapons Standard);

• Result in a form in which the plutonium would be as inaccessible and unattractive for weapons use as the larger and growing quantity of plutonium in commercial spent fuel (the Spent Fuel Standard).

In order to achieve the benefits of plutonium disposition as rapidly as possible, and to minimize the risks and negative signals resulting from leaving the excess plutonium in storage, it is important for disposition options to begin, and to complete the mission as soon as practicable, taking into account non-proliferation, environment, safety, and health, and economic constraints. Timing should be a key criterion in judging disposition alternatives. Beginning the disposition quickly is particularly important to establishing the credibility of the process, domestically and internationally.

Each of the alternatives under consideration for plutonium disposition:

• Has its own advantages and disadvantages with respect to non-proliferation and arms control, but none is clearly superior to the others;

• Can potentially provide high levels of security and safeguards for nuclear materials during the disposition process, mitigating the risk of theft of nuclear materials; and

• Can potentially provide for effective international monitoring of the disposition process.

Plutonium disposition can only reduce, not eliminate, the security risks posed by the existence of excess plutonium, and will involve some risks of its own. Because all plutonium disposition alternatives would take decades to complete, disposition is not a near-term solution to the problem of nuclear theft and smuggling. While disposition will make a long-term contribution, the near-term problem must be addressed through programs to improve security and safeguarding for nuclear materials, and to ensure adequate police, customs, and intelligence capabilities to interdict nuclear smuggling. All plutonium disposition alternatives under consideration would involve processing and transport of plutonium, which will involve more risk of theft in the short term than if the material had remained in heavily guarded storage, in return for the long-term benefit of converting the material to more proliferation-resistant forms.

Both the United States and Russia will still retain substantial stockpiles of nuclear weapons and weapons-usable fissile materials after disposition of the fissile materials currently considered excess is complete. These weapons and materials will continue to pose a security challenge regardless of what is done with excess plutonium. None of the disposition alternatives under consideration would make it impossible to recover the plutonium for use in nuclear weapons, or make it impossible to use other plutonium to rebuild a nuclear arsenal. Therefore, disposition will only reduce, not eliminate, the risk of reversal of current nuclear arms reductions. A United States decision to choose reactor alternatives for plutonium disposition could offer additional arguments and justifications to those advocating plutonium reprocessing and recycle in other countries. This could increase the proliferation risk if it in fact led to significant additional separation and handling of weapons-usable plutonium. On the other hand, if appropriately implemented, plutonium disposition might also offer an opportunity to develop improved procedures and technologies for protecting and safeguarding plutonium, which could reduce proliferation risks and would strengthen United States efforts to reduce the stockpiles of separated plutonium in other countries.

Large-scale bulk processing of plutonium, including processes to convert plutonium pits to oxide and prepare other forms for disposition, as well as fuel fabrication or immobilization processes, represents the stage of the disposition process when material is most vulnerable to covert theft by insiders or covert diversion by the host state. However, such bulk processing is required for all disposition alternatives. In particular, initial processing of plutonium pits and other forms is among the most proliferation sensitive stages of the disposition process, but it is largely common to all the options.

Transport of plutonium is the point in the disposition process when the material is most vulnerable to overt armed attacks designed to steal plutonium. With sufficient resources devoted to security, however, high levels of protection against such overt attacks can be provided.

Conclusions Relating to Specific Disposition Technologies

Reactor technology will meet the Spent Fuel Standard. Reactor technology has some advantage over the immobilization technology with respect to perceived irreversibility, in that the plutonium would be converted from weapons-grade to reactor-grade, even though it is possible to produce nuclear weapons with both weapons and reactor-grade plutonium. However, the immobilization technology has some advantage over the reactor technology in avoiding the perception that the latter approach could potentially encourage additional separation and civilian use of plutonium, which itself poses

proliferation risks. Because reactor technology results in accountable ''items'' (for purposes of international safeguards) whose plutonium content can be accurately measured, this approach offers some advantage in accounting to ensure that the output plutonium matches the input plutonium from the process. The principal uncertainty with respect to using excess weapons plutonium as MOX fuel in domestic reactors relates to the potential difficulty of gaining political and regulatory approvals for the various operations required.

Immobilization technology (can-in-canister) is being refined resulting in an increase in the resistance to separation of the plutonium cans from the surrounding glass, with the goal of meeting the Spent Fuel Standard. The immobilization options have the potential to be implemented more quickly than the reactor options. They face somewhat less political uncertainty but somewhat more technical uncertainty than the reactor options.

The ''can-in-canister'' immobilization options have a timing advantage over the homogeneous immobilization options, in that, by potentially relying on existing facilities, they could begin several years sooner. As noted above, however, modified systems intended to allow this option to meet the Spent Fuel Standard are still being designed.

**Decisions** [17]

Consistent with the January 1997 decision on the Storage and Disposition PEIS, the Department of Energy is affirming its decision to use a hybrid approach for the safe and secure disposition of up to 50 metric tons of surplus plutonium using both immobilization and mixed oxide fuel technologies and to construct and operate three new facilities at its Savannah River Site. The hybrid approach allows for the immobilization of approximately 17 metric tons of surplus plutonium and the use of up to 33 metric tons as mixed oxide fuel which would be irradiated in commercial reactors.

**Construction and Operation of a Pit Disassembly and Conversion Facility**

Consistent with the Preferred Alternative in the SPD Final EIS, the Department has decided to construct and operate a new pit conversion facility at SRS for the purpose of disassembling nuclear weapons pits and converting the plutonium metal to a declassified oxide form suitable for international inspection and disposition, using either immobilization or MOX/reactor approaches. SRS was selected for the pit conversion facility because the site has extensive experience with plutonium processing, and the pit conversion facility complements existing missions and takes advantage of existing infrastructure.

**Construction and Operation of an Immobilization Facility and Selection of an Immobilization Technology** [18]

Consistent with the Preferred Alternative in the SPD Final EIS, the Department has decided to construct and operate a new immobilization facility at SRS using the ceramic can-in-canister technology. This technology will be used to immobilize approximately 17 metric tons of surplus plutonium in a ceramic form, seal it in cans, and place the cans in canisters filled with borosilicate glass containing intensely radioactive high-level waste at the existing Defense Waste Processing Facility. The decision is based, in part, on the fact that the can-in-canister approach at SRS complements existing missions, takes advantage of existing infrastructure and staff expertise, and enables DOE to use an existing facility (DWPF). The ceramic can-in-canister approach will also provide better performance in a geologic repository and provide greater proliferation resistance than the glass can-in-canister approach.

**Construction and Operation of a Mixed Oxide Fuel Fabrication Facility and Irradiation in Commercial Reactors**

Consistent with the Preferred Alternative in the SPD Final EIS, the Department has decided to construct and operate a new facility at SRS to produce MOX fuel containing up to 33 metric tons of surplus weapons-usable plutonium for irradiation in existing domestic, commercial reactors. The decision to use SRS is made, in part, because this activity complements existing missions and takes advantage of existing infrastructure and staff expertise. Based on this selection, the Department will authorize DCS to fully implement the base contract.

As previously stated in the Storage and Disposition PEIS ROD (62 FR 3014, January 21, 1997), the use of MOX fuel in existing reactors will be undertaken in a manner that is consistent with the United States' policy objective on the irreversibility of the nuclear disarmament process and the United States' policy discouraging the civilian use of plutonium. To this end, implementing the MOX alternative will include government ownership and control of the MOX fuel fabrication facility at a DOE site, and use of the facility only for the surplus plutonium disposition program. There will be no reprocessing or subsequent reuse of spent MOX fuel. The MOX fuel will be used in a once-through fuel cycle in existing reactors, with appropriate arrangements, including contractual or licensing provisions limiting use of MOX fuel to surplus plutonium disposition.

**Selection of a Site for Lead Assembly Fabrication**

Consistent with the Preferred Alternative in the SPD EIS, the Department has decided to use LANL for fabrication of MOX fuel rods for use in fabrication of lead assemblies. Based on consideration of the capabilities of the candidate sites and input from the team chosen for the MOX approach, LANL was selected because it already has facilities (*i.e.,* Technical Area 55) that will not require major modifications in order to fabricate fuel rods, and takes advantage of existing infrastructure and staff experience. Additionally, the surplus plutonium dioxide needed to fabricate the MOX fuel rods for lead assemblies will already be on site.

At this time, however, no decision is being made as to which facility at LANL will be used for final assembly of the MOX fuel rods into lead assemblies. DOE is currently evaluating whether there may be the need for additional environmental analysis to support the final stages of lead assembly fabrication at LANL. Pending completion of that review, DOE is deferring a decision as to where on the LANL site this final lead assembly work will be done.

**Selection of a Site for Post-Irradiation Examination of Lead Assemblies**

If post-irradiation examination is necessary for the purpose of qualifying the MOX fuel for commercial reactor use, the Department has decided to perform that task at ORNL, consistent with the Preferred Alternative in the SPD Final EIS. ORNL has the existing

[17] included in these decisions is the Department's decision to fulfill the Moscow Nuclear Safety and Security agreement to apply International Atomic Energy Agency safeguards to surplus plutonium as soon as it is practical. Further, consistent with a Presidential Directive, the Department is continuing to work towards maximizing the quantities of materials eligible for International Atomic Energy Agency safeguards.

[18] The Department intends to use essentially all of the plutonium oxide produced by the Pit Disassembly and Conversion Facility as feed material for mixed oxide fuel. However, some small amounts may be unsuitable for this purpose and will be shipped to the Immobilization Facility for disposition.

facilities and staff expertise needed to perform post-irradiation examination as a matter of its routine activities and no major modifications to facilities or processing capabilities would be required. In addition, ORNL is only about 500 km from the reactor site that would irradiate the fuel, considerably closer than ANL—W, which is about 3,700 km away.

**Use of MOX Fuel in Canadian Uranium Deuterium Reactors**

In the Storage and Disposition PEIS ROD, DOE retained the option to use some of the surplus plutonium as MOX fuel in Canadian Uranium Deuterium (CANDU) reactors, which would have been undertaken only in the event that a multilateral agreement were negotiated among Russia, Canada, and the United States. Since the SPD Draft EIS was issued, DOE determined that adequate reactor capacity is available in the United States for disposition of that portion of the U.S. surplus plutonium suitable for MOX fuel. Therefore, DOE is no longer actively pursuing the CANDU option. However, the CANDU option is still being considered for the disposition of Russian surplus plutonium. To assist U.S., Russia, and Canada in considering this option the three countries are jointly conducting an experiment which will involve irradiating MOX fuel pins that have been fabricated from U.S. and Russian surplus weapons plutonium in a Canadian research reactor. This effort involves a one-time shipment of a small quantity of weapons plutonium from the U.S. to Canada.

**Conclusion**

The Department of Energy has decided to disposition up to 50 metric tons of plutonium at SRS using a hybrid approach that involves both the ceramic can-in-canister immobilization approach and the MOX fuel approach. Approximately 17 metric tons of surplus plutonium will be immobilized in a ceramic form, placed in cans, and embedded in large canisters containing high-level vitrified waste for ultimate disposal in a geologic repository pursuant to the Nuclear Waste Policy Act. Approximately 33 metric tons of surplus plutonium will be used to fabricate MOX fuel, which will be irradiated in existing domestic, commercial reactors. The reactors are the Catawba Nuclear Station near York, South Carolina; the McGuire Nuclear Station near Huntersville, North Carolina; and the North Anna Power Station near Mineral, Virginia. The resulting spent fuel will be placed in a geologic repository pursuant to the Nuclear Waste Policy Act. Pursuing this hybrid approach provides the best opportunity for U.S. leadership in working with Russia to implement similar options for reducing Russia's excess plutonium in parallel. Further, it sends the strongest possible signal to the world of U.S. determination to reduce stockpiles of surplus weapons-usable plutonium as quickly as possible and in an irreversible manner. Pursuing both immobilization and MOX fuel fabrication also provides important insurance against uncertainties of implementing either approach by itself. The construction of new facilities for the disposition of surplus U.S. plutonium would not take place unless there is significant progress on plans for plutonium disposition in Russia. In the plutonium disposition effort, the United States will work with Russia to develop acceptable methods and technologies for transparency measures, including appropriate international verification measures and stringent standards of physical protection, control, and accounting for the management of surplus plutonium.

Issued in Washington, DC, January 4, 2000.

**Bill Richardson,**

*Secretary.*

[FR Doc. 00–594 Filed 1–11–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

**Docket Nos. FE C&E 99–27, C&E 99–28, C&E 99–29, C&E 99–30 & C&E 99–31**

## Office of Fossil Energy; Notice of Filings of Coal Capability of Cleco Evangeline LLC, Liberty Electric Power, LLC, ANP Bellingham Energy Co., Midlothian Energy Limited Partnership and La Paloma Generating Company, LLC; Powerplant and Industrial Fuel Use Act

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of filings.

**SUMMARY:** Cleco Evangeline LLC, Liberty Electric Power, LLC, ANP Bellingham Energy Company, Midlothian Energy Limited Partnership and La Paloma Generating Company, LLC have submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

**ADDRESSES:** Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell at (202) 586–9624

**SUPPLEMENTARY INFORMATION:** Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source.

In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload powerplants have filed a self-certification in acccordance with section 201(d).

*Owner:* Cleco Evangeline LLC (C&E 99–27).

*Operator:* Cleco Evangeline LLC.

*Location:* Evangeline Parish, Louisiana.

*Plant Configuration:* Combined-cycle.

*Capacity:* 710 MW.

*Fuel:* Natural gas.

*Purchasing Entities:* Williams Energy Marketing & Trading Co.

*In-Service Date:* June 1, 2000.

*Owner:* Liberty Electric Power, LLC (C&E 99–28).

*Operator:* Liberty Electric Power, LLC.

*Location:* Delaware County, PA.

*Plant Configuration:* Combined-cycle.

*Capacity:* 500 MW.

*Fuel:* Natural gas.

*Purchasing Entities:* To be determined.

*In-Service Date:* Fourth quarter, 2001.

*Owner:* ANP Bellingham Energy Company (C&E 99–29).

*Operator:* ANP Bellingham Energy Company.

*Location:* Bellingham, MA.

*Plant Configuration:* Combined-cycle.

*Capacity:* 570 MW.

*Fuel:* Natural gas.

*Purchasing Entities:* Competitive market participants in New England.
*In-Service Date:* First quarter, 2002.

*Owner:* Midlothian Energy Limited Partnership (C&E 99–30).
*Operator:* Midlothian Energy Limited Partnership.
*Location:* Midlothian, TX.
*Plant Configuration:* Combined-cycle.
*Capacity:* 1100 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Competitive market participants in Texas.
*In-Service Date:* Fourth quarter, 2001.

*Owner:* La Paloma Generating Company, LLC (C&E 99–31).
*Operator:* La Paloma Generating Company, LLC.
*Location:* McKittrick, CA.
*Plant Configuration:* Combined-cycle.
*Capacity:* 1,040 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* California Power Exchange.
*In-Service Date:* Winter 2001.

Issued in Washington, DC, January 5, 2000.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 00–593 Filed 1–10–00; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP00–60–000]**

## Associated Natural Gas Company, a division of Arkansas Western Gas Company; Notice of Application

January 5, 2000.

Take notice that on December 22, 1999, Associated Natural Gas Company, a division of Arkansas Western Gas Company (ANG), 1083 Sain Street, P.O. Box 1408, Fayetteville, Arkansas 72703, filed in Docket No. CP00–60–000 an application pursuant to Section 7(f) of the Natural Gas Act, for approval of a revised service area determination as a result of a sale of facilities in the state of Missouri to Atmos Energy Corporation (Atmos) and a request for continuation of its waiver of the Commission's accounting and reporting requirements ordinarily applicable to natural gas companies, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.us/online/rims.htm* (call 202–208–2222).

ANG states that it presently has a section 7(f) service area determination which allows it to move gas across the Arkansas-Missouri state line without becoming subject to the comprehensive jurisdiction of the Commission. It is stated that ANG has agreed to sell its Missouri facilities, except for two fifty-foot stub lines to Atmos. ANG states that, while the Missouri assets of the ANG system will be sold to Atmos, there will be a continuing need for ANG and Atmos to deliver gas to each other's systems. ANG states that, after the sale of facilities, it will use the stub lines to receive gas from Atmos or deliver gas to Atmos, depending on the circumstances. It is stated that Atmos has filed in Docket No. CP00–56–000 for a blanket certificate under Section 284.224 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 26, 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 determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission for abandonment 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 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 ANG to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–540 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP00–56–000]**

## Atmos Energy Corporation; Notice of Application

January 5, 2000.

Take notice that on December 22, 1999, Atmos Energy Corporation, (Atmos), Three Lincoln Center, 5430 LBJ Freeway, Dallas, Texas 75040, filed in Docket No CP00–56–000 an application pursuant to Section 7(c) of the Natural Gas Act, for a limited-jurisdiction blanket certificate pursuant to Section 284.224 of the Commission's Regulations to engage in non-discriminatory basis sales and/or transportation of natural gas through facilities in the state of Missouri and for approval of the rates for the services as set forth in an operating statement attached to the application, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.us/online/rims.htm* (call 202–208–2222).

Atmos states that it has entered into an agreement to purchase the Missouri intrastate facilities of Arkansas Western Gas (AWG) doing business in Missouri as Associated Natural Gas (ANG). Atmos further states that the authorizations requested are necessary to preserve the ability of AWG and customers with access to AWG's Arkansas distribution system to access supplies of natural gas available through interstate pipeline delivery points in Missouri. Atmos proposes maximum rates for firm transportation service of $5.3858 per MMBtu and for interruptible transportation service of $0.1771 per MMBtu with minimum rates in each case of $0.00 per MMBtu, with each rate subject to an add-on fuel charge. It is indicated that the proposed rates are derived on a SFV rate design and based on the projected cost of service based in part of the historical cost of service and throughput experience of ANG in operating the Missouri facilities. It is

stated that the costs include an overall rate of return based on the rate of return approved for Atmos by the Missouri Public Service Commission.

Atmos indicates that ANG has filed in Docket No CP00–60–000 to revise its Section 7(f) service area determination to reflect that it has agreed to sell most of its Missouri facilities to Atmos.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 26, 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 determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission for abandonment 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 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 Atmos to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–539 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER00–692–000]**

## Central Vermont Public Service Corporation; Notice of Filing

January 5, 2000.

Take notice that on December 29, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing supplemental information to its Forecast 2000 Cost Report filed with the Commission on November 30, 1999, in the above referenced proceeding.

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 14, 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 determine 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. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–541 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–148–000]**

## CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 4, 2000.

Take notice that on December 22, 1999, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, with an effective date of February 1, 2000.

Fifty-Fourth Revised Sheet No. 32

CNG states that the purpose of this filing is to submit CNG's quarterly revision of the Section 18.2.B Surcharge, effective for the three-month period commencing February 1, 2000.

CNG states that the purpose of this filing is to submit CNG's quarterly revision of the Section 18.2.B Surcharge, effective for the three-month period commencing February 1, 2000. The charge for the quarter ending January 31, 2000 has been $0.0190 per Dt., as authorized by Commission order dated October 26, 1999 in Docket No. RP99–520–000. CNG's proposed Section 18.2.B surcharge for the next quarterly period is $0.0200 per Dt. The revised surcharge is designed to recover $154,354 in Stranded Account No. 858 Costs, which CNG incurred for the period of September 1999 through November, 1999, and $8,236 in under-recovered costs for the period November 1998 through October 1999.

CNG states that copies of this letter of transmittal and enclosures are being served upon CNG's customers and interested state commissions.

Any person desiring to be heard or to protest must file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests were due in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. To become a party a person 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. 00–470 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–82–001]**

### CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 4, 2000.

Take notice that on December 22, 1999, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, with an effective date of January 1, 2000:

Substitute Twenty-Sixth Revised Sheet No. 31

CNG states that the purpose of this filing is to remove all references on its rate tariff sheet to a proposed rate for Title Transfer Tracking service. The change is consistent with the Commission's order issued December 16, 1999, in Docket No. RP00–74–000, rejecting CNG's proposal to charge for Title Tracking service. CNG states that it has made no other changes to the proposed tariff sheet. CNG requests waiver of Section 154.206(b) of the Commission's regulations, so that its tariff sheet may become effective as proposed.

CNG states that copies of its letter of transmittal and enclosures have been served upon CNG's customers and interested state commissions.

Any person desiring to be heard or to protest must file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests were due in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. To become a party a person 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. 00–472 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. GT00–13–000]**

### CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 4, 2000.

Take notice that on December 22, 1999, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of December 1, 1999:

Eighth Revised Sheet No. 251
Original Sheet No. 398
Sheet No. 399

CNG states that the instant filing is an individualized discounted rate letter agreement (DRLA) between CNG and Sithe Power Marketing, L.P. (Sithe).

CNG is filing the DRLA as a non-conforming agreement because the discounts granted in the DRLA are conditioned upon Sithe transporting its full requirements for its generating plant from December 1, 1999 through November 30, 2000 and because the Commission has not granted blanket approval to CNG to offer discounts conditioned upon a shipper transporting its full requirements.

In addition, as required by Section 154.7(a) (7) and (9) of the Commission's Regulations, CNG requests the Commission to waive its prior notice filing requirements in Section 154.207 of its Regulations in order to permit the DRLA to take effect as of December 1, 1999. CNG states that Sithe first contacted it with the service requested in mid-November and that good cause exists to grant waiver of the Commission's prior notice filing requirements.

CNG states that copies of its letter of transmittal and enclosures have been served upon CNG's customers and interested state commissions.

Any person desiring to be heard or to protest must file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests were due in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. To become a party a person 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. 00–474 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–154–000]**

### Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 5, 2000.

Take notice that on December 30, 1999, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective February 1, 2000:

Forty-second Revised Sheet No. 25
Forty-second Revised Sheet No. 26
Forty-second Revised Sheet No. 27
Thirty-eight Revised Sheet No. 28
Fourth Revised Sheet No. 28B
Fifteenth Revised Sheet No. 29
Nineteenth Revised Sheet No. 30A

Columbia states that this filing is being submitted pursuant to an order issued September 15, 1999, by the Federal Energy Regulatory Commission (Commission), which approved an uncontested settlement that resolves environmental cost recovery issues in RP95–408,, *et. al.* Columbia Gas Transmission Corporation, 88 FERC ¶ 61,217 (1999). The settlement established environmental cost recovery through unit components of base rates, all as more fully set forth in Article VI of the settlement agreement filed April 5, 1999 (Phase II Settlement).

For the period February 1, 2000 through January 31, 2001, Columbia is required to make a limited Natural Gas Act (NGA) Section 4 filing to adjust the base rate unit components to reflect (1) its expectation of Remediation Program expenditures during the coming year and (2) its realized Third Party Proceeds and actual collections from customers through the current base rate unit components. In this filing, Columbia has developed base rate unit components to recover the ''prospective annual collection level'' of Main Program Costs

of approximately $4.5 million and of Storage Well Program Costs of $2 million.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 00–544 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–155–000]**

## Columbia Gas Transmission Corporation; Notice of Compliance Filing

January 5, 2000.

Take notice that on December 30, 1999, Columbia Gas Transmission Corporation (Columbia) tendered a filing with the Commission in compliance with Stipulation II, Article III, Section B(3), of the settlement filed in Docket No. RP95–408 *et al,* approved on April 17, 1997 (79 FERC ¶ 61,044 (1997))(Settlement). The Settlement provides that in the event that Columbia is still providing gathering service on February 1, 2000, Columbia shall file no later than December 31, 1999 to be effective February 1, 2000, to reflect in the gathering rates the actual costs of providing gathering service at the time of the filing.

Columbia states that gathering costs have already been fully unbundled from transportation service rates since January 31, 1999, and this filing does not affect transportation service rates. Since Columbia is continuing to sell, refunctionalize, or otherwise dispose of all facilities functionally classified as gathering, Columbia has determined that it is willing to continue to charge the lower currently effective rate for gathering service.

Columbia states further that copies of this filing have been mailed to all of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before January 12, 2000. 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. 00–545 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–147–000]**

## Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 4, 2000.

Take notice that on December 22, 1999, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of January 1, 2000.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules FSS and SST. The costs of the above referenced storage service comprise the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest must file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests were due in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. To become a party a person 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. Waston, Jr.,**

*Acting Secretary*

[FR Doc. 00–471 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP97–287–042]**

## El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 4, 2000.

Take notice that on December 29, 1999, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective January 1, 2000:

Twenty-Seventh Revised Sheet No. 30
Twentieth Revised Sheet No. 31
Third Revised Sheet No. 31A
First Revised Sheet No. 31B

El Paso states that the above tariff sheets are being filed to implement two negotiated rate contracts 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 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. 00–475 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL00–24–000]**

## The Village of Jackson Center, Ohio, the Village of Versailles, Ohio, and the City of Tipp City, Ohio v. the Dayton Power & Light Company; Notice of Amendments to Complaint Filing

January 4, 2000.

Take notice that on December 22, 1999, the Villages of Arcanum, Eldorado, Lakeview, Mendon, Minster, New Bremen, Waynesfield, and Yellow Springs, Ohio filed an amendment to the Complaint previously filed on December 8, 1999, in the above-referenced proceeding. Also, on December 23, 1999, the Villages of Arcanum, Elorado, Jackson Center, Lakeview, Mendon, Minster, New Bremen, Versailles, Waynesfield, and Yellow Springs, Ohio, and the City of Tipp City, Ohio (Municipals), filed a supplement to the same Complaint.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 12, 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 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. 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. 00–473 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–157–000]**

## Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

January 5, 2000.

Take notice that on December 30, 1999, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing, to be effective February 1, 2000.

Kern River states that the purpose of this filing is: (1) To establish a mechanism that makes negotiated rates available to Kern River and its shippers in accordance with the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; and (2) to modify Kern River's rate schedules to specify common types of rate discounts so that service agreements incorporating these discounts will not be considered non-conforming.

Kern River states that it has served a copy of this filing upon its shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 00–547 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. MT00–3–000]**

## MIGC, Inc.; Notice of Tariff Filing

January 4, 2000.

Take notice that on December 20, 1999 MIGC, Inc. (MIGC), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 89 with a proposed effective date of January 1, 1999.

MIGC states that the purpose of the filing is to reflect changes in shared operating personnel.

MIGC states that copies of its filing are being mailed to its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest must file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests were due in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. To become a party a person 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. 00–469 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–156–000]**

## National Fuel Gas Supply Corporation; Notice of Tariff Filing

January 5, 2000.

Take notice that on December 30, 1999, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Twenty Second Revised Sheet No. 9, to become effective January 1, 2000.

National asserts that the purpose of this filing is to comply with the Commission's order issued February 16, 1996, in Docket Nos. RP94–367–000, et al. Under Article I, Section 4, of the settlement approved in that order, National must redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 8.52 cents per dth.

Further, National states that under Article II, Section 1, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate semi-annually and to charge that rate to be effective July 1 and on January 1. The recalculation produced an IG rate of 13 cents per dth. National also states that Article II, Section 2 is not applicable as the monthly recalculation did not result in a rate more than 2 cents above or below the semi-annual calculation.

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 in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 00–546 Filed 1–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–151–000]**

## Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 4, 2000.

Take notice that on December 29, 1999, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets proposed to be effective January 29, 2000:

*Fifth Revised Volume No. 1*

Second Revised Sheet No. 152
Seventh Revised Sheet No. 201
Second Revised Sheet No. 219
Third Revised Sheet No. 220
Fourth Revised Sheet No. 286
Sixth Revised Sheet No. 287
Fourth Revised Sheet No. 292
Second Revised Sheet No. 299A
Second Revised Sheet No. 510

*Original Volume No 2*

160 Revised Sheet No. 1C

Northern states that the purpose of this filing is to make miscellaneous updates and corrections to Northern's Tariff.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 00–467 Filed 1–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–152–000]**

## Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 4, 2000.

Take notice that on December 29, 1999, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet proposed to be effective January 29, 2000:

Third Revised Sheet No. 303

Northern states that the purpose of the filing is to modify the General Terms and Conditions of its Tariff to add as an additional type of discount index price-based discounted rates that Northern may agree to enter into with its shippers.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 00–468 Filed 1–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP96–272–014]**

## Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

January 5, 2000.

Take notice that on December 30, 1999, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to become effective on January 1, 2000:

Sixth Revised Sheet No. 66
First Revised Sheet No. 66C

Northern states that the above sheets are being filed to implement a specific negotiated rate transaction in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, 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. 00–542 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–158–000]**

## Southern Natural Gas Company; Notice of Proposed Changes to FERC GAs Tariff

January 5, 2000.

Take notice that on December 30, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of January 1, 2000:

*Tariff Sheets Applicable to Contesting Parties:*
Fifth Revised Forty Eighth Revised Sheet No. 14
Fifth Revised Sixty Ninth Revised Sheet No. 15
Fifth Revised Forty Eighth Revised Sheet No. 16
Fifth Revised Sixty Ninth Revised Sheet No. 17
*Tariff Sheets Applicable to Settling Parties:*
Sixth Revised Thirty Fourth Revised Sheet No. 14a
Sixth Revised Fortieth Revised Sheet No. 15a
Sixth Revised Thirty Fourth Revised Sheet No. 16a
Sixth Revised Fortieth Revised Sheet No. 17a

Southern submits the revised tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, reflect a change in its FT/FT–NN Southern Energy Cost Surcharge, due to an increase in the FRC interest rate effective January 1, 2000.

Southern states that copies of the filing were served upon all parties listed on the official service list complied by the Secretary in these proceedings.

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 in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 00–548 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–150–000]**

## Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

January 4, 2000.

Take notice that on December 28, 1999 Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, revised tariff sheets listed on Appendix A to the filing to become effective February 1, 2000.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Texas Eastern states that Section 15.1 provides that Texas Eastern shall file to be effective each February 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account.

Texas Eastern states that these revised tariff sheets are being filed to reflect increases in Texas Eastern's projected costs for the use of electric power for the twelve month period beginning February 1, 2000 and an increase in the balance in the EPC Deferred Account for the twelve months ended October 31, 1999.

Texas Eastern states that the rate increases proposed to the primary firm capacity reservation charges, usage rates and 100% load factor average costs for full Access Area Boundary service from the Access Area Zone, East Louisiana, to the three market area zones are as follows:

| Zone | Reservation | Usage | 100% LF |
|---|---|---|---|
| Market 1 | $0.030/dth | $.0016/dth | $.0026/dth |
| Market 2 | 0.092/dth | .0052/dth | .0082/dth |
| Market 3 | 0.134/dth | .0077/dth | .0121/dth |

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any persons 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. 00–466 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–153–000]**

## Williston Basin Interstate Pipeline Company; Notice of Fuel Reimbursement Charge Filing

January 5, 2000.

Take notice that on December 30, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following revised tariff sheets to become effective February 1, 2000.

*Second Revised Volume No. 1*

Thirty-sixth Revised Sheet No. 15
Eighteenth Revised Sheet No. 15A
Thirty-ninth Revised Sheet No. 16
Eighteenth Revised Sheet No. 16A
Thirty-fifth Revised Sheet No. 18
Eighteenth Revised Sheet No. 18A
Eighteenth Revised Sheet No. 19
Eighteenth Revised Sheet No. 20
Thirty-second Revised Sheet No. 21

*Original Volume No. 2*

Eighty-first Revised Sheet No. 11B

Williston Basin states that the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision contained in Section 38 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. 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. 00–543 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EL00–8–000, et al.]**

## White River Electric Associates, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 4, 2000.

Take notice that the following filings have been made with the Commission:

### 1. White River Electric Association, Inc.

[Docket No. EL00–8–000]

Take notice that on December 3, 1999, White River Electric Association, Inc. (White River) filed a supplement to its October 25, 1999 request for waiver of the Federal Energy Regulatory Commission's requirements under Order Nos. 888 and 889 that has been docketed as Docket No. EL00–8–000.

*Comment date:* February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. McDonough Power Cooperative

[Docket No. EL00–14–000]

Take notice that on December 15, 1999, McDonough Power Cooperative filed a letter to supplement its November 9, 1999 request for waiver of the Federal Energy Regulatory Commission's requirements under Order Nos. 888 and 889 docketed as Docket No. EL00–14–000.

*Comment date:* February 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 3. Northeast Utilities Service Company

[Docket No. ER00–330–000]

Take notice that on December 30, 1999, Northeast Utilities Service Company (NUSCO) provided unredacted copies of letter agreements under its market-based rate tariff with Select Energy, Inc. (Select), Consolidated Edison Energy, Inc. (ConEdison Energy), Constellation Power Source, Inc. (CPS), PECO Energy Company (PECO), Duke Energy Trading and Marketing, L.L.C. (DETM) and PP&L Energy Plus, Co. L.L.C. (PP&L Energy) in compliance with the Commission's December 29, 1999 order denying a request for confidential treatment.

NUSCO reiterates its request for an effective date of January 1, 2000.

NUSCO states that copies of this filing have been sent to Select, Con Edison Energy, CPS, PECO, DETM and PP&L Energy.

*Comment date:* January 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. Select Energy, Inc.

[Docket No. ER00–514–000]

Take notice that on December 30, 1999, Select Energy, Inc. (Select) provided unredacted copies of a Standard Offer Service Wholesale Sales Agreement between Select and The Connecticut Light and Power Company (CL&P) in compliance with the Commission's December 29, 1999 order denying a request for confidential treatment.

Select reiterates its request for an effective date of January 1, 2000.

Select states that copies of the filing have been sent to CL&P and the Connecticut Department of Public Utility Control.

*Comment date:* January 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Alliant Energy Corporate Services, Inc.**

[Docket No. ER00–921–000]

Take notice that on December 28, 1999, Alliant Energy Corporate Services, Inc. tendered for filing three executed Service Agreements for Long-Term Firm Point-to-Point Transmission Service. The agreements have been signed by Alliant Energy Corporate Services, Inc. (the Transmission Provider) and Alliant Energy Corporate Services, Inc., (the Transmission Customer).

Alliant Energy Corporate Services, Inc. requests an effective date of January 1, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

*Comment date:* January 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. California Independent System Operator Corporation**

[Docket No. ER00–922–000]

Take notice that on December 28, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and the Delano Energy Company, Inc. for acceptance by the Commission.

The ISO states that this filing has been served on Delano Energy Company, Inc. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective December 14, 1999.

*Comment date:* January 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. California Independent System Operator Corporation**

[Docket No. ER00–923–000]

Take notice that on December 28, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and Delano Energy Company, Inc. for acceptance by the Commission.

The ISO states that this filing has been served on Delano Energy Company, Inc. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement for ISO Metered Entities to be made effective December 21, 1999.

*Comment date:* January 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Montaup Electric Company**

[Docket No. ER00–924–000]

Take notice that on December 28, 1999, Montaup Electric Company (Montaup) filed an executed Service Agreement with PG&E Energy Trading—Power, L.P. (PG&E Energy) under which PG&E Energy may purchase electricity from Montaup at market-based rates pursuant to Montaup's FERC Electric Tariff, Original Volume No. 8. Montaup states that, as of the date of filing, no transactions had taken place under the Service Agreement.

Montaup requests a waiver of the 6-day notice requirement so that the Service Agreement may become effective as of December 28, 1999.

*Comment date:* January 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. New England Power Company**

[Docket No. ER00–925–000]

Take notice that on December 28, 1999, New England Power Company (NEP) tendered for filing proposed supplements to the Amendments to Service Agreement that NEP has with its affiliates The Narrragansett Electric Company (Narragansett) and Massachusetts Electric Company (Mass. Electric).

The proposed supplements will permit NEP to reconcile the costs and revenues under its Contract Termination Charge formulas with Narrangansett and Mass. Electric by returning lump sum amounts to Narragansett and Mass. Electric on or before December 31, 1999. These lump sum payments will be made in lieu of reducing the Contract Termination Charge factor for the upcoming year, and will thereby allow Narragansett and Mass. Electric to obtain the benefits of the reduction earlier than under the existing agreements.

Copies of the filing have been served on (i) Narragansett and Mass. Electric, (ii) all signatories to the restructuring settlements in Docket Nos. ER97–678–000 and ER97-680–000, (iii) the Rhode Island Public Utilities Commission, and (iv) the Massachusetts Department of Telecommunications and Energy.

*Comment date:* January 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. New England Power Company**

[Docket No. ER00–926–000]

Take notice that on December 28, 1999, New England Power Company (NEP) tendered for filing a Notice of Cancellation for its FERC Rate Schedule No. 385.

NEP requests an effective date for the cancellation of November 1, 1999.

*Comment date:* January 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Florida Power & Light Company**

[Docket No. ER00–927–000]

Take notice that on December 28, 1999, Florida Power & Light Company (FPL) filed a Service Agreement with Rochester Gas and Electric Corporation for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreement be made effective on December 13, 1999.

*Comment date:* January 14, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Duke Energy Corporation**

[Docket No. ER00–928–000]

Take notice that on December 28, 1999, Duke Energy Corporation (Duke) tendered for filing a network integration transmission service agreement (NITSA) between Duke Electric Transmission, a division of Duke Energy Corporation, and Duke Power Company, a division of Duke Energy Corporation, (Duke Power) on behalf of itself and the City of Concord, North Carolina (Concord). The only rate change effected by the NITSA relates to the direct assignment of costs of a new delivery point for Concord.

Duke requests an effective date of January 1, 2000 for the NITSA.

Duke states that copies of this filing have been mailed to Duke Power, Concord and the North Carolina Utilities Commission.

*Comment date:* January 14, 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 file 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).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–538 Filed 1–10–00; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6521–7]**

## Office of Environmental Justice Small Grants Program; Application Guidance FY 2000

### Introduction

This guidance outlines the purpose, goals, and general procedures for application and award under the Fiscal Year (FY) 2000 Office of Environmental Justice Small Grants Program. For FY 2000, EPA will make available approximately $1,100,000 in grant funds to eligible organizations (pending availability of funds); $600,000 of this amount is available for superfund projects only. Applications must be mailed to your appropriate EPA regional office (listed in Section III) and postmarked by U. S. Postal Service no later than midnight Friday, March 3, 2000.

This guidance includes the following:

I. Scope and Purpose of the OEJ Small Grants Program
II. Eligible Applicants and Activities
III. Application Requirements
IV. Process for Awarding Grants
V. Expected Time-frame for Reviewing and Awarding Grants
VI. Project Period and Final Reports
VII. Fiscal Year 2001 OEJ Small Grants Program

### Translations Available

A Spanish translation of this announcement may be obtained by calling the Office of Environmental Justice at 1–800–962–6215.

Hay traducciones disponibles de este anuncio en espanol. Si usted esta interesado en obtener una traduccion de este anuncio en espanol, por favor llame a La Officina de Justicia Ambiental conocida como ''Office of Environmental Justice,'' linea gratuita (1–800–962–6215).

### I. Scope and Purpose of the OEJ Small Grants Program

The purpose of this grant program is to provide financial assistance to eligible community groups (i.e., community-based/grassroots organizations, churches, or other non-profit organizations) and federally recognized tribal governments that are working on or plan to carry out projects to address environmental justice issues. Preference for awards will be given to community-based/grassroots organizations that are working on local solutions to local environmental problems. Funds can be used to develop a new activity or substantially improve the quality of existing programs that have a direct impact on affected communities. All awards will be made in the form of a grant not to exceed one year.

*Background*

In its 1992 report, Environmental Equity: Reducing Risk for All Communities, EPA found that minority and low-income populations may experience higher than average exposure to toxic pollutants than the general population. The Office of Environmental Justice (OEJ) was established in 1992 to help these communities identify and assess pollution sources, to implement environmental awareness and training programs for affected residents, and to work with community stakeholders to devise strategies for environmental improvements.

In June of 1993, OEJ was delegated granting authority to solicit, select, supervise, and evaluate environmental justice-related projects, and to disseminate information on the projects' content and effectiveness. Fiscal year (FY) 1994 marked the first year of the OEJ Small Grants Program. The chart below shows how the grant monies have been expended since FY 1994.

| Fiscal year | Dollar amount | Number of awards |
|---|---|---|
| 1994 | $ 500,000 | 71 |
| 1995 | 3,000,000 | 175 |
| 1996 | 2,800,000 | 152 |
| 1997 | 2,700,000 | 139 |
| 1998 | 2,500,000 | 123 |
| 1999 | 1,455,000 | 95 |

*How does EPA Define Environmental Justice Under the Environmental Justice Small Grants Program?*

Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no groups of people, including racial, ethnic, or socioeconomic groups, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

### II. Eligible Applicants and Activities

*A. Who May Submit Applications and May an Applicant Submit More Than One?*

Any affected, non-profit community organization 501c(3) or 501c(4) [1] or federally recognized tribal government may submit an application upon publication of this solicitation. Applicants must be non-profit to receive these federal funds. State recognized tribes or indigenous peoples organizations are able to apply for grant assistance as long as they meet the definition of a non-profit organization. ''Non-profit organization'' means any corporation, trust, association, cooperative, or other organization that (1) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (2) is not organized primarily for profit; and (3) uses its net proceeds to maintain, improve, and/or expand its operations. While state and local governments and academic institutions are eligible to receive grants, preference will be given to non-profit, community-based/grassroots organizations and federally recognized tribal governments. Preference may be given to those organizations that have not received previous Environmental Justice grants. Individuals are not eligible to receive grants.

The Environmental Justice Small Grants Program is a competitive process. In order not to give preferential treatment to any single potential applicant, the Agency will offer training

[1] As a result of the Lobbying Disclosure Act of 1995, EPA (and other federal agencies) may not award grants to non-profit, 501(c)(4) organizations that engage in lobbying activities. This restriction applies to any lobbying activities of a 501(c)(4) organization without distinguishing between lobbying funded by federal money and lobbying funded by other sources.

and/or conference calls on grant application guidelines. We encourage you to participate so that you can have your questions answered in a public forum. Please call your regional office to inquire about the scheduled dates of the special training and conference calls. (See Contact List in this document).

EPA will consider only one application per applicant for a given project. Applicants may submit more than one application as long as the applications are for separate and distinct projects or activities. Applicants that were previously awarded small grant funds may submit an application for FY 2000. Every application for FY 2000 will be evaluated based on the merit of the proposed project in relation to the other FY 2000 pre-applications. However, past performance may be considered during the ranking and evaluation process for those applicants who have received previous grants.

*B. What Types of Projects Are Eligible for Funding?*

While there are many applications submitted from community groups for equally worthwhile projects, EPA is emphasizing the need for projects in two categories: 1. Projects which address public health concerns/issues in minority/low-income communities. 2. Projects which address how environmental information can be made available in minority/low-income communities. Both of these areas of concentration are important issues to local communities. In order to be considered for funding, the application must include the following information: (1) How the proposed project addresses issues related to at least two environmental statutes and (2) How the proposed project meets at least two of the program goals.

(1) Multi-Media Statutory Requirement

The OEJ Small Grants Program awards grants under a multi-media granting authority. This means that recipients of these funds must implement projects that address pollution in more than one environmental medium (*e.g.*, air, water). To show evidence of the breadth of the project's scope, the application must identify at least two environmental statutes that the project will address. In most cases, your project will include activities outlined in the following environmental statutes:

a. Clean Water Act, Section 104(b)(3): conduct and promote the coordination of research, investigations, experiments, training, demonstration, surveys, and studies relating to the causes, extent, prevention, reduction, and elimination of water pollution.

b. Safe Drinking Water Act, Section 1442(b)(3): develop, expand, or carry out a program (that may combine training, education, and employment) for occupations relating to the public health aspects of providing safe drinking water.

c. Solid Waste Disposal Act, Section 8001(a): conduct and promote the coordination of research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to solid waste (e.g., health and welfare effects of exposure to materials present in solid waste and methods to eliminate such effects)

d. Clean Air Act, Section 103(b)(3): conduct research, investigations, experiments, demonstrations, surveys, and studies related to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution.

In some circumstances, your project may be very research-oriented and specific to a particular environmental problem. If this is the case, you may reference the following environmental statutes (either list one of the following in addition to one listed above or list two of the following).

e. Toxic Substances Control Act, Section 10(a): conduct research, development, and monitoring activities on toxic substances.

f. Federal Insecticide, Fungicide, and Rodenticide Act, Section 20(a): conduct research on pesticides.

g. Marine Protection, Research, and Sanctuaries Act, Section 203: conduct research, investigations, experiments, training, demonstrations, surveys, and studies relating to the minimizing or ending of ocean dumping of hazardous materials and the development of alternatives to ocean dumping.

h. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Section 311(c) ''research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment. The term ''hazardous substances'' in CERCLA Section 101(14) and does not include many petroleum products.

EPA's grant regulations define ''research'' as ''systematic study directed towards a fuller scientific knowledge or understanding of the subject studied.'' 40 CFR 30.2(dd). EPA has interpreted ''research'' to include study that extends to socioeconomic, institutional, and public policy issues as well as the ''natural'' sciences.

Please note: if your project includes scientific research and/or data collection, you must be prepared to submit a Quality Assurance Plan (QAP) to your EPA Project Officer prior to the beginning of the research.

(2) Special Requirements for ''Superfund'' EJ Research Grants

a. Superfund grants can only be made for research projects authorized by CERCLA 311(c)—research with respect to the detection, assessment, and evaluation of the effects on and risks to human health of hazardous substances and detection of hazardous substances in the environment.

b. Applicants must demonstrate that the research project relates to ''hazardous substances'' as that term is defined by CERCLA 101(14). There is a list of hazardous substances at 40 CFR 302.4 which, while not exclusive, does provide useful guidance.

c. Research funded under CERCLA 311(c) cannot relate to petroleum products excluded from the definition of hazardous substances found at CERCLA 101(14).

d. Applicants must meet the requirement that the project relate to two environmental grant authority statutes by proposing a research project that is authorized by both CERCLA 311(c) and another statute listed above which authorizes research funding.

e. The project must be of a research nature only, i.e., survey, research, collecting and analyzing data that will be used to expand scientific knowledge or understanding of the subject studied. Projects which expand the scientific knowledge or understanding of community members of hazardous substances issues that affect them can be funded as EJ Superfund grants.

f. The project cannot carry out training activities, other than training in research techniques, or outreach, technical assistance, or public education or awareness activities.

g. The project can include conferences only if the purpose of the conference is to present research results or gather research data.

(3) Office of Environmental Justice Small Grants Program Goals

In addition to the multi-statute requirement outlined above, the application must also include a description of how an applicant plans to meet at least two of the three program goals listed below. See Section III ''Application Requirements'' for more details.

1. Identify necessary improvements in communication and coordination among all stakeholders, including existing community-based/grassroots organizations and local, state, tribal, and

federal environmental programs. Facilitate communication and information exchange, and create partnerships among stakeholders to address disproportionate, high and adverse environmental exposure (*e.g.*, workshops, awareness conferences, establishment of community stakeholder committees);

2. Build community capacity to identify local environmental justice problems and involve the community in the design and implementation of activities to address these concerns. Enhance critical thinking, problem-solving, and active participation of affected communities. (*e.g.*, train-the-trainer programs).

3. Enhance community understanding of environmental and public health information systems and generate information on pollution in the community. If appropriate, seek technical experts to demonstrate how to access and interpret public environmental data (e.g., Geographic Information Systems (GIS), Toxic Release Inventories (TRI), and other databases).

The issues discussed above may be defined differently among applicants from various geographic regions, including areas outside the continental U.S. (Alaska, American Samoa, Guam, Hawaii, Puerto Rico, and the U.S. Virgin Islands). Each application should define its issues as they relate to the specific project. In your narrative/work plan, include a succinct explanation of how the project may serve as a model in other settings and how it addresses a high-priority environmental justice issue. The degree to which a project addresses a high-priority environmental justice issue will vary and must be defined by applicants according to their local environmental justice concerns.

*C. How Much Money May Be Requested, and Are Matching Funds Required?*

The ceiling in federal funds for any one grant is $15,000 for non superfund projects or $20,000 for superfund projects. The Headquarters Office of Environmental Justice will provide each region with approximately $110,000 to issue awards of which $60,000 is available exclusively for superfund projects. Some regions may augment their regional pools with additional funds subject to availability. Please check with your regional contact for the amount of funds that will be available in each region.

Applicants are not required to provide matching funds.

*D. Are There Any Restrictions on the Use of the Federal Funds?*

Yes. EPA grant funds can only be used for the purposes set forth in the grant agreement. Among other things, absent specific statutory authority, grant funds from this program cannot be used for matching funds for other federal grants, lobbying, or intervention in federal regulatory or adjudicatory proceedings. In addition, the recipient may not use these federal assistance funds to sue the federal government or any other government entity. Refer to 40 CFR 30.27, entitled ''Allowable Costs''. Further, the scope of EJ grants may not include construction, personal gifts (e.g., t-shirts, buttons, hats), and furniture purchases.

**III. Application Requirements**

*A. What Is Required for Applications?*

In order to be considered for funding under this program, proposals from eligible organizations must have the following:

1. Application for Federal Assistance (SF–424) the official form required for all federal grants that requests basic information about the grantee and the proposed project. The applicant must submit the original application, plus two copies, signed by a person duly authorized by the governing board of the applicant.

Please complete Part 10 of the SF–424 form, ''Catalog of Federal Domestic Assistance Number'' with the following information: 66.604—Environmental Justice Small Grants Program.

2. The Federal Standard Form (SF–424A) and budget detail, which provides information on your budget. For the purposes of this grants program, complete only the non-shaded areas of SF–424A. Budget figures/projections should support your work plan/narrative. The EPA portion of these grants will not exceed $15,000 for non superfund or $20,000 for superfund projects, therefore your budget should reflect this limit on federal funds.

3. Narrative/work plan of the proposal, not to exceed five pages. Applications may not be considered if they exceed five single pages. A narrative/work plan describes the applicant's proposed project. The pages of the work plan must be letter size (8½″ x 11″), with normal type size (12 characters per inch), and at least 1″ margins.

The narrative/work plan is one of the most important aspects of your application and (assuming that all other required materials are submitted) will be used as the primary basis for selection. Work plans must be submitted in the format described below:

a. A one page summary that:

- Identifies the environmental justice issue(s) to be addressed by the project;
- Identifies the EJ community/target audience;
- Identifies at least two environmental statutes/Acts addressed by the project; and
- Identifies at least two program goals that the project will meet and how it will meet them.

b. A concise introduction that states the nature of the organization (*i.e.*, how long it has been in existence, if it is incorporated, if it is a network, etc.), how the organization has been successful in the past, purpose of the project, EJ community/target audience, project completion plans/time frames, and expected results.

c. A concise project description that describes how the applicant is community-based and/or plans to involve the target audience in the project and how the applicant plans to meet at least two of the three program goals outlined in Section IIB: ''Office of Environmental Justice Small Grants Program Goals.'' Additional credit will not be given for projects that fulfill more than two goals.

d. A conclusion discussing how the applicant will evaluate and measure the success of the project, including the anticipated benefits and challenges in implementing the project.

e. An appendix with resumes of up to three key personnel who will be significantly involved in the project.

4. Letter(s) of commitment. If your proposed project includes the significant involvement of other community organizations, your application must include letters of commitment from these organizations. This requirement may not apply to your proposed project—only include if applicable.

Applications that do not include the information listed above in items 1–3 and if applicable, item 4, will not be considered for an award.

Please note: your application to this EPA program may be subject to your state's intergovernmental review process and/or the consultation requirements of Section 204, Demonstration Cities and Metropolitan Development Act. Check with your state's Single Point of Contact to determine your requirements—some states do not require this review. Applicants from American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands should also check with their Single Point of Contact. If you do not know who your Single Point of Contact is, please call your EPA regional contact

(Section III) or EPA Headquarters at (202) 260–9266. Federally recognized tribal governments are not required to comply with this procedure.

*B. When and Where Must Applications be Submitted?*

The applicant must submit/mail one signed original application with required attachments and one copy to the primary contact at the EPA regional office listed below. The application must be postmarked by United Parcel Postal Service no later than Friday, March 3, 2000.

**Regional Contact Names and Addresses**

*Region l—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont*

*Primary Contact:* Ronnie Harrington, (617) 918–1703, USEPA Region 1 (SAA), 1 Congress Street—Suite 1100, Boston, MA 02114–2023.

*Secondary:* Pat O'Leary (617) 565–3834.

*Region 2—New Jersey, New York, Puerto Rico, U.S. Virgin Islands*

*Primary Contact:* Natalie Loney (212) 637–3639, USEPA Region 2, 290 Broadway, 26th Floor, New York, NY 10007.

*Secondary:* Melva Hayden (212) 637–5027.

*Region 3—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia*

*Primary Contact:* Reginald Harris (215) 814–2988, USEPA Region 3 (3DA00), 1650 Arch Street, Philadelphia, PA 19103–2029.

*Secondary:* Kathy Duran (215) 814–5441.

*Region 4—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee*

*Primary Contact:* Gloria Love (404) 562–9672, USEPA Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303–8960.

*Secondary:* Connie Raines (404) 562–9671.

*Region 5—Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin*

*Primary Contact:* Margaret Millard (312) 353–1440, USEPA Region 5 (MC T–175), 77 West Jackson Boulevard, Chicago, IL 60604–3507.

*Secondary:* Karla Johnson (312) 886–5993.

*Region 6—Arkansas, Louisiana, New Mexico, Oklahoma, Texas*

*Primary Contact:* Olivia Balandran (214) 665–7257, USEPA Region 6 (6EN), 1445 Ross Avenue, 12th Floor, Dallas, Texas 75202–2733.

*Secondary:* Shirley Augurson (214) 665–7401.

*Region 7—Iowa, Kansas, Missouri, Nebraska*

*Primary Contact:* Althea Moses (913) 551–7649 or 1–800–223–0425, USEPA Region 7, 726 Minnesota Avenue, Kansas City, KS 66101.

*Secondary:* Cecil Bailey (913) 551–7462.

*Region 8—Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming*

*Primary Contact:* Nancy Reish (303) 312–6040, USEPA Region 8 (8ENF–EJ), 999 18th Street, Suite 500, Denver, CO 80202–2466.

*Secondary:* Marcella Devargas (303) 312–6161.

*Region 9—Arizona, California, Hawaii, Nevada, American Samoa, Guam*

*Primary Contact:* Willard Chin (415) 744–1204, USEPA Region 9 (A–2–2), 75 Hawthorne Street, San Francisco, CA 94105.

*Secondary:* EJ Information Line (415) 744–1565.

*Region 10—Alaska, Idaho, Oregon, Washington*

*Primary Contact:* Victoria Plata (206) 553–8580, USEPA Region 10 (CEJ–163), 1200 Sixth Avenue, Seattle, WA 98101.

*Secondary:* Mike Letourneau (206) 553–1687.

**IV. Process for Awarding Grants**

*A. How Will Applications be Reviewed?*

EPA Regional offices will review, evaluate, and select grant recipients. Applications will be screened to ensure that they meet all eligible activities and requirements described in Sections II and III. Applications will also be evaluated by Regional review panels based on the criteria outlined in this solicitation. Applications will be disqualified if they do not meet these criteria.

*B. How Will the Final Selections be Made?*

After the individual projects are reviewed and ranked, EPA Regional officials will compare the best applications and make final selections. Additional factors that EPA will take into account include geographic and socioeconomic balance, diverse nature of the projects, cost, and projects whose benefits can be sustained after the grant is completed. Regional Administrators will select the final grants.

Please note that this is a very competitive grants program. Limited funding is available and many grant applications are expected to be received. Therefore, the Agency cannot fund all applications. If your project is not funded, a listing of other EPA grant programs may be found in the Catalog of Federal Domestic Assistance. This publication is available at local libraries, colleges, or universities.

*C. How Will Applicants be Notified?*

After all applications are received, EPA Regional offices will mail acknowledgments to applicants in their Regions. Once applications have been recommended for funding, the EPA Regions will notify the finalists and request any additional information necessary to complete the award process. The finalists will be required to complete additional government application forms prior to receiving a grant, such as the EPA Form SF–424B (Assurances—Non-Construction Programs), EPA Form 5700–48, and the Certification Regarding Debarment, Suspension, and Other Responsibility Matters. The federal government requires all grantees to certify and assure that they will comply with all applicable federal laws, regulations, and requirements.

The EPA Regional Environmental Justice Coordinators or their designees will notify those applicants whose projects are not selected for funding.

**V. Expected Time-Frame for Reviewing and Awarding Grants**

December 8, 1999—FY 2000 OEJ Small Grants Program Application Guidance is available and published in the **Federal Register**.

December 9, 1999 to March 3, 2000—Eligible grant recipients develop and complete their applications.

March 3, 2000—Applications must be postmarked by this date and mailed or delivered to the appropriate EPA regional office.

March 3, 2000 to April 9, 2000—EPA Regional Program Officials review and evaluate applications and select grant finalists.

April 9, 2000 to August 6, 2000—Applicants will be contacted by the region if their application is being considered for funding. Additional information may be required from the finalists, as indicated in Section IV. EPA regional grant offices process grants and make awards.

September 30, 2000—EPA expects to release the national announcement of the FY 2000 Office of Environmental Justice Small Grant Recipients.

**VI. Project Period and Final Reports**

Activities must be completed and funds spent within the time frame specified in the grant award, usually one year. Project start dates will depend on the grant award date (most projects begin in August or September). The recipient organization is responsible for the successful completion of the project. The recipient's project manager is subject to approval by the EPA project officer but EPA may not direct that any particular person be the project manager.

All recipients must submit final reports for EPA approval within ninety (90) days of the end of the project period. Specific report requirements (e.g., Final Technical Report and Financial Status Report) will be described in the award agreement. EPA will collect, review, and disseminate grantees' final reports to serve as model programs.

For further information about this program, please visit EPA's website at *www.epa.gov/oeca/oej/00grants.html* or call our hotline at 1–800–962–6215.

**VII. Fiscal Year 2001 OEJ Small Grants Program**

*A. How Can I Receive Information on the Fiscal Year 2001 Environmental Justice Grants Program?*

If you wish to be placed on the national mailing list to receive information on the FY 2001 Environmental Justice Small Grants Program, you must mail your request along with your name, organization, address, and phone number to: U.S. Environmental Protection Agency, Office of Environmental Justice Small Grants Program (2201A), FY 2001 Grants Mailing List, 401 M Street, SW, Washington, DC 20460, 1 (800) 962–6215.

Thank you for your interest in our Small Grants Program and we wish you luck in the application process.

**Barry E. Hill,**

*Director, Office of Environmental Justice.*

[FR Doc. 00–625 Filed 1–10–00; 8:45 am]

**BILLING CODE 6560–50–U**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 9:58 a.m. on Friday, January 7, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider a matter relating to the Corporation's resolution activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Dated: January 7, 2000.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 00–753 Filed 1–7–00; 3:36 pm]

**BILLING CODE 6714–01–M**

## FEDERAL MEDIATION AND CONCILIATION SERVICE

### Labor-Management Cooperation Program; Application Solicitation

**AGENCY:** Federal Mediation and Conciliation Service.

**ACTION:** Final Fiscal Year 2000 Program Guidelines/Application Solicitation for Labor-Management Committees.

**SUMMARY:** The Federal Mediation and Conciliation Service (FMCS) is publishing the final Fiscal Year 2000 Program Guidelines/Application Solicitation for the Labor-Management Cooperation program to inform the public. The program is supported by Federal funds authorized by the Labor-Management Cooperation Act of 1978, subject to annual appropriations. This Solicitation contains changes in the maximum Federal funding amount available for different categories of committees.

**FOR FURTHER INFORMATION CONTACT:** Peter L. Regner, 202–606–8181.

**Labor-Management Cooperation Program Application Solicitation for Labor-Management Committees FY2000**

**A. Introduction**

The following is the final solicitation for the Fiscal Year (FY) 2000 cycle of the Labor-Management Cooperation Program as it pertains to the support of labor-management committees. These guidelines represent the continuing efforts of the Federal Mediation and Conciliation Service to implement the provisions of the Labor-Management Cooperation Act of 1978 which was initially implemented in FY81. The Act generally authorizes FMCS to provide assistance in the establishment and operation of company/plant, area, public sector, and industry-wide labor-management committees which:

(A) Have been organized jointly by employers and labor organizations representing employees in that company/plant, area, government agency, of industry; and

(B) Are established for the purpose of improving labor-management relationships, job security, and organizational effectiveness; enhancing economic development; or involving workers in decisions affecting their jobs, including improving communication with respect to subjects of mutual interest and concern.

The Program Description and other sections that follow, as well as a separately published FMCS Financial and Administrative Grants Manual, make up the basic guidelines, criteria, and program elements a potential applicant for assistance under this program must know in order to develop an application for funding consideration for either a company/plant, area-wide, industry, or public sector labor-management committee. Directions for obtaining an application kit may be found in Section H. A copy of the Labor-Management Cooperation Act of 1978, included in the application kit, should be reviewed in conjunction with this solicitation.

**B. Program Description**

*Objectives*

The Labor-Management Cooperation Act of 1978 identifies the following seven general areas for which financial assistance would be appropriate:

(1) To improve communication between representatives of labor and management;

(2) To provide workers and employers with opportunities to study and explore new and innovative joint approaches to achieving organizational effectiveness;

(3) To assist workers and employers in solving problems of mutual concern

not susceptible to resolution within the collective bargaining process;

(4) To study and explore ways of eliminating potential problems which reduce the competitiveness and inhibit the economic development of the company/plant, area, or industry;

(5) To enhance the involvement of workers in making decisions that affect their working lives;

(6) To expand and improve working relationships between workers and managers; and

(7) To encourage free collective bargaining by establishing continuing mechanisms for communication between employers and their employees through Federal assistance in the formation and operation of labor-management committees.

The primary objective of this program is to encourage and support the establishment and operation of joint labor-management committees to carry out specific objectives that meet the aforementioned general criteria. The term ''labor'' refers to employees represented by a labor organization and covered by a formal collective bargaining agreement. These committees may be found at either the plant (company), area, industry, or public sector levels. A plant or company committee is generally characterized as restricted to one or more organizational or productive units operated by a single employer. An area committee is generally composed of multiple employers of diverse industries as well as multiple labor unions operating within and focusing upon city, county, contiguous multicounty, or statewide jurisdictions. An industry committee generally consists of a collection of agencies or enterprises and related labor union(s) producing a common product or service in the private sector on a local, state, regional, or nationwide level. A public sector committee consists either of government employees and managers in one or more units of a local or state government, managers and employees of public institutions of higher education, or of employees and managers of public elementary and secondary schools. Those employees must be covered by a formal collective bargaining agreement or other enforceable labor-management agreement. In deciding whether an application is for an area or industry committee, consideration should be given to the above definitions as well as to the focus of the committee.

In FY 2000, competition will be open to company/plant, area, private industry, and public sector committees. Public Sector committees will be divided into two sub-categories for scoring purposes. One sub-category will consist of committees representing state/local units of government and public institutions of higher education. The second sub-category will consist of public elementary and secondary schools.

Special consideration will be given to committee applications involving innovative or unique efforts. All application budget requests should focus directly on supporting the committee. Applicants should avoid seeking funds for activities that are clearly available under other Federal programs (e.g., job training, mediation of contract disputes, etc.).

*Required Program Elements*

1. Problem Statement

The application, which should have numbered pages, must discuss in detail what specific problem(s) face the company/plant, area, government, or industry and its workforce that will be addressed by the committee. Applicants must document the problem(s) using as much relevant data as possible and discuss the full range of impacts these problem(s) could have or are having on the company/plant, government, area, or industry. An industrial or economic profile of the area and workforce might prove useful in explaining the problem(s). This section basically discusses *WHY* the effort is needed.

2. Results or Benefits Expected

By using specific goals and objectives, the application must discuss in detail *WHAT* the labor-management committee as a demonstration effort will accomplish during the life of the grant. Applications that promise to provide objectives *after* a grant is awarded will receive little or no credit in this area. While a goal of ''improving communication between employers and employees'' may suffice as one over-all goal of a project, the objectives must, whenever possible, be expressed in *specific* and *measurable* terms. Applicants should focus on the outcome, impacts or changes that the committee's efforts will have. Existing committees should focus on *expansion* efforts/results expected from FMCS funding. The goals, objectives, and projected impacts will become the foundation for future monitoring and evaluation efforts of the grantee, as well as the FMCS grants program.

3. Approach

This section of the application specifies *HOW* the goals and objectives will be accomplished. At a minimum, the following elements must be included in all grant applications:

(a) A discussion of the strategy the committee will employ to accomplish its goals and objectives;

(b) A listing, by name and title, of all existing or proposed members of the labor-management committee. The application should also offer a rationale for the selection of the committee members (e.g., members represent 70% of the area or company/plant workforce).

(c) A discussion of the number, type, and role of all committee staff persons. Include proposed position descriptions for all staff that will have to be hired as well as resumes for staff already on board;

(d) In addressing the proposed approach, applicants must also present their justification as to why Federal funds are needed to implement the proposed approach;

(e) A statement of how often the committee will meet (we require meetings at least every other month) as well as any plans to form subordinate committees for particular purposes; and

(f) For applications from existing committees (i.e., in existence at least 12 months prior to the submission deadline), a discussion of past efforts and accomplishments and how they would integrate with the proposed expanded effort.

4. Major Milestones

This section must include an implementation plan that indicates what major steps, operating activities, and objectives will be accomplished as well as a timetable for *WHEN* they will be finished. A milestone chart must be included that indicates what specific accomplishments (process and impact) will be completed by month over the life of the grant using September 18, 2000, as the start date. The accomplishment of these tasks and objectives, as well as problems and delays therein, will serve as the basis for quarterly progress reports to FMCS.

5. Evaluation

Applicants must provide for either an external evaluation or an internal assessment of the project's success in meeting its goals and objectives. An evaluation plan must be developed which briefly discusses what basic questions or issues the assessment will examine and what baseline data the committee staff already has or will gather for the assessment. This section should be written with the application's own goals and objectives clearly in mind and the impacts or changes that the effort is expected to cause.

6. Letters of Commitment

Applications must include current letters of commitment from *all* proposed or existing committee participants and chairpersons. These letters should indicate that the participants support the application and will attend scheduled committee meetings. A blanket letter signed by a committee chairperson or other official on behalf of all members is not acceptable. We encourage the use of individual letters submitted on company or union letterhead represented by the individual. The letters should match the names provided under Section 3(b).

7. Other Requirements

Applicants are also responsible for the following:

(a) The submission of data indicating approximately how many employees will be covered or represented through the labor-management committee;

(b) From existing committees, a copy of the existing staffing levels, a copy of the by-laws, a breakout of annual operating costs and identification of all sources and levels of current financial support;

(c) A detailed budget narrative based on policies and procedures contained in the FMCS Financial and Administrative Grants Manual;

(d) An assurance that the labor-management committee will not interfere with any collective bargaining agreements; and

(e) An assurance that committee meetings will be held at least every other month and that written minutes of all committee meetings will be prepared and made available to FMCS.

*Selection Criteria*

The following criteria will be used in the scoring and selection of applications for award:

(1) The extent to which the application has clearly identified the problems and justified the needs that the proposed project will address.

(2) The degree to which appropriate and *measurable* goals and objectives have been developed to address the problem/needs of the applicant.

(3) The feasibility of the approach proposed to attain the goals and objectives of the project and the perceived likelihood of accomplishing the intended project results. This section will also address the degree of innovativeness or uniqueness of the proposed effort.

(4) The appropriateness of committee membership and the degree of commitment of these individuals to the goals of the application as indicated in the letters of support.

(5) The feasibility and thoroughness of the implementation plan in specifying major milestones and target dates.

(6) The cost effectiveness and fiscal soundness of the application's budget request, as well as the application's feasibility vis-a-vis its goals and approach.

(7) The overall feasibility of the proposed project in light of all of the information presented for consideration; and

(8) The value to the government of the application in light of the overall objectives of the Labor-Management Cooperation Act of 1978. This includes such factors as innovativeness, site location, cost, and other qualities that impact upon an applicant's value in encouraging the labor-management committee concept.

**C. Eligibility**

Eligible grantees include state and local units of government, labor-management committees (or a labor union, management association, or company on behalf of a committee that will be created through the grant), and certain third-party private non-profit entities on behalf of one or more committees to be created through the grant. Federal government agencies and their employees are not eligible.

Third-party private, non-profit entities which can document that a major purpose or function of their organization has been the improvement of labor relations are eligible to apply. However, all funding must be directed to the functioning of the labor-management committee, and all requirements under Part B must be followed. Applications from third-party entities must document particularly strong support and participation from all labor and management parties with whom the applicant will be working. Applications from third-parties which do not directly support the operation of a new or expanded committee will not be deemed eligible, nor will applications signed by entities such as law firms or other third-parties failing to meet the above criteria.

Applicants who received funding under this program in the past for committee operations are generally not eligible to apply. The only exceptions apply to grantees who seek funds on behalf of an entirely different committee.

**D. Allocations**

The total FY 2000 appropriation for this program is $1.5 million, of which at least $1,000,000 will be available competitively for new applicants. Specific funding levels will not be established for each type of committee. Instead, the review process will be conducted in such a manner that at least two awards will be made in each category (company/plant, industry, public sector, and area), providing that FMCS determines that at least two outstanding applications exist in each category. After these applications are selected for award, the remaining applications will be considered according to merit without regard to category.

In addition to the competitive process identified in the preceding paragraph, FMCS will set aside a sum not to exceed thirty percent of its non-reserved appropriation to be awarded on a non-competitive basis. These funds will be used only to support applications that have been solicited by the Director of the Service and are not subject to the dollar range noted in Section E or to any submission deadline.

FMCS reserves the right to retain up to five percent of the FY2000 appropriation to contract for program support purposes (such as evaluation) other than administration.

**E. Dollar Range and Length of grants and Continuation Policy**

Awards to continue and expand existing labor-management committees (*i.e.*, in existence 12 months prior to the submission deadline) will be for period of 12 months. If all of the original funding is not obligated within 12 months, FMCS will consider grant period extensions for up to an additional six months. No continuation awards are anticipated. Initial awards to establish new labor-management committees (*i.e.*, not yet established or in existence less than 12 months prior to the submission deadline), will be for a period of 18 months. If successful progress is made during this initial budget period and all grant funds are not obligated within 18 months, these grants may be extended for up to six months. No continuation awards are anticipated.

The dollar range of awards is as follows:

—Up to $45,000 in FMCS funds per annum for existing company/plant or single department public sector applicants:

—Up to $65,000 over 18 months for new company/plant committee or single department public sector applicants;

—Up to $100,000 in FMCS funds per annum for existing area, industry and multi-departmental public sector committee applicants;

—Up to $125,000 per 18-month period for new area, industry, and multi-

department public sector committee applicants.

Applicants are reminded that these figures represent maximum Federal funds only. If total costs to accomplish the objectives of the application exceed the maximum allowable Federal funding level and its required grantee match, applicants may supplement these funds through voluntary contributions from other sources. Applicants are also strongly encouraged to consult with their local or regional FMCS field office to determine what kinds of training may be available at no cost before budgeting for such training in their applications. A list of our field leadership team and their phone numbers is included in the application kit.

**F. Cash Match Requirements and Cost Allowability**

Applicants for new labor-management committees must provide at least 10 percent of the total allowable project costs. Applicants for existing committees must provide at least 25 percent of the total allowable project costs. All matching funds may come from state or local government sources or private sector contributions, but may generally not include other Federal funds. Funds generated by grant-supported efforts are considered ''project income,'' and may not be used for matching purposes.

It will be the policy of this program to reject all requests for indirect or overhead costs as well as ''in-kind'' match contributions. In addition, grant funds must not be used to supplant private or local/state government funds currently spent for these purposes. Funding requests from existing committees should focus entirely on the costs associated with the expansion efforts. Also, under no circumstances may business or labor officials participating on a labor-management committee be compensated out of grant funds for *time* spent at committee meetings or *time* spent in committee training sessions. Applicants generally will not be allowed to claim all or a portion of *existing* full-time staff as an expense or match contribution. For a more complete discussion of cost allowability, applicants are encouraged to consult the FY2000 FMCS Financial and Administrative Grants Manual which will be included in the application kit.

**G. Application Submission and Review Process**

Applications should be signed by *both* a labor and management representative and be postmarked no later than May 20, 2000. No applications or supplementary materials can be accepted after the deadline. It is the responsibility of the applicant to ensure that the application is correctly postmarked by the U.S. Postal Service or other carrier. An original application containing numbered pages, plus *three* copies, should be addressed to the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW, Washington, DC 20427. FMCS will not consider videotaped submissions or video attachments to submissions.

After the deadline has passed, all eligible applications will be reviewed and scored initially by one or more Grant Review Boards. The Board(s) will recommend selected applications for further funding consideration. The Director, Program Services, will finalize the scoring and selection process. The individual listed as contact person in Item 6 on the application form will generally be the only person with whom FMCS will communicate during the application review process.

All FY2000 grant applicants will be notified of results and all grant awards will be made before September 15, 2000. Applicants submitted after the May 20 deadline date or that fail to adhere to eligibility or other major requirements will be administratively rejected by the Director, Program Services.

**H. Contact**

Individuals wishing to apply for funding under this program should contact the Federal Mediation and Conciliation Service as soon as possible to obtain an application kit.

These kits and additional information or clarification can be obtained free of charge by contacting the Federal Mediation and Conciliation Service, Labor-Management Grants Program, 2100 K Street, NW, Washington, DC 20427; or by calling 202–606–8181. The Application Solicitation can also be found on the FMCS web site at www.fmcs.gov.

**C. Richard Barnes,**

*Director, Federal Mediation and Conciliation Service.*

[FR Doc. 00–575 Filed 1–10–00; 8:45 am]

BILLING CODE 6732–01–M

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**TIME AND DATE:** 11:00 a.m., Tuesday, January 18, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: January 7, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–752 Filed 1–7–00; 3:56 pm]

BILLING CODE 6210–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

**[ATSDR–156]**

### Public Health Assessments Completed

**AGENCY:** Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces those sites for which ATSDR has completed public health assessments during the period from July through September 1999. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Williams, P.E., DEE, Assistant Surgeon General, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

**SUPPLEMENTARY INFORMATION:** The most recent list of completed public health

assessments was published in the **Federal Register** on September 17, 1999 [64 FR 50514]. This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

**Availability**

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8:00 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

**Public Health Assessments Completed or Issued**

Between July 1 and September 30, 1999, public health assessments were issued for the sites listed below:

*NPL Sites*

California

Barstow Marine Corps Logistics Base (a/k/a Marine Corps Logistics Base Barstow)—Barstow—(PB20–101181)

Jet Propulsion Laboratory (NASA)—Pasadena—(PB99–167470)

Florida

Florida Petroleum Reprocessors—Davie—(PB99–167074)

Shuron Incorporated—Barnwell—(PB99–176943)

Solitron Microwave—Port Salerno—(PB99–172801)

Stauffer Chemical (Tarpon Springs)—Tarpon Springs—(Addendum)—(PB99–160400)

Georgia

Clark Road Municipal Solid Waste Landfill—Waynesboro—(PB99–176968)

Illinois

Adams County Quincy Landfills 2 & 3—Quincy—(PB20–100214)

Matthiessen and Hegler Zinc Company—La Salle—(PB20–100214)

Iowa

Farmer's Mutual Cooperative—Hospers—(PB20–100502)

Massachusetts

GAF Materials Corporation—Millis—(PB99–171811)

South Weymouth Naval Air Station—South Weymouth—(PB20–100928)

Minnesota

Naval Industrial Reserve Ordnance Plant—Fridley—(PB20–100940)

Missouri

Newton County Wells (a/k/a Silver Creek TCE)—Joplin—(PB99–166324)

Wheeling Disposal Service Company Landfill—Amazonia—(PB169955)

New Hampshire

Pease Air Force Base—Portsmouth—(PB20–100939)

New Jersey

Zschiegner Refining—Howell Township—(PB99–157000)

Texas

Jasper Creosoting Company Incorporated—Jasper—(PB20–100691)

Longhorn Army Ammunition Plant—Karnack—(PB99–171860)

Rockwool Industries—Belton—(PB99–171829)

State Marine of Port Arthur—Port Arthur—(PB–171878)

*Non NPL Petitioned Sites*

New York

Metro Gas Station—Flanders—(PB99–171886)

Virginia

Oldover Corporation (a/k/a Virginia Solite)—Cascade—(PB20–100503)

Dated: January 5, 2000.

**Georgi Jones,**

*Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 00–567 Filed 1–10–00; 8:45 am]

BILLING CODE 4163–70–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–05–00]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

**Proposed Project**

1. National Disease Surveillance Program—II. Disease Summaries (0920–0004)—Reinstatement—National Center for Infectious Diseases (NCID), National Disease Surveillance Program. Surveillance of the incidence and distribution of disease has been an important function of the U.S. Public Health Service (PHS) since 1878. Through the years, PHS/CDC has formulated practical methods of disease control through field investigations. The CDC Surveillance program is based on the premise that diseases cannot be diagnosed, prevented, or controlled until existing knowledge is expanded and new ideas developed and implemented. Over the years, the mandate of CDC has broadened to include preventive health activities and the surveillance systems maintained have expanded.

Data on disease and preventable conditions are collected in accordance with jointly approved plans by CDC and the Council of State and Territorial Epidemiologists (CSTE). Changes in the surveillance program and in reporting methods are effected in the same manner. At the onset of this surveillance program in 1968, the CSTE and CDC decided on which diseases warranted surveillance. These diseases are reviewed and revised based on variations in the public health. Surveillance forms are distributed to the State and local health departments who voluntarily submit these reports to CDC on variable frequencies, either weekly or monthly. CDC then calculates and publishes weekly statistics via the Morbidity and Mortality Weekly Report

(MMWR), providing the states with timely aggregates of their submissions.

The following diseases/conditions are included in this program: Influenza Virus, Respiratory and Enterovirus, Arboviral Encephalitis, Rabies, Salmonella, Campylobacter, Shigella, Foodborne Outbreaks, Waterborne Outbreaks, and Enteric Virus. This request is for extension of the data collection for three years with minor revisions.

These data are essential on the Local, State, and Federal levels for measuring trends in diseases, evaluating the effectiveness of current preventive strategies, and determining the need for modifying current preventive measures. The total annual burden hours are 2647.

| Respondents | Number of respondents | Number of responses/ respondent | Average burden of response (in hrs.) |
|---|---|---|---|
| State and Local Health Officials in 50 states/territories | 864 | 28 | .25 |

Dated: January 5, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–565 Filed 1–10–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[30DAY–10–00]**

## Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

**Proposed Project**

1. Studies Safety for Workers' Eyes: Testing the Effectiveness of Theoretically-Based Eye Injury Prevention Messages—NEW—National Institute for Occupational Safety and Health (NIOSH)—Despite evidence that at least 90% of workplace eye injuries are preventable, safety eye wear use among workers is disappointingly low. According to the National Institute for Occupational Safety and Health (NIOSH) and results from the 1988 National Health Interview Survey Occupation Health Supplement, more than 600,000 occupational eye injuries occur annually. Sixteen percent of eye injuries occur among construction with carpenters being at particular risk given the nature of their work.

Research has been conducted on the nature and extent of eye injuries among workers, but few studies have explored the behavioral aspects of the use of safety eye wear. To date, no one has used behavioral theory to examine the use of safety eye wear among union carpenters or develop a program that would increase safety eye wear use.

The goals of this investigation are to: (1) estimate the number of carpenters who are currently wearing protective eye wear by direct observation and pre-intervention survey in the study sample; (2) develop an eye wear safety promotion campaign geared toward carpenters, their first-line supervisors, and contractors based on results from focus groups and using the theory of planned behavior; (3) increase the use of protective eye wear among carpenters by administering the eye safety messages to carpenters, their first-line supervisors, and contractors; and (4) determine the effectiveness of the messages by comparing the use of safety eye wear among carpenters before and after the campaign by direct observation, post-intervention survey, and focus groups.

The pre- and post-intervention survey instruments will assess carpenters' use of eye wear before and after the health communication message. In addition, based on the theory of planned behavior, the questionnaire will address workers behavioral intentions, attitudes, subjective norms, and perceived behavioral control.

Using a quasi-experimental design, the data collected in this study will assess the effectiveness of theory-based messages to increase the use of safety eye wear when compared to a control group. This information will provide public health investigators as well as carpenter safety officers with a theory-driven effective eye injury prevention program and the tools to implement it. The total annual burden hours is 0.

| Respondents | Number of respondents | Number of responses/ respondent | Average burden/ response (in hrs.) |
|---|---|---|---|
| Carpenters | 150 | 2 | .33 |

Dated: January 5, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–566 Filed 1–10–00; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request Proposed Project

*Title:* Temporary Assistance for Needy Families (TANF) State Plan Guidance.

*OMB No.:* 0970–0145.

*Description:* The State plan is a mandatory statement submitted to the Secretary of the Department of Health and Human Services by the State. It consists of an outline of how the State's TANF program will be administered and operated and certain required certifications by the State's Chief Administrative Officer. Its submittal triggers the State's family assistance grant funding and it is used to provide the public with information about the program. If a State makes changes in its program, it must submit a State plan amendment.

*Respondents:* States.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| State TANF plan | 54 | 1 | 30 | 1,620 |
| Title Amendments | 54 | 1 | 3 | 162 |

*Estimated Total Annual Burden Hours:* 1782.

In compliance with the requirements of section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 5, 2000.

**Bob Sargis,**

*Acting Reports Clearance Officer.*

[FR Doc. 00–578 Filed 1–10–00; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Availability of the HRSA Preview; Correction

**AGENCY:** Health Resources and Services Administration.

**ACTION:** Notice; correction.

**SUMMARY:** In the **Federal Register** issue of Thursday, August 18, 1999, make the following correction:

**Correction**

In the **Federal Register** issue of Wednesday, August 18, 1999, in FR Doc. 99–21257, on page 45031, the grant category beginning in the first column under the heading ''Healthy Start: Infrastructure/Capacity Building Projects (CFDA# 926.F)'' is withdrawn from competition due to insufficient funds.

Dated: January 5, 2000.

**Claude Earl Fox,**

*Administrator.*

[FR Doc. 00–535 Filed 1–10–00; 8:45 am]

**BILLING CODE 4160–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Privacy Act of 1974; Annual Publication of Systems of Records

**AGENCY:** Department of Health and Human Services (DHHS); Health Resources and Services Administration (HRSA).

**ACTION:** Publication of minor changes to system-of-records notices.

**SUMMARY:** In accordance with Office of Management and Budget Circular No. A–130, Appendix I, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' HRSA is publishing minor changes to its notices of systems of records.

**SUPPLEMENTARY INFORMATION:** HRSA has completed the annual review of its systems of records and is publishing below those minor changes which affect the public's right or need to know, such as system deletions, title changes, and changes in the system location of records, or the addresses of systems managers.

1. A new system of records, 09–15–0061, Ricky Ray Hemophilia Relief Fund Act of 1998, HHS/HRSA/BHPr, was added (64 FR 69274–69277, December 10, 1999).

2. System of records 09–15–0001, Division of Federal Occupational Health Medical anc Counseling Records, HHS/HRSA/BPHC, has been terminated. No information has been added to the system since December 31, 1998. Previously collected information has been consolidated with system of records OPM/GOVT–10, Employee Medical File System Records.

3. System of records 09–15–0057, Scholarships for the Undergraduate Education of Professional Nurses Grant Programs, HHS/HRSA/BHPr, has been terminated. This is no longer an active program.

4. Other minor systems-of-records changes affecting individual categories are published below.

Dated: December 22, 1999.

**James J. Corrigan,**

*Associate Administrator for Management and Program Support.*

### Table of Contents

The following table of contents lists all currently active Privacy Act systems of records maintained by the Health Resources and Services Administration:

09–15–0002 Record of Patients' Personal Valuables and Monies, HHS/HRSA/BPHC.
09–15–0003 Contract Physicians and Consultants, HHS/HRSA/BPHC.
09–15–0004 Federal Employee Occupational Health Data System, HHS/HRSA/BPHC.
09–15–0007 Patients Medical Records System PHS Hospitals/Clinics, HHS/HRSA/BPHC.
09–15–0028 PHS Clinical Affiliation Trainee Records, HHS/HRSA/BPHC.
09–15–0037 Public Health Service (PHS) and National Health Service Corps (NHSC) Scholarship/Loan Repayment Participant Records System, HHS/HRSA/BPHC.
09–15–0038 Disability Claims of the Nursing Student Loan Program, HHS/HRSA/BHPr.
09–15–0039 Disability Claims in the Health Professions Student Loan Program, HHS/HRSA/BHPr.
09–15–0042 Physician Shortage Area Scholarship Program, HRSA/HRSA/BPHC.
09–15–0044 Health Educational Assistance Loan Program (HEAL) Loan Control Master File, HHS/HRSA/BHPr.
09–15–0046 Health Professions Planning and Evaluation, HHS/HRSA/OA.
09–15–0054 National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners, HHS/HRSA/BHPr.
09–15–0055 Organ Procurement and Transplantation Network (OPTN) Data System, HHS/HRSA/OSP.
09–15–0056 National Vaccine Injury Compensation Program, HHS/HRSA/BHPr.
09–15–0058 Faculty Loan Repayment Program, HHS/HRSA/BHPr.
09–15–0059 Health Resources and Services Administration Correspondence Control System, HHS/HRSA/OMPS.
09–15–0060 Minority/Disadvantaged Health Professions Programs, HHS/HRSA/BHPr.
09–15–0061 Ricky Ray Hemophilia Relief Fund Act of 1998, HHS/HRSA/BHPr.

### Changes

**09–15–0044**

**SYSTEM NAME:**

Health Educational Assistance Loan Program (HEAL) Loan Control Maste File, HHS/HRSA/BHPr.

Minor changes have been made to this system-of-records notice. The following categories should be revised:

* * * * *

**SYSTEM LOCATION:**

Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–37, Rockville, MD 20857.

Records are also located at contractor sites. A list of contractor sites where individually-identifiable data are currently located is available upon request to the System Manager.

Washington National Records Center, 4205 Suitland Road, Suitland, MD 20409.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Recipients of Health Education Assistance Loans.

* * * * *

**PURPOSE(S):**

The purpose of this system is to (1) identify students participating in the HEAL Program; (2) monitor the loan status of HEAL recipients, which includes the collection of overdue debts owed under the HEAL Program; and (3) to compile and generate managerial and statistical reports.

* * * * *

**09–15–0056**

**SYSTEM NAME:**

National Vaccine Injury Compensation Program, HHS/HRSA/BHPr.

Minor changes have been made to this system-of-records notice. The following category should be revised:

* * * * *

**RETRIEVABILITY:**

(1) Docket number assigned by the U.S. Claims Court; (2) petitioner and/or name of person vaccinated.

* * * * *

**09–15–0058**

**SYSTEM NAME:**

Faculty Loan Repayment Program, HHS/HRSA/BHPr.

Minor changes have been made to this system-of-records notice. The following categories should be revised:

* * * * *

**SYSTEM LOCATION:**

Office for Campus Based Programs, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–34, Rockville, MD 20857.

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Public Health Service Act, as amended, sec. 738(a) (42 U.S.C. 293b). This section authorizes the establishment of a program for entering into contract with individuals from disadvantaged backgrounds for repayment of educational loans in exchange for teaching services.

* * * * *

**SYSTEM MANAGER(S) ADDRESS:**

Associate Division Director, Office for Campus Based Programs, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8–34, Rockville, MD 20857.

* * * * *

[FR Doc. 00–534 Filed 1–10–00; 8:45 am]

**BILLING CODE 4160–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Eye Institute; 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 a meeting of the National Advisory Eye Council.

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 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 Eye Council.

*Date:* February 10, 2000.

*Open:* 8:30 AM to 11:30 AM.

*Agenda:* Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute

and discussions concerning Institute programs and policies.

*Place:* 6120 Executive Blvd., EPN Conference Room G, Rockville, MD 20852.

*Closed:* 11:30 AM to 5:00 PM.

*Agenda:* To review and evaluate grant applications.

*Place:* 6120 Executive Blvd., EPN Conference Room G, Rockville, MD 20852.

*Contact Person:* Lois DeNinno, National Eye Institute, Executive Plaza South, Suite 350, 6120 Executive Blvd., MSC 7167, Bethesda, MD 20892, 301–496–9110.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: January 3, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–556 Filed 1–10–00; 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 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 a meeting of the National Heart, Lung, and Blood Advisory Council.

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 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 Advisory Council.

*Date:* February 10–11, 2000.

*Open:* February 10, 2000, 8:30 am to 3:00 pm.

*Agenda:* For discussion of program policies and issues.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

*Closed:* February 10, 2000, 3:00 pm to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Robert Carlsen, Director, Division of Extramural Affairs, Nat. Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

(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 21, 1999.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–561 Filed 1–10–00; 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 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 Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

*Date:* February 17–19, 2000.

*Time:* 7:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Katherine M. Woodbury, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–92323.

*Name of Committee:* Training Grant and Career Development Review Committee.

*Date:* February 18, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle Hotel, Conference Center, One Washington Circle, DC 20037.

*Contact Person:* Lillian M. Publos, Chief, Scientific Review Branch, NINDS/NIH/DHHs, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, lp28e@nih.gov.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders B.

*Date:* February 24–25, 2000.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Wyndham City Center, 1143 New Hampshire Avenue NW, Washington, DC 20037.

*Contact Person:* Paul A. Sheehy, 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 Research in the Neurosciences, National Institutes of Health, HHS)

Dated: January 3, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–553 Filed 1–10–00; 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 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) as 552b(c)(6), 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 11, 2000.

*Time:* 2:00 pm to 4:00 pm.

*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.

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 Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* January 20, 2000.

*Time:* 3:00 pm to 5:00 pm.

*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: January 3, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc 00–554 Filed 11–10–00; 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 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 a meeting of the National Advisory Dental and Craniofacial Research Council.

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 Dental and Craniofacial Research Council.

*Date:* Janaury 20–21, 2000.

*Open:* January 20, 2000, 9:00 am to 5:00 pm.

*Agenda:* Director's Report, Presentations, Workgroups.

*Place:* Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 2092.

*Closed:* January 21, 2000, 9:00 am to 3:00 pm.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20802.

*Contact Person:* Dushanka V. Kleinman, Deputy Director, National Institute of Dental & Craniofacial Res., National Institutes of Helath, 9000 Rockville Pike, 31/2C39, Bethesda, MD 20892.

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. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–555 Filed 1–10–00; 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 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 a meeting of the National Advisory Neurological Disorders and Stroke Council.

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 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 Neurological Disorders and Stroke Council.

*Date:* February 10–11, 2000.

*Open:* February 10, 2000, 8:30 a.m. to 4:15 p.m.

*Agenda:* Report by the Director, NINDS; Report by the Associate Director for Extramural Research; and other administrative and program developments.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Closed:* February 10, 2000, 4:15 p.m. to 5:30 p.m.

*Agenda:* To review and evaluate the Division of Intramural Research Board of Scientific Counselors' reports.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Closed:* February 11, 2000, 8:30 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Building 31, Conference Room 6, 31 Center Drive, Bethesda, MD 20892.

*Contact Person:* Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

(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: January 3, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–557 Filed 1–10–00; 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 12, 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 12, 2000.

*Time:* 1 p.m. to 2 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.

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. 00–562 Filed 1–10–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; 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 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 section 552b(c)(9)(B), Title 5 U.S.C., as amended. The journals as potential titles to be indexed by the National Library of Medicine and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the journals as potential titles to be indexed by the National Library of Medicine, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Literature Selection Technical Review Committee.

*Date:* January 27–28, 2000.

*Open:* January 27, 2000, 9:00 AM to 10:30 AM.

*Agenda:* Administrative reports and program developments.

*Place:* National Library of Medicine, 8600 Rockville Pike, Board room, Bethesda, MD 20894.

*Closed:* January 28, 2000, 8:30 AM to 12:30 PM.

*Agenda:* To review and evaluate journals as potential titles to be indexed by the National Library of Medicine.

*Place:* National Library of Medicine, 8600 Rockville Pike, Board room, Bethesda, MD 20894.

*Contact Person:* Sheldon Kotzin, BA, Chief, Bibliographic Services Division; Division of Library of Operations, National Library of Medicine, 8600 Rockville Pike, Bldg 38A/Room 4N419 Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS).

Dated: January 3, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–558 Filed 1–10–00; 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 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/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:* Center for Scientific Review Special Emphasis Panel.

*Date:* January 21, 2000.

*Time:* 1:00 PM to 3:00 PM.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Philip Perkins, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

(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 29, 1999.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–559 Filed 1–10–00; 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 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:* Center for Scientific Review Special Emphasis Panel.

*Date:* January 6, 2000.

*Time:* 1:00 pm to 2:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* David M. Monsees, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 319, MSC 7770, Bethesda, MD 20892, (301) 435–0684, monseesd@drg.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. 93.306, 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 29, 1999.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–560 Filed 1–10–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### Substance Abuse and Mental Health Services Administration; Notice of Listing of Members of the Substance Abuse and Mental Health Services Administration's Senior Executive Service Performance Review Board (PRB)

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces the persons who will serve on the Substance Abuse and Mental Health Services Administration's Performance Review Board. This action is being taken in accordance with Title 5, U.S.C., Section 4314(c)(4), which requires that members of performance review boards be appointed in a manner to ensure consistency, stability, and objectivity in performance appraisals, and requires that notice of the appointment of an individual to serve as a member be published in the **Federal Register**.

The following persons will serve on the SAMHSA Performance Review Board, which oversees the evaluation of performance appraisals of SAMHSA's Senior Executive Service (SES) members:

Joseph Autry, Chairperson
H. Westley Clark
Ruth Sanchez-Way
Randolph Wykoff

For further information about the SAMHSA Performance Review Board, contact the Division of Human Resources management, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 14 C–24, Rockville, Maryland 20857, telephone (301) 443–5030 (not a toll-free number).

Dated: November 4, 1999.

**Nelba Chavez,**

*Administrator, SAMHSA.*

[FR Doc. 00–536 Filed 1–10–99; 8:45 am]

**BILLING CODE 4160–01–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–104–6334–DE:GPO–0067]**

### Draft Environmental Impact Statement—North Bank Habitat Management Area

**AGENCY:** Bureau of Land Management, Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** Notice is given that the Bureau of Land Management (BLM), Roseburg District, has prepared an EIS/HMP that evaluates the environmental impacts of management on the 6,580 acre North Bank Habitat Management Area (NBHMA). This plan was necessary to form a basis for the management of habitat for the Columbian white-tailed deer (a federally listed ''endangered'' species), as well as rare plants and other sensitive species of wildlife. The EIS/HMP also identifies recreational opportunities and habitat restoration projects. The effect of this action would be to meet criteria in the Recovery Plan required for delisting the Columbian white-tailed deer (CWTD). The NBHMA is approximately five miles east of Wilbur, Oregon on County Road 200 (North Bank Road).

**DATES:** Written comments will be accepted until February 28, 2000.

**ADDRESSES:** Comments should be sent to the District Manager, Roseburg District, Bureau of Land Management, 777 NW Garden Valley Blvd., Roseburg, Oregon 97470; Attention NBHMA Project.

**FOR FURTHER INFORMATION CONTACT:** Ralph Klein (541) 440–4930.

**SUPPLEMENTARY INFORMATION:** The EIS was written in cooperation with the Oregon Department of Fish and Wildlife and the U.S. Fish and Wildlife Service.

If there is sufficient public interest, an open house meeting and field tour may be scheduled during the public comment period. EPA Notice was published on December 30, 1999.

Dated: January 3, 2000.

**William O'Sullivan,**

*Field Manager.*

[FR Doc. 00–563 Filed 1–10–00; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF INTERIOR

### Bureau of Land Management

**[WY–930–1060–JJ]**

### Notice of Public Hearing; Wyoming Wild Horse Management; Helicopter and Motor Vehicle Use

**AGENCY:** Bureau of Land Mangement, Interior.

**ACTION:** Notice of Public Hearing.

**SUMMARY:** A public hearing is scheduled at the Bureau of Land Management Office. A formal hearing will be conducted to receive statements from the public concerning the use of helicopters and motor vehicles in wild horse management operations within Wyoming for calendar year 2000.

**DATES:** February 14, 2000, 3:00 P.M.

**ADDRESSES:** Bureau of Land Management, 280 Hwy 191 North, Rock Springs, Wyoming 82901.

**FOR FURTHER INFORMATION CONTACT:** Ron Hall, WH&B Program Manager, Rock Springs Field Office, 280 Hwy 191 North, Rock Springs, Wyoming, (307) 352–0208.

The meeting is open to the public and interested persons may make oral statements on the subject. All statements will be recorded.

**Authority:** Public Law 92–195 as amended by Pub. L. 94–579 and CFR Subpart 4740.1(b).

**John S. McKee,**

*Field Manager.*

[FR Doc. 00–568 Filed 1–10–00; 8:45 am]

**BILLING CODE 4310–22–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 31, 1999. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by January 26, 2000.

**Carol D. Shull,**

*Keeper of the National Register.*

**ARIZONA**

*Santa Cruz County*

Pennington Rural Historic Landscape, N of jct. of Royal Rd. and Calle Del Rio, Nogales vicinity, 00000004

**COLORADO**

*Alamosa County*

Husung Hardware, 625 Main St., Alamosa, 00000003

*Las Animas County*

First Baptist Church, 809 San Pedro St., Trinidad, 00000005

**FLORIDA**

*Orange County*

Well'sbuilt Hotel, 511 W. South St., Orlando, 00000006

**LOUISIANA**

*Jefferson Parish*

Kerner House, 1012 Monroe St., Gretna, 00000008

*Richland Parish*

Delhi Municipal Baseball Park, Chicago and Louisiana Sts., Delhi, 00000007

**MICHIGAN**

*Chippewa County*

Parker Road—Charlotte River Bridge, (Highway Bridges of Michigan MPS), Parker Rd. over Charlotte River., Bruce Township, 00000009

*Oakland County*

Trowbridge Road—Grand Trunk Western Railroad Bridge, (Highway Bridges of Michigan MPS), Trowbridge Rd. over GTW Railroad, Bloomfield Hills, 00000010

*St. Clair County*

Indian Trail Road—Belle River Bridge (Highway Bridges of Michigan MPS), Indian Trail Rd. over Belle River, China Township, 00000012

Jeddo Road—South Branch Mill Creek Drain Bridge (Highway Bridges of Michigan MPS),Jeddo Rd. over S. Branch Mill Creek Drain, Brookway Township, 00000013

Vernier Street—Swan Creek Bridge (Highway Bridges of Michigan MPS), Vernier St. over Swan Cr., Ira Township, 00000011

Wadhams Road—Pine River Bridge (Highway Bridges of Michigan MPS), Wadhams Rd. over Pine River, Saint Clair Township, 00000014

**MISSOURI**

*St. Louis Independent City*

Kiel Opera House, 1400 Market St., St. Louis, 00000016

St. Louis Post-Dispatch Building, 1139 Olive St.,St. Louis, 00000015

**NORTH CAROLINA**

*Ashe County*

Todd Historic District, Along Todd Railroad Grade Rd., Big Hill Rd., and Carter Miller Rd., Todd, 00000017

**OHIO**

*Belmont County*

Zweig Building, 3396 Belmont St., Bellaire, 00000018

**SOUTH CAROLINA**

*Spartanburg County*

Spartanburg historic District (Boundary Increase), 100 Blk. of E. Main St., Spartanburg, 00000019

**SOUTH DAKOTA**

*Clay County*

South Dakota Department of Transportation Bridge No. 14–060–032 (Historic Bridges in South Dakota MPS) Local Rd. over Spring Creek, Wakonda vicinity, 00000020

*Minnehaha County*

Dell Rapids Bridge (Historic Bridges in South Dakota MPS) Local road over the Big Sioux R., Dell Rapids, 00000021

South Dakota Department of Transportation Bridge No. 50–122–155 (Historic Bridges in South Dakota MPS), Local road over Skunk Creek, Brandon Twp. vicinity, 00000022

**VIRGINIA**

*Albemarle County*

Woodburn, Address Restricted, Charlottesville vicinity, 00000029

*Botetourt County*

Hawthorne Hall, 1527 Hawthorne Hall Rd., Fincastle, 00000025

*Charlotte County*

Toombs Tobacco Farm, 1125 Tates Mill Rd., Red Oak vicinity, 00000027

*Franklin County*

Holland—Duncan House, 13508 Booker T. Washington Hwy,Moneta vicinity, 00000026

*Russell County*

Carter Hill, Fincastle Rd., Lebanon vicinity, 00000023

Catlerun Historic District,Rte. 682, Castlewood vicinity, 00000024

*Warren County*

Warren County Courthouse,
1 E. Main St.,
Front Royal, 00000028

[FR Doc. 00–641 Filed 1–10–00; 8:45 am]

**BILLING CODE 4310–70–P**

## INTERNATIONAL TRADE COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** January 13, 2000 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–297 and 731–TA–422 (Review) (Steel Rails from Canada)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on January 24, 2000.)
5. Inv. Nos. 701–TA–A and 731–TA–157 (Review) (Carbon Steel Wire Rod from Argentina)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on January 26, 2000.)
6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: January 5, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–693 Filed 1–7–00; 12:59 pm]

**BILLING CODE 7020–02–P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Notice of Meetings

**TIME AND DATE:** 10:00 a.m., Thursday, January 13, 2000.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Request from a Federal Credit Union to Convert to a Community Charter.
2. Request from a Corporate Federal Credit Union for a National Field of Membership Amendment.
3. Request from a Corporate Credit Union to Convert to a Federally Chartered Corporate Credit Union with a National Field of Membership.
4. NCUA's ''Results Act'' Strategic Plan and Annual Performance Plan.

**RECESS:** 11:15 a.m.

**TIME AND DATE:** 11:30 a.m., Thursday, January 13, 2000.

**PLACE:** Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
2. Administrative Action under Sections 206 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
3. Administrative Actions under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
4. Administrative Action under Part 703 of NCUA's Rules and Regulations. Closed pursuant to exemptions (8), (9)(A)(ii) and (9)(B).
5. One (1) Personnel Action. Closed pursuant to exemptions (2), (5), (6), (7) and (9)(B).

**FOR FURTHER INFORMATION CONTACT:** Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

**Becky Baker,**

*Secretary of the Board.*

[FR Doc. 00–697 Filed 1–7–00; 1:47 pm]

**BILLING CODE 7535–01–M**

## NATIONAL SCIENCE FOUNDATION

### Notice of Intent To Seek Approval To Extend Without Revision an Expired Information Collection

**AGENCY:** National Science Foundation.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. this is the Second notice for public comment; the first was published in the **Federal Register** at 64 FR 51804 (September 24, 1999) and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

**COMMENTS:** Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov.

**DATES:** Comments regarding these information collections are best assured of having their full effect if received on or before February 10, 2000. Copies of the submission(s) may be obtained by calling 703–306–1125 X 2017.

**FOR FURTHER INFORMATION CONTACT:** Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 306–1125 x2017 or send email to splimpto@nsf.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.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* An Evaluation of Awards Made Under the NSF Design and Manufacturing Research Programs.

*OMB Approval Number:* 3145–0167.

**Proposed Project**

An Evaluation of the Outcomes and Impacts of awards made in the Division of Design, Manufacture, and Industrial Innovation (DMII) in FYs 1989–90. The ability of the National Science Foundation to continue a high level of support for university-based research is becoming increasingly dependent on the ability of NSF and its research partners to explain the impact of funded research on the lives of the U.S. citizens who provide those funds. The Foundation

has no systematic evidence regarding the frequency of such events among awards made in 1989 and 1990, some of which were from unsolicited proposals and others were from proposals in three special initiative areas; Strategic Manufacturing, Technology Management, and Industrial Internships. Furthermore, nothing is known about the process by which any outcomes may have occurred. A pilot study of DMII research program awards from 1986 using the same instruments was conducted several years ago. To assist DMII in reporting accurately about the results from more recent awards, especially those made in three initiative areas—Technology Management, Strategic Manufacturing, and Industrial Internships—and managing its present research programs, the Division would like to reinstate without change data collection 3145–0167.

Some 250 Principal Investigators (PIs) and co-Principal Investigators (co-PIs) who were recipients of DMII research program awards in FY 1989–90 will be asked to provide via e-mail:

(1) A brief one-page narrative regarding the outcomes and impacts of the project;

(2) Citations to 3 to 5 key journal articles, books or patents that resulted from the project, or in which the project played an important role;

(3) The names, addresses and telephone numbers of between 3 and 5 other individuals who are familiar with the work carried out under the project, and who could provide additional insights as to its outcomes and impacts; and

With regard to the narrative materials, the following information will be requested:

(A) Complete project title.

(B) Key project participants and their institutional affiliations.

(C) Time frame during which project was conducted.

(D) Principal outputs or results of the project.

(E) Longer Term outcome and follow-on impacts of the project.

(F) The researcher's best assessment of the impact of this NSF-funded research on the current (1999) state of design and manufacturing technology relevant to the award, including any known commercial implementations.

(G) Any other observations that the researcher wishes to make (e.g., regarding the promotion of a significant discovery, creation of a significant research capability, promotion of new knowledge flowing to society).

The narratives, citations, and names of others knowledgeable about the project may be submitted using the Internet or regular mail.

Technical experts will review and assess the narratives submitted by the awardees, then select a total of examples of awards with outstanding results and awards with limited results. A total of 30 brief case studies will be prepared by the contractor—15 about awards with outstanding results and 15 about awards with limited results—in order to understand better what occurred and factors contributing to or limiting impacts.

DMII has contracted with Abt Associates Inc. of Cambridge, Massachusetts, to conduct the study and prepare reports following the methodology they used in the pilot project.

*Use of Information:* The information collected will be used to assist DMII in the evaluation of these programs, and in considering various program priorities and selection procedures for future projects in this area. NSF also will use the results to satisfy requirements of the Government Performance and Results Act (GPRA).

*Confidentiality:* No sensitive information is being requested in the collection.

*Estimate of Burden:* Completing the instrument will average 120 minutes. In addition, the Foundation anticipates conducting 30 case studies that will require three hours of interview time per case study. The total response burden is estimated at 540 hours, based on the following:

Survey: 250 PIs and co-PIs × 90% completion rate = 225 respondents × 120 minutes = 450 hours.

Case Studies: 30 PIs × 100% completion rate = 30 respondents × 180 minutes = 90 hours.

Total respondent burden hours: 540.

*Respondents:* Individuals.

*Estimated Number of Responses:* 225

*Estimated Total Annual Burden on Respondents:* 540 hours.

*Frequency of Responses:* Once.

Dated: January 6, 2000.

**Suzanne H. Plimpton,**

*Reports Clearance Officer.*

[FR Doc. 00–602 Filed 1–10–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On October 7, 1999, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on November 10, 1999 to the following applicants:.

Bruce R. Mate—Permit No. 2000–015

Philip R. Kyle—Permit No. 2000–016

Bess B. Ward—Permit No. 2000–017

Brenda Hall—Permit No. 2000–018

Donal T. Manahan—Permit No. 2000–019

Gerald L. Kooyman—Permit No. 2000–020

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 00–552 Filed 1–10–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–271]**

### Vermont Yankee Nuclear Power Co; Vermont Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to 10 CFR Part 50 for Facility Operating License No. DPR–28, issued to Vermont Yankee Nuclear Power Corporation, (the licensee), for operation of the Vermont Yankee Nuclear Power Station (Vermont Yankee), located in Windham County, Vermont.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed amendment would correct two textual errors and change the designation of a referenced figure.

The proposed action is in accordance with the licensee's application for amendment dated October 21, 1999.

*The Need for the Proposed Action*

The proposed action is needed to correct administrative errors in the Technical Specifications (TSs).

*Environmental Impacts of the Proposed Action*

The Commission has completed its evaluation of the proposed action and concludes that the modifications to TSs are administrative in nature.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Vermont Yankee Nuclear Power Station.

*Agencies and Persons Consulted*

In accordance with its stated policy, on December 13, 1999, the staff consulted with the Vermont State official, William Sherman, of the Vermont Department of Public Service regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 21, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 5th day of January 2000.

For the Nuclear Regulatory Commission.

**Richard P. Croteau,**

*Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–610 Filed 1–10–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on February 3–5, 2000, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 14, 1999 (64 FR 55787).

**Thursday, February 3, 2000**

*8:30 a.m.–8:45 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:45 a.m.–10:45 a.m.: Technical Aspects Associated with the Revised Reactor Oversight Process and Related Matters* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the technical aspects associated with the revised reactor oversight process, including the updated significance determination process, plant performance indicators, and related matters.

*11 a.m.–12 Noon: Proposed Final Amendment to 10 CFR 50.72 and 50.73* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and the Nuclear Energy Institute (NEI) regarding the proposed final amendment to 10 CFR 50.72, ''Immediate Notification Requirements for Operating Nuclear Power Reactors,'' and 50.73, ''Licensee Event Report System.''

*1 p.m.–2:30 p.m.: Proposed Regulatory Guide and Associated NEI Document 96–07, ''Guidelines for 10 CFR 50.59 Safety Evaluations''* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and NEI regarding the proposed Regulatory Guide, which endorses guidance in NEI 96–07, associated with the implementation of the revised 10 CFR 50.59 process.

*2:45 p.m.–4:15 p.m.: Proposed Revision of the Commission's Safety Goal Policy Statement for Reactors* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding proposed revision of the Commission's Safety Goal Policy Statement for reactors and related matters, including industry views.

*4:15 p.m.–5:15 p.m.: Break and Preparation of Draft ACRS Reports* (Open)—Cognizant ACRS members will prepare draft reports for consideration by the full Committee.

*5:15 p.m.–7:00 p.m.: Discussion of Proposed ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss proposed ACRS reports on: Low-Power and Shutdown Operations Risk Insights Report; License Renewal Process; and Response to Follow-up Questions Resulting from the ACRS Meeting with the Commission on November 4, 1999.

**Friday, February 4, 2000**

*8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman* (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

*8:35 a.m.–10:30 a.m.: Impediments to the Increased Use of Risk-Informed Regulation and Use of Importance Measures in Risk-Informing 10 CFR Part 50* (Open)—The Committee will hear presentations by and hold discussions with representatives of NEI, the NRC staff as needed, and invited experts regarding impediments associated with the increased use of risk-informed regulation and use of importance measures in risk-informing 10 CFR Part 50, and related matters.

*10:45 a.m.–11:30 a.m.: Proposed Final Revision of Appendix K to 10 CFR Part 50* (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed

final revision of Appendix K, ''ECCS Evaluation Models,'' to 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities.''

*11:30 a.m.–11:45 a.m.: Subcommittee Report* (Open)—The Committee will hear a report by the Chairman of the Reliability and Probabilistic Risk Assessment Subcommittee regarding matters discussed during the December 15–16, 1999 meeting.

*11:45 a.m.–12:00 Noon: Report of the Joint ACRS/ACNW Subcommittee—The Committee will hear a report on matters discussed during the January 13–14, 2000 meeting of the Joint ACRS/ACNW Subcommittee.*

*1:00 p.m.–3:00 p.m.: NRC Safety Research Program Report to the Commission* (Open)—The Committee will discuss the proposed final report to the Commission on the NRC Safety Research Program and related matters.

*3:15 p.m.–3:30 p.m.: Reconciliation of ACRS Comments and Recommendations* (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

*3:30 p.m.–3:45 p.m.: Future ACRS Activities* (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

*3:45 p.m.–4:30 p.m.: Report of the Planning and Procedures Subcommittee* (Open)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business.

*4:30 p.m.–5:30 p.m.: Break and Preparation of Draft ACRS Reports* (Open)—Cognizant ACRS members will prepare draft reports for consideration by the full Committee.

*5:30 p.m.–7:15 p.m.: Discussion of Proposed ACRS Reports* (Open)—The Committee will discuss proposed ACRS reports.

**Saturday, February 5, 2000**

*8:30 a.m.–2 p.m.: Discussion of Proposed ACRS Reports* (Open)—The Committee will continue its discussion of proposed ACRS reports.

*2 p.m.–2:30 p.m.: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52353). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman.

Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. Sam Duraiswamy prior to the meeting. In view of the possibility that the schedule for ACRS 5 meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Sam Duraiswamy if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m., EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: January 5, 2000.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. 00–608 Filed 1–10–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures

The ACRS Subcommittee on Planning and Procedures will hold a meeting on January 27–29, 2000, Radisson Suite Resort, Cedarwood #2 Room, 1201 Gulf Boulevard, Clearwater, Florida.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

**Thursday, January 27, 2000—8:30 a.m. Until the Conclusion of Business**

The Subcommittee will discuss issues related to PRA quality, including development of industrial standards; use of importance measures in risk-informing 10 CFR Part 50; impediments to the increased use of risk-informed regulation; technical aspects of the revised reactor oversight process, including technical adequacy of the current and proposed performance indicators; and safety culture.

**Friday, January 28, 2000—8:30 a.m. Until the Conclusion of Business**

The Subcommittee will discuss best estimate computer codes, technical quality of codes, and how they are used at the NRC. It will also discuss industry views of ACRS activities, self-assessment of ACRS performance in CY 1999, potential operational areas for improved effectiveness, other activities related to the conduct of ACRS business, and proposed response to follow-up questions resulting from the ACRS meeting with the Commission on November 4, 1999.

**Saturday, January 29, 2000—8:30 a.m. Until 12:00 Noon**

The Subcommittee will discuss ACRS positions on PRA issues, technical adequacy of the current and proposed performance indicators for the revised reactor oversight process, and potential future ACRS review activities.

The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415-7360) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 5, 2000.

**Howard J. Larson,**

*Acting Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 00–609 Filed 1–10–00; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 10, 2000.

An open meeting will be held on Wednesday, January 12, 2000 at 10 a.m.

Commissioner Unger, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the open meeting scheduled for Wednesday, January 12, 2000, will be:

The Commission will hear oral argument on an appeal by Michael J. Markowski from an administrative law judge's initial decision barring him from association with any broker or dealer. For further information, contact David J. Tess at (202) 942–0833.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: January 7, 2000.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–756 Filed 1–7–00; 3:54 p.m.]

**BILLING CODE 8010–01–M**

## DEPARTMENT OF STATE

**[Public Notice No. 3069]**

### Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea, Working Group on Dangerous Goods, Solid Cargoes and Containers; Meeting Notice

The Working Group on Dangerous Goods, Solid Cargoes and Containers (DSC) of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 10 a.m. on Friday, January 21, 2000, in Room 6103, at U.S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the Fifth Session of the DSC Subcommittee of the International Maritime Organization (IMO) which is scheduled for February 7–11, 2000, at the IMO Headquarters in London.

The agenda items of particular interest are:

a. Amendment 30 to the International Maritime Dangerous Goods (IMDG) Code, its Annexes and Supplements including harmonization of the IMDG Code with the United Nations Recommendations on the Transport of Dangerous Goods, reformatting of the IMDG Code, and implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended.

b. Revision of the Emergency Schedules (EmS).

c. Review of the Code of Safe Practice for Solid Bulk Cargoes (BC Code), including evaluation of properties of solid bulk cargoes.

d. Matters Related to the Cargo Securing Manual.

e. Casualty and incident reports and analysis.

f. Implementation of IMO instruments and training requirements for cargo-related matters.

g. Ventilation requirements for packaged dangerous goods.

h. Carriage of Calcium Hypochlorite.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. E.P. Pfersich, U.S. Coast Guard (G–MSO–3), 1 2100 Second Street, SW, Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: December 27, 1999.

**Stephen M. Miller,**

*Executive Secretary, Shipping Coordinating Committee.*

[FR Doc. 00–612 Filed 1–10–00; 8:45 am]

**BILLING CODE 4710–07–U**

## DEPARTMENT OF TRANSPORTATION

### Amtrak Reform Council; Notice of Meeting

**AGENCY:** Amtrak Reform Council, DOT.

**ACTION:** Notice of a Special Business Meeting and Press Conference regarding the Annual Report.

**SUMMARY:** As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of business meeting of the Council, following the business meeting there will be a press conference. At its business meeting the Council will release the Annual Report due to Congress in January 2000 and discuss the work program as well as its schedule of meetings and events for the year 2000. The meeting will also consider matters raised by individual Council members.

**DATES:** The business meeting and press conference is scheduled for Monday, January 24, 2000. The business meeting will be from 9:00 a.m. to 11:00 a.m. and the press conference will be from 11:00 a.m. to 12:00 noon. Both events are opened to the public.

**ADDRESSES:** The business meeting and press conference will held in the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Ave., NW, Washington, DC 20001, located in the Lexington/Bunker Hill room, telephone (202) 737–1234. Persons in need of special arrangements should contact the person listed below.

**FOR FURTHER INFORMATION CONTACT:** Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, S.W., Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061.

**SUPPLEMENTARY INFORMATION:** The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after two years, the ARC has the authority to determine whether Amtrak can meet certain financial goals specified under the ARAA and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consists of eleven members, including the Secretary of Transportation and ten others nominated by the President and Congressional leaders. Each member is to serve a five-year term.

Issued in Washington, DC, January 5, 2000.

**Thomas A. Till,**

*Executive Director.*

[FR Doc. 00–550 Filed 1–10–00; 8:45 am]

**BILLING CODE 4910–06–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Proposed Advisory Circular 25–XX, Transport Airplane Propulsion Engine and Auxiliary Power Unit Installation Certification Handbook—The Propulsion Mega AC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Withdrawal of notice of availability of proposed advisory circular.

**SUMMARY:** This action withdraws a previously-issued notice of availability of proposed Advisory Circular (AC) 25–XX, ''Transport Airplane Propulsion Engine and Auxiliary Power Unit Installation Certification Handbook—The Propulsion Mega AC.'' The FAA previously announced the availability of and requested public comments on that proposed AC. The intent of the AC was to provide one consolidated source of guidance on methods acceptable to the Administrator for showing compliance with the type certification requirements for propulsion systems and auxiliary power unit (APU) installations as they apply to transport category airplanes. The FAA is withdrawing the proposal at this time to allow the majority of the affected public time to concentrate their resources towards concluding the harmonization of international aviation standards, which the FAA considers a higher priority. The FAA intends to re-issue the notice at a later time.

**ADDRESSES:** Send comments to Steve Happenny, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

**FOR FURTHER INFORMATION CONTACT:** Jill DeMarco, Program Management Branch, ANM–114, Transport Airplane Directorate, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1313; fax (425) 227–1320.

**SUPPLEMENTARY INFORMATION:**

#### Discussion of Original Proposal

On September 23, 1999, the FAA issued a notice of availability and request for comments on proposed Advisory Circular (AC) 25–XX, ''Transport Airplane Propulsion Engine and Auxiliary Power Unit Installation Certification Handbook—*The Propulsion Mega AC.*'' The notice was published in the **Federal Register** on September 30, 1999 (64 FR 52819). The FAA initiated the proposed AC in response to requests by the affected aviation industry that the FAA provide one comprehensive source of FAA policy and guidance on various methods acceptable to the FAA Administrator for showing compliance with the type certification requirements for propulsion systems and auxiliary power unit (APU) installations on transport category airplanes. The public was provided until December 29, 1999, to submit comments on the proposed document.

#### Requests from the Affected Public

Since issuance of the notice, the FAA has received numerous requests from representatives of the affected industry and non-U.S. civil aviation authorities, asking that the FAA withhold further action on the proposed Propulsion Mega AC.

These representatives have stated that many in industry who will be most affected by the AC are members of Working Groups under the aegis of the FAA's Aviation Rulemaking Advisory Committee (ARAC). Currently, these ARAC Working Groups will be focusing their resources on expediting the final harmonization of 14 CFR part 25 rules and the European Joint Aviation Requirements (JAR)–25. The FAA has encouraged ARAC to give this final harmonization effort its highest priority, thus increasing the workload of the same parties that normally would be reviewing the proposed Propulsion Mega AC. This will leave little time or resources for those parties to provide an adequate, thorough review of the proposed AC before the comment deadline.

Additionally, these representatives indicate that new recommendations to the FAA may come out of ARAC as a result of the activities of these Working Groups, and those recommendations (and subsequent rulemaking) may affect the form and content of part of the proposed AC.

#### Withdrawal of the Notice

The FAA has reviewed and considered these requests from the affected public, and has determined that a temporary withdrawal of the notice of proposed advisory circular and suspension of the public comment period is appropriate at this time. The FAA has placed high priority on completing the regulatory harmonization effort in a timely manner, and expects the affected industry's resources (via ARAC) to be directed primarily towards that goal. Once the harmonization effort has concluded, however, the FAA plans to re-issue the notice and re-open the period for public comment.

When formally re-issued, the draft AC likely will not be substantially changed from its current form. In fact, approximately 99% of the draft AC is comprised of the text of current regulations, historical background, advisory circular material, and long-standing accepted FAA policy. (The remaining 1% is new policy and advisory material not previously released formally to the public.) All of that currently-existing material can be found in other documents that have been:

- Available to the public for some time, and
- Used by applicants in demonstrating compliance with the pertinent regulations, and
- Used by the FAA in finding compliance with regulations.

Those documents remain valid in their current form.

**Note:** The FAA will continue to provide resources to further modify the draft AC and subsequent draft versions will be available on the Internet at *http://www.faa.gov/avr/air/airhome.htm,* at the link titled ''Draft AC's'' under the ''Available Documents'' drop-down menu. The public can continue to refer to this draft document as a consolidated source reference for currently-existing material.

Because the proposed AC likely will not change significantly before it is re-issued, and because of the time already allotted to the public for review of the proposal, the FAA intends to provide a shortened period for public comment when the notice is re-issued.

Issued in Renton, Washington, on January 5, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–580 Filed 1–10–00; 8:45 am]

**BILLING CODE 4910–13–U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Approval of Noise Compatibility Program, Tulsa International Airport, Tulsa, Oklahoma

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Tulsa Airports Improvement Trust for Tulsa International Airport under the provisions of Title 49, USC, Chapter 475 and CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On June 16, 1999, the FAA determined that the noise exposure maps submitted by the Tulsa Airports Improvement Trust for Tulsa International Airport under Part 150 were in compliance with applicable requirements. On December 9, 1999, the Administrator approved the noise compatibility program. All of the recommendations of the program were approved.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the Tulsa International Airport noise compatibility program is December 9, 1999.

**FOR FURTHER INFORMATION CONTACT:** Timothy L. Tandy, Department of Transportation, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas, 76137, (817) 222–5635. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for Tulsa International Airport, effective December 9, 1999.

Under Title 49 USC, section 47504 (hereinafter referred to as ''Title 49''), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses within the area covered by the noise exposure maps. Title 49 requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in Part 150 and Title 49 and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompataible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports Division Office in Fort Worth, Texas.

The Tulsa Airports Improvement Trust submitted to the FAA on May 26, 1999, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from May 18, 1995 through May 26, 1999. The Tulsa International Airport Noise exposure maps were determined by FAA to be in compliance with applicable requirements on June 16, 1999. Notice of this determination was published in the **Federal Register** on June 30, 1999.

The FAR Part 150 Study for Tulsa International Airport contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2002. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Title 49. The FAA began its review of the program on June 16, 1999 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained seven proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of Title 49 and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective December 9, 1999.

Outright approval was granted for all of the specific program elements: (1) Continue airport's existing noise concern/citizen liaison program, (2) update and review the FAA part 150 study, (3) voluntary acquisition of residences, (4) voluntary sound attenuation of homes and churches, (5) voluntary purchase of avigation easements, (6) voluntary sales assistance with avigation easement, and (7) noise monitoring.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on December 9, 1999. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available at the FAA office listed above and at the administrative offices of the Tulsa Airports Improvement Trust, Tulsa International Airport Terminal, P.O. Box 58138, Tulsa, Oklahoma 74158.

Issued in Fort Worth, Texas, December 23, 1999.

**Joseph G. Washington,**

*Acting Manager, Airports Division.*

[FR Doc. 00–581 Filed 1–10–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## Index of Administrator's Decisions and Orders of Civil Penalty Actions; Publication

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of publication.

**SUMMARY:** This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on December 31, 1999. This publication ensures that the agency is in compliance with statutory indexing requirements.

**FOR FURTHER INFORMATION CONTACT:** James S. Dillman, Assistannt Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 400 7th Street, SW., Suite PL 200–A, Washington, DC 20590: telephone (202) 366–4118.

**SUPPLEMENTARY INFORMATION:** The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR Part 13, Subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number. The indexes are published on a quarterly basis (i.e., January, April, July, and October).

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 45984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of the civil penalty decisions for the previous year. 58 FR 5044; 1/19/93.

The previous quarterly publications of these indexes have appeared in the **Federal Register** as follows:

| Dates of quarter | Federal Register publication |
|---|---|
| 11/1/89–9/30/90 .... | 55 FR 45984; 10/31/90. |
| 10/1/90–12/31/90 .. | 56 FR 44886; 2/6/91. |
| 1/1/91–3/31/91 ..... | 56 FR 20250; 5/2/91. |
| 4/1/91–6/30/91 ..... | 56 FR 31984; 7/12/91. |
| 7/1/91–9/30/91 ..... | 56 FR 51735; 10/15/91. |
| 10/1/91–12/31/91 .. | 57 FR 2299; 1/21/92. |
| 1/1/92–3/31/92 ..... | 57 FR 12359; 4/9/92. |
| 4/1/92–6/30/92 ..... | 57 FR 32825; 7/23/92. |
| 7/1/92–9/30/92 ..... | 57 FR 48255; 10/22/92. |
| 10/1/92–12/31/92 .. | 58 FR 5044; 1/19/93. |
| 1/1/93–3/31/93 ..... | 58 FR 21199; 4/19/93. |
| 4/1/93–6/30/93 ..... | 58 FR 42120; 8/6/93. |
| 7/1/93–9/30/93 ..... | 58 FR 58218; 10/29/93. |
| 10/1/93–12/31/93 .. | 59 FR 5466; 2/4/94. |
| 1/1/94–3/31/94 ..... | 59 FR 22196; 4/29/94. |
| 4/1/94–6/30/94 ..... | 59 FR 39618; 8/3/94. |
| 7/1/94–12/31/94 .... | 60 FR 4454; 1/23/95. |
| 1/1/95–3/31/95 ..... | 60 FR 19318; 4/17/95. |
| 4/1/95–6/30/95 ..... | 60 FR 36854; 7/18/95. |
| 7/1/95–9/30/95 ..... | 60 FR 53228; 10/12/95. |
| 10/1/95–12/31/95 .. | 61 FR 1972; 1/24/96. |
| 1/1/96–3/31/96 ..... | 61 FR 16955; 4/18/96. |
| 4/1/96–6/30/96 ..... | 61 FR 37526; 7/18/96. |
| 7/1/96–9/30/96 ..... | 61 FR 54833; 10/22/96. |
| 10/1/96–12/31/96 .. | 62 FR 2434; 1/16/97. |
| 1/1/97–3/31/97 ..... | 62 FR 24533; 5/2/97. |
| 4/1/97–6/30/97 ..... | 62 FR 38339; 7/17/97. |
| 7/1/97–9/30/97 ..... | 62 FR 53856; 10/16/97. |
| 10/1/97–12/31/97 .. | 63 FR 3373; 1/22/98. |
| 1/1/98–3/31/98 ..... | 63 FR 19559; 4/20/98. |
| 4/1/98–6/30/98 ..... | 63 FR 37914; 7/14/98. |
| 7/1/98–9/30/98 ..... | 63 FR 57729; 10/28/98. |
| 10/1/98–12/31/98 .. | 64 FR 1855; 1/12/99. |
| 1/1/99–3/31/99 ..... | 64 FR 24690; 5/7/99. |
| 4/1/99–6/30/99 ..... | 64 FR 43236; 8/9/99. |
| 7/1/99–9/30/99 ..... | 64 FR 58879; 11/1/99. |

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. Also, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callaghan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld).

A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases are provided at the end of the notice. Information regarding the accessibility of materials filed in recently initiated civil penalty cases in FAA civil penalty cases at the DOT Docket and over the Internet also appears at the end of this notice.

### Civil Penalty Actions—Orders Issued by the Administrator

*Order Number Index for 1999*

(This index includes all decisions and orders issued by the Administrator from January 1, 1999, to December 31, 1999.)

99–1—American Airlines
3/2/99 CP95SW0195 et seq.
99–2—Oxygen Systems, Inc.
3/4/99 CP97SO0071
99–3—Clarence L. Justice
6/11/99 CP98WP0055
DMS No. FAA–1998–4751
99–4—Warbelow's Air Ventures
7/1/99 CP97AL0012
99–5—Africa Air Corp.
8/31/99 CP96EA0044
99–6—James K. Squire
8/31/99 CP97WP0007
99–7—Premier Jets
8/31/99 CP97NM0005
99–8—Michael McDermott
8/31/99 CP98WP0055
99–9—Lifeflite Medical Air Transport
8/31/99 CP98WP0062
99–10—Azteca Aviation
8/31/99 CP97SW0024, CP98SW0015
99–11—Evergreen Helicopters
8/31/99 CP97AL0001
99–12—Trans World Airlines, Inc.
10/7/99 CP97SO0016, CP97SO0017
99–13—Falcon Air Express, Inc.
12/22/99 CP97SO0073
99–14—Alika Aviation, Inc.
12/22/99 CP97WP0045
99–15—Blue Ridge Airlines
12/22/99 CP97NM0024
99–16—Sharon Dorfman
12/22/99 CP98SW0005

## Civil Penalty Actions—Orders Issued by the Administrator

*Subject Matter Index*

(Current as of December 31, 1999.)


Administrative Law Judges—Power and Authority:
- Continuance of hearing ... 91–11 Continental Airlines; 92–29 Haggland.
- Credibility findings ... 90–21 Carroll; 92–3 Park; 93–17 Metcalf; 94–3 Valley Air; 94–4 Northwest Aircraft Rental; 95–25 Conquest; 95–26 Hereth; 97–20 Werle; 97–30 Emery Worldwide Airlines; 97–32 Florida Propeller; 98–18 General Aviation; 99–6 Squire.
- Default Judgment ... 91–11 Continental Airlines; 92–47 Cornwall; 94–8 Nunez; 94–22 Harkins; 94–28 Toyota; 95–10 Diamond; 97–28 Continental Airlines; 97–33 Rawlings; 98–13 Air St. Thomas.
- Discovery ... 89–6 American Airlines; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–46 Sutton-Sautter; 93–10 Costello.
- Expert Testimony ... 94–21 Sweeney.
- Granting extensions of time ... 90–27 Gabbert.
- Hearing location ... 92–50 Cullop.
- Hearing request ... 93–12 Langton; 94–6 Strohl; 94–27 Larsen; 94–37 Houston; 95–19 Rayner.
- Initial Decision ... 92–1 Costello; 92–32 Barnhill.
  - Lateness of ... 97–31 Sanford Air.
  - Should include requirement to file appeal brief ... 98–5 Squire.
- Jurisdiction:
  - Generally ... 90–20 Degenhardt; 90–33 Cato; 92–1 Costello; 92–32 Barnhill.
  - After issuance of order assessing civil penalty ... 94–37 Houston; 95–19 Rayner; 97–33 Rawlings.
  - When complaint is withdrawn ... 94–39 Kirola.
- Motion for Decision ... 92–73 Wyatt; 92–75 Beck; 92–76 Safety Equipment; 93–11 Merkley; 96–24 Horizon; 98–20 Koenig.
- No authority to extend due date for late Answer without showing of good cause. (See also Answer). 95–28 Atlantic World Airways; 97–18 Robinson; 98–4 Larry's Flying Service.
- Notice of Hearing ... 92–31 Eaddy.
- Regulate proceedings ... 97–20 Werle.
- Sanction ... 90–37 Northwest Airlines; 91–54 Alaska Airlines; 94–22 Harkins; 94–28 Toyota.
- Service of law judges by parties ... 97–18 Robinson.
- Vacate initial decision ... 90–20 Degenhardt; 92–32 Barnhill; 95–6 Sutton.
- Aerial Photography ... 95–25 Conquest Helicopters.
- Agency Attorney ... 93–13 Medel.

Air Carrier/Aircraft Operator:
- Agent/independent contractor of ... 92–70 USAir.
- Careless or Reckless ... 92–48 & 92–70 USAir; 93–18 Westair Commuter.
- Duty of care is non-delegable ... 92–70 USAir; 96–16 Westair Commuter; 96–24 Horizon; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 99–12 TWA.
- Employee ... 93–18 Westair Commuter; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 99–12 TWA; 99–14 Alika Aviation.
- Ground Security Coordinator, Failure to provide ... 96–16 WestAir Commuter.
- Intoxicated Passenger:
  - Allowing to board ... 98–11 TWA.
  - Serving alcohol to ... 98–11 TWA.
- Liability for acts/omissions of employees in the scope of employment. 98–11 TWA, 99–12 TWA; 99–14 Alika.
- Use of unqualified pilot ... 99–15 Blue Ridge.

Aircraft Maintenance (See also Airworthiness, Maintenance Manual):
- Generally ... 90–11 Thunderbird Accessories; 91–8 Watts Agricultural Aviation; 93–36 & 94–3 Valley Air; 94–38 Bohan; 95–11 Horizon; 96–3 America West Airlines; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–9 Alphin; 97–10 Alphin; 97–11 Hampton; 97–30 Emery Worldwide Airlines; 97–31 Sanford Air; 98–18 General Aviation; 99–5 Africa Air.
- Acceptable methods, techniques, and practices ... 96–3 America West Airlines.
- After certificate revocation ... 92–73 Wyatt.
- Airworthiness Directive, compliance with ... 96–18 Kilrain; 97–9 Alphin.
- Inspection ... 96–18 Kilrain; 97–10 Alphin; 99–14 Alika Aviation.
- Major alterations: Failed to prove ... 99–5 Africa Air.
- Major/minor repairs ... 96–3 America West Airlines.
- Minimum Equipment List (MEL) ... 94–38 Bohan; 95–11 Horizon; 97–11 Hampton; 97–21 Delta; 97–30 Emer Worldwide Airlines.

Aircraft Records:
- Aircraft Operation ... 91–8 Watts Agricultural Aviation.
- Flight and Duty Time ... 96–4 South Aero.
- Maintenance Records ... 91–8 Watts Agricultural Aviation; 94–2 Woodhouse; 97–30 Emery Worldwide Airlines; 97–31 Sanford Air; 98–18 General Aviation.
- ''Yellow tags'' ... 91–8 Watts Agricultural Aviation.

Aircraft-Weight and Balance (See Weight and Balance)
Airmen:
- Airline Transport Pilot certificates requirement in foreign aviation by Part 135 operator. — 99–11 Evergreen Helicopters.
- Altitude deviation — 92–49 Richardson & Shimp.
- Careless or Reckless — 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–49 Richardson & Shimp; 92–47 Cornwall; 93–17 Metcalf; 93–29 Sweeney; 96–17 Fenner.
- Flight Time Limitations — 93–11 Merkley.
- Flight Time Records — 99–7 Premier Jets.
- Follow ATC Instruction — 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–49 Richardson & Shimp.
- Low Flight — 92–47 Cornwall; 93–17 Metcalf.
- Owner's Responsibility — 96–17 Fenner.
- Pilot — 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–49 Richardson & Shimp; 93–17 Metcalf.
- See and Avoid — 93–29 Sweeney.
- Unqualified for Part 135 operation — 99–15 Blue Ridge.

Air Operations Area (AOA):
- Air Carrier Responsibilities — 90–19 Continental Airlines; 91–33 Delta Air Lines; 94–1 Delta Air Lines.
- Airport Operator Responsibilities — 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 96–1 [Airport Operator]; 98–7 LAX.
- Badge Display — 91–4 [Airport Operator]; 91–33 Delta Air Lines; 99–1 American Airlines.
- Definition of — 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–58 [Airport Operator].
- Exclusive Areas — 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–58 [Airport Operator]; 98–7 LAX.

Airport Security Program (ASP):
- Compliance with — 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 94–1 Delta Air Lines; 96–1 [Airport Operator]; 97–23 Detroit Metropolitan; 98–7 LAX; Airport Operator.
- Responsibilities — 90–12 Continental Airlines, 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 96–1 [Airport Operator]; 97–23 Detroit Metropolitan.

Air Traffic Control (ATC):
- Error as mitigating factor — 91–12 & 91–31 Terry & Menne.
- Error as exonerating factor — 91–12 & 91–31 Terry & Menne; 92–40 Wendt.
- Ground Control — 91–12 Terry & Menne; 93–18 Westair Commuter.
- Local Control — 91–12 Terry & Menne.
- Tapes & Transcripts — 91–12 Terry & Menne; 92–49 Richardson & Shimp.
- Airworthiness — 91–8 Watts Agricultural Aviation; 92–10 Flight Unlimited; 92–48 & 92–70 USAir; 94–2 Woodhouse; 95–11 Horizon; 96–3 America West Airlines; 96–18 Kilrain; 94–25 USAir; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–9 Alphin; 97–10 Alphin; 97–11 Hampton; 97–21 Delta; 97–30 Emery Worldwide Airlines; 97–32 Florida Propeller; 98–18 General Aviation; 99–14 Alika Aviation.

Amicus Curiae Briefs — 90–25 Gabbert.
Answer:
- ALJ may not extent due date for late answer unless good cause shown. — 95–28 Atlantic World Airways; 97–18 Robinson; 97–33 Rawlings; 98–4 Larry's Flying Service.
- Reply to each number paragraph in the complaint required — 98–21 Blankson.
- Timeliness of answer — 90–3 Metz; 90–15 Playter; 92–32 Barnhill; 92–47 Cornwall; 92–75 Beck; 92–76 Safety Equipment; 94–5 Grant; 94–29 Sutton; 94–30 Columna; 94–43 Perez; 95–10 Diamond; 95–28 Atlantic World Airways; 97–18 Robinson; 97–19 Missirlian; 97–33 Rawlings; 97–38 Air St. Thomas; 98–4 Larry's Flying Service; 98–13 Air St. Thomas; 99–8 McDermott; 99–9 Lifeflite Medical Air Transport; 99–16 Dorfman.
- Timeliness not at issue once hearing held — 99–16 Dorfman.
- What constitutes — 92–32 Barnhill; 92–75 Beck; 97–19 Missirlian.

Appeals (See also Filing; Timeliness; Mailing Rule):
- Briefs, Generally — 89–4 Metz; 91–45 Park; 92–17 Giuffrida; 92–19 Cornwall; 92–39 Beck; 93–24 Steel City Aviation; 93–28 Strohl; 94–23 Perez; 95–13 Kilrain.
- Additional Appeal Brief — 92–3 Park; 93/5 Wendt; 93–6 Westair Commuter; 93–28 Strohl; 94–4 Northwest Aircraft; 94–18 Luxemburg; 94–29 Sutton; 97–22 Sanford Air; 97–34 Continental Airlines; 97–38 Air St. Thomas; 98–18 General Aviation; 99–11 Evergreen Helicopter.
- Appeal dismissed as premature — 95–19 Rayner.
- Apeal dismissed as moot after complaint withdrawn — 92–9 Griffin.

Appellate arguments ..... 92–70 USAir.
Court of Appeals, appeal to (See Federal Courts)
Good Cause for Late-Filed Brief or Notice of Appeal ..... 90–3 Metz; 90–27 Gabbert; 90–39 Hart; 91–10 Graham; 91–24 Esau; 91–48 Wendt; 91–50 & 92–1 Costello; 92–3 Park; 92–17 Giuffrida; 92–39 Beck; 92–41 Moore & Sabre Associates; 92–52 Beck; 92–57 Detroit Metro Wayne Co. Airport; 92–69 McCabe; 93–23 Allen; 93–27 Simmons; 93–31 Allen; 95–2 Meronek; 95–9 Woodhouse; 95–25 Conquest, 97–6 WRA Inc.; 97–7 Stalling; 97–28 Continental; 97–38 Air St. Thomas; 98–1 V. Taylor; 98–13 Air St. Thomas; 99–4 Warbelow's Air Ventures.
Informal Conference: Conduct of, not on appeal ..... 99–14 Alika Aviation.
Motion to Vacate construed as a brief ..... 91–11 Continental Airlines.
Perfecting an Appeal, generally ..... 92–17 Giuffrida; 92–19 Cornwall; 92–39 Beck; 94–23 Perez; 95–13 Kilrain; 96–5 Alphin Aircraft; 98–20 Koenig.
Extension of Time for (good cause for) ..... 89–8 Thunderbird Accessories; 91–26 Britt Airways; 91–32 Bargen; 91–50 Costello; 93–2 & 93–3 Wendt; 93–24 Steel City Aviation; 93–32 Nunez; 98–5 Squire; 98–15 Squire; 93–3 Justice; 99–4 Warbelow's Air Ventures.
Failure to ..... 89–1 Gressani; 89–7 Zenkner; 90–11 Thunderbird Accessories; 90–35 P. Adams; 90–39 Hart; 91–7 Pardue; 91–10 Graham; 91–20 Bargen; 91–43, 91–44, 91–46 & 91–47 Delta Air Lines; 92–11 Alilin; 92–15 Dillman; 92–18 Bargen; 92–34 Carrell; 92–35 Bay Land Aviation; 92–36 Southwest Airlines; 92–45 O'Brien; 92–56 Montauk Caribbean Airways; 92–67 USAir; 92–68 Weintraub; 92–78 TWA; 93–7 Dunn; 93–8 Nunez; 93–20 Smith; 93–23 & 93–31 Allen; 93–34 Castle Aviation; 93–35 Steel City Aviation; 94–12 Bartusiak; 94–24 Page; 94–26 French Aircraft; 94–34 American International Airways; 94–35 American International Airways; 94–36 American International Airways; 95–4 Hanson; 95–22 & 96–5 Alphin Aircraft; 96–2 Skydiving Center; 96–13 Winslow; 97–3 [Airport Operator], 97–6 WRA, Inc.; 97–15 Houston & Johnson County; 97–35 Gordon Air Services; 97–36 Avcon; 97–37 Roush; 98–10 Rawlings; 99–2 Oxygen Systems.
Notice of appeal construed as appeal brief ..... 92–39 Beck; 94–15 Columna; 95–9 Woodhouse; 95–23 Atlantic World Airways; 96–20 Missirlian; 97–2 Sanford Air; 98–5 Squire; 98–17 Blue Ridge Airlines; 98–23 Instead Balloon Services; 99–3 Justice; 99–8 McDermott.
What Constitutes ..... 90–4 Metz; 90–27 Gabbert; 91–45 Park; 92–7 West; 92–17 Giuffrida; 92–39 Beck; 93–7 Dunn; 94–15 Columna; 94–23 Perez; 94–30 Columna; 95–9 Woodhouse; 95–23 Atlantic World Airways; 96–20 Missirlian; 97–2 Sanford Air.
Service of brief:
Fail to serve other party ..... 92–17 Giuffrida; 92–19 Cornwall.
Timeliness of Notice of Appeal ..... 90–3 Metz; 90–39 Hart; 91–50 Costello; 92–7 West; 92–69 McCabe; 93–27 Simmons; 95–2 Meronek; 95–9 Woodhouse; 95–15 Alphin Aviation; 96–14 Midtown Neon Sign Corp.; 97–7 & 97–17 Stallings; 97–28 Continential; 97–38 Air St. Thomas; 98–1 V. Taylor; 98–13 Air St. Thomas; 98–16 Blue Ridge Airlines; 98–17 Blue Ridge Airlines; 98–21 Blankson.

Withdrawal of ..... 89–2 Lincoln-Walker; 89–3 Sittko; 90–4 Nordrum; 90–5 Sussman; 90–6 Dabaghian; 90–7 Steele; 90–8 Jenkins; 90–9 Van Zandt; 90–13 O'Dell; 90–14 Miller; 90–28 Puleo; 90–29 Sealander; 90–30 Steidinger; 90–34 D. Adams; 90–40 & 90–41 Westair Commuter Airlines; 91–1 Nestor; 91–5 Jones; 91–6 Lowery; 91–13 Kreamer; 91–14 Swanton; 91–15 Knipe; 91–16 Lopez; 91–19 Bayer; 91–21 Britt Airways; 91–22 Omega Silicone Co.; 91–23 Continental Airlines; 91–25 Sanders; 91–27 Delta Airlines; 91–28 Continental Airlines; 91–29 Smith; 91–34 GASPRO; 91–35 M. Graham; 91–36 Howard; 91–37 Vereen; 91–39 America West; 91–42 Pony Express; 91–49 Shields; 91–56 Mayhan; 91–57 Britt Airways; 91–59 Griffin; 91–60 Brinton; 92–2 Koller; 92–4 Delta Air Lines; 92–6 Rothgeb; 92–12 Bertetto; 92–20 Delta Air Lines; 92–21 Cronberg; 92–22, 93–23, 92–24, 92–25, 92–26, & 92–28 Delta Air Lines; 92–33 Port Authority of NY & NJ; 92–42 Jayson; 92–43 Delta Air Lines; 92–44 Owens; 92–53 Humble; 92–54 & 92–55 Northwest Airlines; 92–60 Costello; 92–61 Romerdahl; 92–62 USAir; 92–63 Schaefer; 92–64 & 92–65 Delta Air Lines; 92–66 Sabre Associates & Moore; 92–79 Delta Air Lines; 93–1 Powell & Co.; 93–4 Harrah; 93–14 Fenske; 93–15 Brown; 93–21 Delta Air Lines; 93–22 Yannotone; 93–26 Delta Air Lines; 93–33 HPH Aviation; 94–9 B & G Instruments; 94–10 Boyle; 94–11 Pan American Airways; 94–13 Boyle; 94–14 B & G Instruments; 94–16 Ford; 94–33 Trans World Airlines; 94–41 Dewey Towner; 94–42 Taylor; 95–1 Diamond Aviation; 95–3 Delta Air Lines; 95–5 Araya; 95–6 Sutton; 95–7 Empire Airlines; 95–20 USAir; 95–21 Faisca; 95–24 Delta Air Lines; 96–7 Delta Air Lines; 96–8 Empire Airlines; 96–10 USAir; 96–11 USAir; 96–12 USAir; 96–21 Houseal; 97–4 [Airport Operator]; 97–5 WestAir; 97–25 Martin & Jaworski; 97–26 Delta Air Lines; 97–27 Lock Haven; 97–39 Delta Air Lines; 98–9 Continental Express.

Assault (See also Battery, and Passenger Misconduct) ..... 96–6 Ignatov; 97–12 Mayer; 99–16 Dorfman.

''Attempt'' ..... 89–5 Schultz.

Attorney Conduct: Obstreperous or Disruptive ..... 94–39 Kirola.

Attorney Fees (See EAJA)

Aviation Safety Reporting System ..... 90–39 Hart; 91–12 Terry & Menne; 92–49 Richardson & Shimp.

Baggage Matching ..... 98–6 Continental; 99–12 TWA.

Balloon (Hot Air) ..... 94–2 Woodhouse.

Bankruptcy ..... 91–2 Continental Airlines.

Battery (See also Assault and Passenger Misconduct) ..... 99–6 Ignatov; 97–12 Mayer; 99–16 Dorfman.

Certificates and Authorizations:

Surrender when revoked ..... 92–73 Wyatt.

Civil Air Security National Airport Inspection Program (CASNAIP) .. 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator].

Civil Penalty Amount (See Sanction)

Closing Argument (See Final Oral Argument)

Collateral Estoppel ..... 91–8 Watts Agricultural Aviation.

Complaint:

Complainant Bound By ..... 90–10 Webb; 91–53 Koller.

No Timely Answer to (See Answer)

Partial Dismissal/Full Sanction ..... 94–19 Pony Express; 94–40 Polynesian Airways.

Staleness (See Stale Complaint Rule)

Statute of Limitations (See Statute of Limitations)

Timeliness of complaint ..... 91–51 Hagwood; 93–13 Medel; 94–7 Hereth; 94–5 Grant.

Withdrawal of ..... 94–39 Kirola; 95–6 Sutton.

Compliance & Enforcement Program:

(FAA Order No. 2150.3A) ..... 89–5 Schultz; 89–6 American Airlines; 91–38 Esau; 92–5 Delta Air Lines.

Compliance/Enforcement Bulletin 92–3 ..... 96–16 [Air Carrier].

Sanction Guidance Table ..... 89–5 Schultz; 90–23 Broyles; 90–33 Cato; 90–37 Northwest Airlines; 91–3 Lewis; 92–5 Delta Air Lines; 98–18 General Aviation.

Concealment of Weapons (See Weapons Violations).

Consolidation of Cases ..... 90–12, 90–18 & 90–19 Continental Airlines.

Constitutionality of Regulations (See also Double Jeopardy) ..... 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 90–37 Northwest Airlines; 96–1 [Airport Operator]; 96–25 USAir; 97–16 Mauna Kea; 97–34 Continental Airlines; 98–6 Continental Airlines; 98–11 TWA: 99–1 America; 99–12 TWA.

Continuance of Hearing ..... 90–25 Gabbert; 92–29 Haggland.

Corrective Action (See Sanction)

Counsel:

Leave to withdraw ..... 97–24 Gordon.

No right to assigned counsel (See Due Process)

Credibility of Witnesses:

Generally ..... 95–25 Conquest Helicopters; 95–26 Hereth; 97–32 Florida Propeller.

Bias ..... 97–9 Alphin.
Defer to ALJ determination of ..... 90–21 Carroll; 92–3 Park; 93–17 Metcalf; 95–26 Hereth; 97–20 Werle; 97–30 Emery Worldwide Airlines; 97–32 Florida Propeller; 98–11 TWA; 98–18 General Aviation; 99–6 Squire.
Experts: (See also Witness) ..... 90–27 Gabbert; 93–17 Metcalf; 96–3 America West Airlines.
Impeachment ..... 94–4 Northwest Aircraft Rental.
Reliability of Identification by eyewitnesses ..... 97–20 Werle.
De facto answer ..... 92–32 Barnhill.
Delay in initiating action ..... 90–21 Carroll.
Deliberative Process Privilege ..... 89–6 American Airlines; 90–12, 90–18 & 90–19 Continental Airlines.
Deterrence ..... 89–5 Schultz; 92–10 Flight Unlimited; 95–16 Mulhall; 95–17 Larry's Flying Service; 97–11 Hampton.
Discovery:
Deliberative Process Privilege ..... 89–6 American Airlines; 90–12, 90–18 & 90–19 Continental Airlines.
Depositions, generally ..... 91–54 Alaska Airlines.
Notice of deposition ..... 91–54 Alaska Airlines.
Failure to Produce ..... 90–18 & 90–19 Continental Airlines; 91–17 KDS Aviation; 93–10 Costello.
Sanction for ..... 91–17 KDS Aviation; 91–54 Alaska Airlines.
Regarding Unrelated Case ..... 92–46 Sutton-Sautter.
Double Jeopardy ..... 95–8 Charter Airlines; 96–26 Midtown.
Due Process:
Generally ..... 89–6 American Airlines; 90–12 Continental Airlines; 90–37 Northwest Airlines; 96–1 [Airport Operator]; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 99–12 TWA.
Before finding a violation ..... 90–27 Gabbert.
Multiple violations ..... 96–26 Midtown; 97–9 Alphin.
No right to assigned counsel ..... 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–9 Alphin; 99–6 Squire.
Violation of ..... 89–6 American Airlines; 90–12 Continental Airlines; 90–37 Northwest Airlines; 96–1 [Airport Operator]; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 98–19 Martin & Jaworski.
EAJA:
Adversary Adjudication ..... 90–17 Wilson; 91–17 & 91–52 KDS Aviation; 94–17 TCI; 95–12 Toyota.
Amount of award ..... 95–27 Valley Air.
Appeal from ALJ decision ..... 95–9 Woodhouse.
Expert witness fees ..... 95–27 Valley Air.
Final disposition ..... 96–22 Woodhouse.
Further proceedings ..... 91–52 KDS Aviation.
Jurisdiction over appeal ..... 92–74 Wendt; 96–22 Woodhouse.
Late-filed application ..... 96–22 Woodhouse.
Other expenses ..... 93–29 Sweeney.
Position of agency ..... 95–27 Valley Air
Prevailing party ..... 91–52 KDS Aviation.
Special circumstances ..... 95–18 Pacific Sky.
Substantial justification ..... 91–52 & 92–71 KDS Aviation; 93–9 Wendt; 95–18 Pacific Sky; 95–27 Valley Air; 96–15 Valley Air; 98–19 Martin & Jaworski.
Supplementation of application ..... 95–27 Valley Air.
Evidence (See Proof & Evidence)
Ex Parte Communications ..... 93–10 Costello; 95–16 Mulhall; 95–19 Rayner.
Expert Witnesses (See Witness)
Extension of Time:
By Agreement of Parties ..... 89–6 American Airlines; 92–41 Moore & Sabre Associates.
Dismissal by Decisionmaker ..... 89–7 Zenkner; 90–39 Hart.
Good Cause for ..... 89–8 Thunderbird Accessories.
Objection to ..... 89–8 Thunderbird Accessories; 93–3 Wendt.
Who may grant ..... 90–27 Gabbert.
Federal Courts ..... 92–7 West; 97–1 Midtown Neon Sign; 98–8 Carr; 99–12 TWA.
Federal Rules of Civil Procedure ..... 91–17 KDS Aviation.
Federal Rules of Evidence (see also Proof & Evidence):
Admissions ..... 96–25 USAir, 99–5 Africa Air.
Evidentiary admissions are rebuttable ..... 99–5 Africa Air.
Settlement Offers (Rule 408) ..... 95–16 Mulhall; 96–25 USAir; 99–5 Africa Air.
Admissions as part of settlement offers excluded ..... 99–5 Africa Air; 99–14 Alika Aviation.
Subsequent Remedial Measures ..... 96–24 Horizon; 96–25 USAir.
Final Oral Argument ..... 92–3 Park.
Firearms (See Weapons)
Ferry Flights ..... 95–8 Charter Airlines.
Filing (See also Appeals; Timeliness):
Burden to prove date of filing ..... 97–11 Hampton Air; 98–1 V. Taylor.
Discrepancy between certificate of service and postmark ..... 98–16 Blue Ridge Airlines.
Service on designated representative ..... 98–19 Martin & Jaworski.

Flight & Duty Time:
- Circumstances beyond crew's control:
  - Generally ..... 95–8 Charter Airlines.
  - Foreseeability ..... 95–8 Charter Airlines.
  - Late freight ..... 95–8 Charter Airlines.
  - Weather ..... 95–8 Charter Airlines.
- Competency check flights ..... 96–4 South Aero.
- Limitation of Duty Time ..... 95–8 Charter Airlines; 96–4 South Aero.
- Limitation of Flight ..... 95–8 Charter Airlines.
  - ''Other commercial flying'' ..... 95–8 Charter Airlines.
- Recordkeeping:
  - Individual flight time record for each Part 135 pilot ..... 97–Premier Jets.

Flights ..... 94–20 Conquest Helicopters.
Freedom of Information Act ..... 93–10 Costello.
Fuel Exhaustion ..... 95–26 Hereth.
Guns (See Weapons)
Ground Security Coordinator, (See also Air Carrier; Standard Security Program) Failure to provide. 96–16 WestAir Commuter.
Hazardous Materials:
- Transportation of, generally ..... 90–37 Northwest Airlines; 92–76 Safety Equipment; 92–77 TCI; 94–19 Pony Express; 94–28 Toyota; 94–31 Smalling; 95–12 Toyota; 95–16 Mulhall; 96–26 Midtown.
- Civil Penalty, generally ..... 92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 92–2 Carr.
  - Corrective Action ..... 92–77 TCI; 94–28 Toyota.
  - Culpability ..... 92–77 TCI; 94–28 Toyota; 94–31 Smalling.
  - Financial hardship ..... 95–16 Mulhall.
    - Installment plan ..... 95–16 Mulhall.
  - First-time violation ..... 92–77 TCI; 94–28 Toyota; 94–31 Smalling.
  - Gravity of violation ..... 92–77 TCI; 94–28 Toyota; 94–31 Smalling; 96–26 Midtown; 98–2 Carr.
  - Minimum penalty ..... 95–16 Mulhall; 98–2 Carr.
  - Numbers of violations ..... 95–16 Mulhall; 96–26 Midtown Neon Sign; 98–2 Carr.
  - Redundant violations ..... 95–16 Mulhall; 96–26 Midtown Neon Sign; 98–2 Carr.
- Criminal Penalty ..... 92–77 TCI; 94–31 Smalling.
- EAJA, applicability of ..... 94–17 TCI; 95–12 Toyota.
- Individuals violations ..... 95–16 Mulhall.
- Judicial review ..... 97–1 Midtown Neon Sign; 98–8 Carr.
- Knowingly ..... 92–77 TCI; 94–19 Pony Express; 94–31 Smalling.
- Specific hazard class transported:
  - Combustible: Paint ..... 95–16 Mulhall.
  - Corrosive:
    - Wet Battery ..... 94–28 Toyota Motor Sales.
    - Other ..... 92–77 TCI.
  - Explosive: Fireworks ..... 94–31 Smalling; 98–2 Carr.
  - Flammable:
    - Paint ..... 96–26 Midtown Neon Sign.
    - Turpentine ..... 95–16 Mulhall.
  - Radioactive ..... 94–19 Pony Express.

Hearing: Failure of party to attend ..... 98–23 Instead Balloon Services.
Informal Conference ..... 94–4 Northwest Aircraft Rental.
Initial Decision: What constitutes ..... 92–32 Barnhill.
Interference with crewmembers (See also Passenger Misconduct; Assault). 92–3 Park; 96–6 Ignatovf; 97–12 Mayer; 98–11 TWA; 98–12 Stout.
Interlocutory Appeal ..... 89–6 American Airlines; 91–54 Alaska Airlines; 93–37 Airspect; 94–32 Detroit Metropolitan; 98–25 Gotbetter.
Internal FAA Policy &/or Procedures ..... 89–6 American Airlines; 90–12 Continental Airlines; 92–73 Wyatt.
Jurisdiction:
- After initial decision ..... 90–20 Degenhardt; 90–33 Cato; 92–32 Barnhill; 93–28 Strohl.
- After Order Assessing Civil Penalty ..... 94–37 Houston; 95–19 Rayner.
- After withdrawal of complaint ..... 94–39 Kirola.
- $50,000 Limit ..... 90–12 Continental Airlines.
- EAJA cases ..... 92–74 Wendt; 96–22 Woodhouse.
- HazMat cases ..... 92–76 Safety Equipment.
- NTSB ..... 90–11 Thunderbird Accessories.
- Statutory authority to regulate flights entirely outside of U.S. questioned. 99–11 Evergreen Helicopters.

Knowledge of concealed weapon (See also Weapons Violation) ..... 89–5 Schultz; 90–20 Degenhardt.
Laches (See Delay in initiating action)
Mailing Rule, generally ..... 89–7 Zenkner; 90–3 Metz; 90–11 Thunderbird Accessories; 90–39 Hart; 98–20 Koenig.
- Overnight express delivery ..... 89–6 American Airlines.

Maintenance (See Aircraft Maintenance)
Maintenance Instruction ..... 93–36 Valley Air.
Maintenance Manual ..... 90–11 Thunderbird Accessories: 96–25 USAir.

Air carrier maintenance manual ..... 96–3 America West Airlines.
Approved/accepted repairs ..... 96–3 America West Airlines.
Manufacturer's maintenance manual ..... 96–3 America West Airlines; 97–31 Sanford Air; 97–32 Florida Propeller.

Minimum Equipment List (MEL) (See Aircraft Maintenance)
Mootness, appeal dismissed as moot ..... 92–9 Griffin; 94–17 TCI.
National Aviation Safety Inspection Program (NASIP) ..... 90–16 Rocky Mountain.
National Transportation Safety Board:
Administrator not bound by NTSB case law ..... 91–12 Terry & Menne; 92–49 Richardson & Shimp; 93–18 Westair Commuter.

Lack of Jurisdiction ..... 90–11 Thunderbird Accessories; 90–17 Wilson; 92–74 Wendt.
Notice of Hearing: Receipt ..... 92–31 Eaddy.
Notice of Proposed Civil Penalty:
Initiates action ..... 91–9 Continental Airlines.
Signature of agency attorney ..... 93–12 Langton.
Withdrawal of ..... 90–17 Wilson.
Operate, generally ..... 91–12 & 91–31 Terry & Menne; 93–18 Westair Commuter; 96–17 Fenner.

Responsibility of aircraft owner/operator for actions of pilot ..... 96–17 Fenner.
Oral Argument before Administrator on appeal:
Decision to hold ..... 92–16 Wendt.
Instructions for ..... 92–27 Wendt.
Order Assessing Civil Penalty:
Appeal from ..... 92–1 Costello; 95–19 Rayner.
Timeliness of request for hearing ..... 95–19 Rayner.
Withdrawal of ..... 89–4 Metz; 90–16 Rocky Mountain; 90–22 USAir; 95–19 Rayner; 97–7 Stalling.

Parachuting ..... 98–3 Fedele.
Parts Manufacturer Approval (PMA): Failure to obtain ..... 93–19 Pacific Sky Supply.
Passenger List ..... 99–13 Falcon Air Express.
Passenger Misconduct ..... 92–3 Park.
Assault/Battery ..... 96–6 Ignatov; 97–12 Mayer; 98–11 TWA; 99–16 Dorfman.
Compliance with Fasten Seat Belt Sign ..... 99–16 Alika Aviation.
Interference with a crewmember ..... 96–6 Ignatov; 97–12 Mayer; 98–11 TWA; 98–12 Stout; 99–16 Dorfman.

Smoking ..... 92–37 Giuffrida; 99–6 Squire.
Hearing loss and failure to obey instructions re: not smoking. 99–6 Squire.
Stowing carry-on items ..... 97–12 Mayer; 99–16.
Penalty (see Sanction; Hazardous Materials)
Person ..... 93–18 Westair Commuter.
Prima Facie Case (See also Proof & Evidence) ..... 95–26 Hereth; 96–3 America West Airlines.
Proof & Evidence (see also Federal Rules of Evidence):
Admissions ..... 99–5 Africa Air.
Evidentiary admission is rebuttable ..... 99–5 Africa Air.
Affirmative Defense ..... 92–13 Delta Air Lines; 92–72 Giuffrida; 98–6 Continental Airlines
Burden of Proof ..... 90–26 & 90–43 Waddell; 91–3 Lewis; 91–30 Trujillo; 92–13 Delta Air Lines; 92–72 Giuffrida; 93–29 Sweeney; 97–32 Florida Propeller.

Circumstantial Evidence ..... 90–12, 90–19 & 91–9 Continental Airlines; 93–29 Sweeney; 96–3 America West Airlines; 97–10 Alphin; 97–11 Hampton; 97–32 Florida Propeller; 98–6 Continental Airlines.

Credibility (See Administrative Law Judges; Credibility of Witnesses)
Criminal standard rejected ..... 91–12 Terry & Menne.
Closing Arguments (See also Final Oral Argument) ..... 94–20 Conquest Helicopters.
Extra-record material ..... 95–26 Hereth; 96–24 Horizon.
Hearsay ..... 92–72 Giuffrida; 97–30 Emery Worldwide Airlines; 97–11 TWA.
New evidence ..... Northwest Aircraft Rental 94–4; 97–23 Kilrain; 99–15 Blue Ridge.
Offer of proof ..... 97–32 Florida Propeller.
Preponderance of evidence ..... 90–11 Thunderbird Accessories; 90–12 Continental Airlines; 91–12 & 91–31 Terry & Menne; 92–72 Giuffrida; 97–30 Emery Worldwide Airlines; 97–31 Sanford Air; 97–32 Florida Propeller; 98–3 Fedele; 98–6 Continental Airlines; 98–11 TWA.

Presumption that message on ATC tape is received as transmitted. 91–12 Terry & Menne; 92–49 Richardson & Shimp.
Presumption that a gun is deadly or dangerous ..... 90–26 Waddell; 91–30 Trujillo.
Presumption that owner gave pilot permission ..... 96–17 Fenner.
Prima facie case ..... 95–26 Hereth, 96–3 America West; 98–6 Continental Airlines.
Settlement offer ..... 95–16 Mulhall; 96–25 USAir; 99–5 Africa Air.
Admission as part of settlement offer excluded ..... 99–5 Africa Air; 99–14 Alika Aviation.
Subsequent remedial measures ..... 96–24 Horizon; 96–25 USAir.
Substantial evidence ..... 92–72 Giuffrida.
Pro Se Parties: Special Considerations ..... 90–11 Thunderbird Accessories; 90–3 Metz; 95–25 Conquest.

Prosecutorial Discretion ..... 89–6 American Airlines; 90–23 Broyles; 90–38 Continental Airlines; 91–41 [Airport Operator]; 92–46 Sutton-Sautter; 92–73 Wyatt; 95–17 Larry's Flying Service.

Administrator does not review Complainant's decision not to bring action against anyone but respondent. ..... 98–2 Carr.

Reconsideration:

Denied by ALJ ..... 89–4 & 90–3 Metz.

Granted by ALJ ..... 92–32 Barnhill.

Late request for ..... 97–14 Pacific Aviation; 98–14 Larry's Flying Service.

Petition based on new material ..... 96–23 Kilrain.

Repetitious petitions ..... 96–9 [Airport Operator].

Stay of order pending ..... 90–31 Carroll; 90–32 Continental Airlines.

Redundancy, enhancing safety ..... 97–11 Hampton.

Remand ..... 89–American Airlines; 90–16 Rocky Mountain; 90–24 Bayer; 91–51 Hagwood; 91–54 Alaska Airlines; 92–1 Costello; 92–76 Safety Equipment; 94–37 Houston.

Repair Station ..... 90–11 Thunderbird Accessories; 92–10 Flight Unlimited; 94–2 Woodhouse; 97–9 Alphin; 97–10 Alphin; 97–31 Sanford Air; 97–32 Florida Propeller.

Request for Hearing ..... 94–37 Houston; 95–19 Rayner.

Constructive withdrawal of ..... 97–7 Stalling; 98–23 Instead Balloon Services.

Rules of Practice (14 CFR Part 13, Subpart G):

Applicability of ..... 90–12, 90–18 & 90–19 Continental Airlines; 91–17 KDS Aviation.

Challenges to ..... 90–12, 90–18 & 90–19 Continental Airlines; 90–21 Carroll; 90–37 Northwest Airlines.

Effect of Changes in ..... 90–21 Carroll; 90–22 USAir; 90–38 Continental Airlines.

Initiation of Action ..... 91–9 Continental Airlines.

Runway incursions ..... 92–40 Wendt; 93–18 Westair Commuter.

Sanction:

Ability to Pay ..... 89–5 Schultz; 90–10 Webb; 91–3 Lewis; 91–38 Esau; 92–10 Flight Unlimited; 92–32 Barnhill; 92–37 & 92–72 Giuffrida; 92–38 Cronberg; 92–46 Sutton-Sautter; 92–51 Koblick; 93–10 Costello; 94–4 Northwest Aircraft Rental; 94–20 Conquest Helicopters; 95–16 Mulhall; 95–17 Larry's Flying Service; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–11 Hampton; 97–16 Mauna Kea; 98–4 Larry's Flying Service; 98–11 TWA; 99–12 TWA; 99–15 Blue Ridge.

Agency policy:

ALJ bound by ..... 90–37 Northwest Airlines; 92–46 Sutton-Sautter; 96–19 [Air Carrier].

Changes after complaint ..... 97–7 & 97–17 Stallings.

Statements of (*e.g.,* FAA Order 2150.3A, Sanction Guidance Table, memoranda pertaining to). ..... 90–19 Continental Airlines; 90–23 Broyles; 90–33 Cato; 90–37 Northwest Airlines; 92–46 Sutton-Sautter; 96–4 South Aero; 96–19 [Air Carrier]; 96–25 USAir.

Compliance Disposition ..... 97–23 Detroit Metropolitan.

Consistency with Precedent ..... 96–6 Ignatov; 96–26 Midtown; 97–30 Emery Worldwide Airlines; 98–12 Stout; 98–18 General Aviation.

But when precedent is based on superceded sanction policy ..... 96–19 [Air Carrier].

Corrective Action ..... 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 92–5 Delta Air Lines; 93–18 Westair Commuter; 94–28 Toyota; 96–4 south Areo; 96–19 [Air Carrier]; 97–16 Mauna Kea; 97–23 Detroit Metropolitan; 98–6 Continental Airlines; 98–22 Northwest Airlines; 99–12 TWA; 99–14 Alika Aviation.

Discovery (See Discovery)

Factors to consider ..... 89–5 Schultz; 90–23 Broyles; 90–37 Northwest Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 92–10 Flight Unlimited; 92–46 Sutton-Sautter; 92–51 Koblick; 94–28 Toyota; 95–11 Horizon; 96–19 [Air Carrier]; 96–26 Midtown; 97–16 Mauna Kea; 98–2 Carr; 99–15 Blue Ridge.

First-Time Offenders ..... 89–5 Schultz; 92–5 Delta Air Lines; 92–51 Koblick.

HazMat (See Hazardous Materals)

Inexperience ..... 92–10 Flight Unlimited.

Installment Payments ..... 95–16 Mulhall; 95–17 Larry's Flying Service.

Maintenance ..... 95–11 Horizon; 96–3 America West Airlines; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–9 Alphin; 97–10 Alphin; 97–11 Hampton; 97–30 Emery Worldwide Airlines; 99–14 Alika Aviation.

Maximum ..... 90–10 Webb; 91–53 Koller; 96–19 [Air Carrier].

Minimum (HazMat) ..... 95–16 Mulhall; 96–26 Midtown; 98–2 Carr.

Modified ..... 89–5 Schultz; 90–11 Thunderbird Accessories; 91–38 Esau; 92–10 Flight Unlimited; 92–13 Delta Air Lines; 92–32 Barnhill.

Partial Dismissal of Complaint/Full Sanction (See also Complaint). ..... 94–19 Pony Express; 94–40 Polynesian Airways.

Sanctions in specific cases:

Failure to comply with Security Directives ..... 98–6 Continental Airlines; 99–12 TWA.

Passenger/baggage matching ..... 98–6 Continental Airlines; 99–12 TWA.

Passenger Misconduct ..... 97–12 Mayer; 98–12 Stout.
Person evading screening (See also Screening) ..... 97–20 Werle.
Pilot Deviation ..... 92–8 Watkins.
Test object detection ..... 90–18 & 90–19 Continental Airlines; 96–19 [Air Carrier].
Unairworthy aircraft ..... 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–9 Alphin; 98–18 General Aviation; 99–14 Alika Aviation.
Unauthorized access ..... 90–19 Continental Airlines; 90–37 Northwest Airlines; 94–1 Delta Air Lines; 98–7 LAX.
Unqualified pilot ..... 99–15 Blue Ridge.
Weapons violations ..... 90–23 Broyles; 90–33 Cato; 91–3 Lewis; 91–38 Esau; 92–32 Barnhill; 92–46 Sutton-Sautter; 92–51 Koblick; 94–5 Grant; 97–7 & 97–17 Stallings.

Screening of Persons:
Air carrier failure to detect weapon Sanction ..... 94–44 American Airlines.
Air carrier failure to match bag with passenger ..... 98–6 Continental Airlines; 99–12 TWA.
Entering Sterile Areas ..... 90–24 Bayer; 92–58 Hoedl; 97–20 Werle; 98–20 Koenig.
Sanction for individual evading screening (See also Sanction) .... 97–20 Werle; 98–20 Koenig.
Security (See Screening of Persons, Standard Security Program, Test Object Detection, Unauthorized Access, Weapons Violations):
Agency directives, violation of ..... 99–12 TWA.
Giving false information about carrying a weapon or explosive on board an aircraft. 98–24 Stevens.
Sealing of Record ..... 97–13 Westair Commuter; 97–28 Continental Airlines.
Separation of Functions ..... 90–12 Continental Airlines; 90–18 Continental Airlines; 90–19 Continental Airlines; 90–21 Carroll; 90–38 Continental Airlines; 93–13 Medel.

Service (See also Mailing Rule; Receipt):
Of NPCP ..... 90–22 USAir; 97–20 Werle.
Of FNPCP ..... 93–13 Medel.
Receipt of document sent by mail ..... 92–31 Eaddy.
Return of certified mail ..... 97–7 & 97–17 Stallings.
Valid Service ..... 92–18 Bargen; 98–19 Martin & Jaworski.
Settlement ..... 91–50 & 92–1 Costello; 95–16 Mulhall; 99–10 Azteca.
Request for hearing not withdrawn ..... 99–10 Azteca.
Skydiving ..... 98–3 Fedele.
Smoking ..... 92–37 Giuffrida; 94–18 Luxemburg; 99–6 Squire.
Stale Complaint Rule: If NPCP not sent ..... 97–20 Werle.
Standard Security Program (SSP):
Compliance with ..... 90–12, 90–18 & 90–19 Continental Airlines; 91–33 Delta Air Lines; 91–55 Continental Airlines; 92–13 & 94–1 Delta Air Lines; 96–19 [Air Carrier]; 98–22 Northwest Airlines; 99–1 American.
Checkpoint Security Coordinator ..... 98–22 Northwest Airlines.
Ground Security Coordinator ..... 96–16 Westair Commuter.
Statute of Limitations ..... 97–20 Werle.
Stay of Orders ..... 90–31 Carroll; 90–32 Continental Airlines.
Pending judicial review ..... 95–15 Charter Airlines.
Strict Liability ..... 89–5 Schultz; 90–27 Gabbert; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–58 [Airport Operator]; 97–23 Detroit Metropolitan; 98–7 LAX.
Test Object Detection ..... 90–12, 90–18, 90–19, 91–9 & 91–55 Continental Airlines; 92–13 Delta Air Lines; 96–19 [Air Carrier].
Proof of violation ..... 90–18, 90–19 & 91–9 (Continental Airlines: 92–13 Delta Air Lines.
Sanction ..... 90–18 & 90–19 Continental Airlines; 96–19 [Air Carrier].
Timeliness (See also Complaint; Filing; Mailing Rule; and Appeals):
Burden to prove date of filing ..... 97–11 Hampton Air; 98–1 V. Taylor.
Of response to NPCP ..... 90–22 USAir
Of Complaint ..... 91–51 Hagwood; 93–13 Medel; 94–7 Hereth.
Of initial decision ..... 97–31 Sanford Air.
Of NPCP ..... 92–73 Wyatt.
Of reply brief ..... 97–11 Hampton.
Of request for hearing ..... 93–12 Langton; 95–19 Rayner.
Of EAJA application (See EAJA—Final disposition, EAJA—Jurisdiction)
Unapproved Parts (See also Parts Manufacturer Approval) ..... 93–19 Pacific Sky Supply.
Unauthorized Access:
To aircraft ..... 90–12 & 90–19 Continental Airlines; 94–1 Delta Air Lines.
To Air Operations Area (AOA) ..... 90–37 Northwest Airlines; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–58 [Airport Operator]; 94–1 Delta Air Lines.
Visual Cues Indicating Runway, Adequacy of ..... 92–40 Wendt.
Weapons Violations, generally ..... 89–5 Schultz, 90–10 Webb; 90–20 Degenhardt; 90–23 Broyles; 90–33 Cato; 90–26 & 90–43 Waddell; 91–3 Lewis; 91–30 Trujillo; 91–38 Esau; 91–53 Koller; 92–32 Barnhill; 92–46 Sutton-Sautter; 92–51 Koblick; 92–59 Petek-Jackson; 94–5 Grant; 94–44 American Airlines.
Concealed weapon ..... 89–5 Schultz; 92–46 Sutton-Sautter; 92–51 Koblick.

| | |
|---|---|
| ''Deadly or Dangerous'' | 90–26 & 90–43 Waddell; 91–30 Trujillo; 91–38 Easu. |
| First-time Offenders | 89–5 Schutz. |
| Intent to commit violation | 89–5 Schultz; 90–20 Degenhardt; 90–23 Broyles; 90–26 Waddell; 91–3 Lewis; 91–53 Koller. |
| Knowledge: Of Weapon Concealment (See also Knowledge) | 89–5 Schultz; 90–20 Degenhardt. |
| Sanction (See Sanction) | |
| Weight and Balance | 94–40 Polynesian Airways. |
| Passenger list | 99–13 Falcon Air Express. |
| Witnesses (See also Credibility): | |
| Absence of, Failure to subpoena | 92–3 Park; 98–2 Carr. |
| Expert testimony: Evaluation of | 93–17 Metcalf; 94–3 Valley Air; 94–21 Sweeney; 96–3 American West Airlines; 96–15 Valley Air; 97–9 Alphin; 97–32 Florida Propeller. |
| Expert witness fees (See EAJA) | |


**Regulations (Title 14 CFR, unless otherwise noted)**


| | |
|---|---|
| 1.1 (maintenance) | 94–38 Bohan; 97–11 Hampton. |
| 1.1 (major alteration) | 99–5 Africa Air. |
| 1.1 (major repair) | 96–3 America West Airlines. |
| 1.1 (minor repair) | 96–3 America West Airlines. |
| 1.1 (operate) | 91–12 & 91–31 Terry & Menne; 93–18 Westair Commuter; 96–17 Fenner. |
| 1.1 (person) | 93–18 Westair Commuter. |
| 1.1 (propeller) | 96–15 Valley Air. |
| 13.16 | 90–16 Rocky Mountain; 90–22 USAir; 90–37 Northwest Airlines; 90–38 & 91–9 Continental Airlines; 91–18 [Airport Operator]; 91–51 Hagwood; 92–1 Costello; 92–46 Sutton-Sautter; 93–13 Medel; 93–28 Strohl; 94–27 Larsen; 94–37 Houston; 94–31 Smalling; 95–19 Rayner; 96–26 Midtown Neon Sign; 97–1 Midtown Neon Sign; 97–9 Alphin; 98–18 General Aviation. |
| 13.201 | 90–12 Continental Airlines. |
| 13.202 | 90–6 American Airlines; 92–76 Safety Equipment. |
| 13.203 | 90–12 Continental Airlines; 90–21 Carroll; 90–38 Continental Airlines. |
| 13.204 | |
| 13.205 | 90–20 Degenhardt; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–32 Barnhill; 94–32 Detroit Metropolitan; 94–39 Kirola; 95–16 Mulhall; 97–20 Werle. |
| 13.206 | |
| 13.207 | 94–39 Kirola. |
| 13.208 | 90–21 Carroll; 91–51 Hagwood; 92–73 Wyatt; 92–76 Safety Equipment; 93–13 Medel; 93–28 Strohl; 94–7 Hereth; 97–20 Werle; 98–4 Larry's. |
| 13.209 | 90–3 Metz; 90–15 Playter; 91–18 [Airport Operator]; 92–32 Barnhill; 92–47 Cornwall; 92–75 Beck; 92–76 Safety Equipment; 94–8 Nunez; 94–5 Grant; 94–22 Harkins; 94–29 Sutton; 94–30 Columna; 95–10 Diamond; 95–28 Atlantic World Airways; 97–7 Stalling; 97–18 Robinson; 97–33 Rawlings; 98–21 Blankson. |
| 13.210 | 92–19 Cornwall; 92–75 Beck; 92–76 Safety Equipment; 93–7 Dunn; 93–28 Strohl; 94–5 Grant; 94–30 Columna; 95–28 Atlantic World Airways; 96–17 Fenner; 97–11 Hampton; 97–18 Robinson; 97–38 Air St. Thomas; 98–16 Blue Ridge Airlines. |
| 13.211 | 89–6 American Airlines; 89–7 Zenkner; 90–3 Metz; 90–11 Thunderbird Accessories; 90–39 Hart; 91–24 Esau; 92–1 Costello; 92–9 Griffin; 92–18 Bargen; 92–19 Cornwall; 92–57 Detroit Metro. Wayne County Airport; 92–74 Wendt; 92–76 Safety Equipment; 93–2 Wendt; 94–5 Grant; 94–18 Luxemburg; 94–29 Sutton; 95–12 Toyota; 95–28 Valley Air; 97–7 Stalling; 97–11 Hampton; 98–4 Larry's Flying Service; 98–19 Martin & Jaworski; 98–20 Koenig; 99–2 Oxygen Systems. |
| 13.212 | 90–11 Thunderbird Accessories; 91–2 Continental Airlines; 99–2 Oxygen Systems. |
| 13.213 | |
| 13.214 | 91–3 Lewis. |
| 13.215 | 93–28 Strohl; 94–39 Kirola. |
| 13.216 | |
| 13.217 | 91–17 KDS Aviation. |
| 13.218 | 89–6 American Airlines; 90–11 Thunderbird Accessories; 90–39 Hart; 92–9 Griffin; 92–73 Wyatt; 93–19 Pacific Sky Supply; 94–6 Strohl; 94–27 Larsen; 94–37 Houston; 95–18 Rayner; 96–16 WestAir; 96–24 Horizon; 98–20 Koenig. |
| 13.219 | 89–6 American Airlines; 91–2 Continental; 91–54 Alaska Airlines; 93–37 Airspect; 94–32 Detroit Metro. Wayne County Airport; 98–25 Gotbetter. |

| | |
|---|---|
| 13.220 | 89–6 American Airlines; 90–20 Carroll; 91–8 Watts Agricultural Aviation; 91–17 KDS Aviation; 91–54 Alaska Airlines; 92–46 Sutton-Sautter. |
| 13.221 | 92–29 Haggland; 92–31 Eaddy; 92–52 Cullop. |
| 13.222 | 92–72 Giuffrida; 96–15 Valley Air. |
| 13.223 | 91–12 & 91–31 Terry & Menne; 92–72 Giuffrida; 95–26 Hereth; 96–15 Valley Air; 97–11 Hampton; 97–31 Sanford Air; 97–32 Florida Propeller; 98–3 Fedele; 98–6 Continental Airlines. |
| 13.224 | 90–26 Waddell; 91–4 [Airport Operator]; 92–72 Giuffrida; 94–18 Luxemburg; 94–28 Toyota; 95–25 Conquest; 96–17 Fenner; 97–32 Florida Propeller; 98–6 Continental Airlines. |
| 13.225 | 97–32 Florida Propeller. |
| 13.226 | |
| 13.227 | 90–21 Carroll; 95–26 Hereth. |
| 13.228 | 92–3 Park. |
| 13.229 | |
| 13.230 | 92–19 Cornwall; 95–26 Hereth; 96–24 Horizon. |
| 13.231 | 92–3 Park. |
| 13.232 | 89–5 Schultz; 90–20 Degenhardt; 92–1 Costello; 92–18 Bargen; 92–32 Barnhill; 93–28 Strohl; 94–28 Toyota; 95–12 Toyota; 95–16 Mulhall; 96–6 Ignatov; 98–18 General Aviation. |
| 13.233 | 89–1 Gressani; 89–4 Metz; 89–5 Schultz; 89–7 Zenkner; 89–8 Thunderbird Accessories; 90–3 Metz; 90–11 Thunderbird Accessories; 90–19 Continental Airlines; 90–20 Degenhardt; 90–25 & 90–27 Gabbert; 90–35 P. Adams; 90–19 Continental Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–7 Pardue; 91–8 Watts Agricultural Aviation; 91–10 Graham; 91–11 Continental Airlines; 91–12 Bargen; 91–24 Esau; 91–26 Britt Airways; 91–31 Terry & Menne; 91–32 Bargen; 91–43 & 91–44 Delta; 91–45 Park; 91–46 Delta; 91–47 Delta; 91–48 Wendt; 91–52 KDS Aviation; 91–53 Koller; 92–1 Costello; 92–3 Park; 92–7 West; 92–11 Alilin; 92–15 Dillman; 92–16 Wendt; 92–18 Bargen; 92–19 Cornwall; 92–27 Wendt; 92–32 Barnhill; 92–34 Carrell; 92–35 Bay Land Aviation; 92–36 Southwest Airlines; 92–39 Beck; 92–45 O'Brien; 92–52 Beck; 92–56 Montauk Caribbean Airways; 92–57 Detroit Metro. Wayne Co. Airport; 92–67 USAir, 92–69 McCabe; 92–72 Giuffrida; 92–74 Wendt; 92–78 TWA; 93–5 Wendt; 93–6 Westair Commuter; 93–7 Dunn; 93–8 Nunez; 93–19 Pacific Sky Supply; 93–23 Allen; 93–27 Simmons; 93–28 Strohl; 93–31 Allen; 93–32 Nunez; 94–9 B & G Instruments; 94–10 Boyle; 94–12 Bartusiak; 94–15 Columna; 94–18 Luxemburg; 94–23 Perez; 94–24 Page; 94–26 French Aircraft; 94–28 Toyota; 95–2 Meronek; 95–9 Woodhouse; 95–13 Kilrain; 95–23 Atlantic World Airways; 95–25 Conquest; 95–26 Hereth; 96–1 [Airport Operator; 96–2 Skydiving Center; 97–1 Midtown Neon Sign; 97–2 Sanford Air; 97–7 Stalling; 97–22 Sanford Air; 97–24 Gordon Air; 97–31 Sanford Air; 97–33 Rawlings; 97–38 Air St. Thomas; 98–4 Larry's Flying Service; 98–3 Fedele; Continental Airlines 98–6; 98–7 LAX; 98–10 Rawlings; 98–15 Squire; 98–18 General Aviation; 98–19 Martin & Jaworski; 98–20 Koenig; 99–2 Oxygen Systems; 99–11 Evergreen Helicopters. |
| 13.234 | 90–19 Continental Airlines; 90–31 Carroll; 90–32 & 90–38 Continental Airlines; 91–4 [Airport Operator]; 95–12 Toyota; 96–9 [Airport Operator]; 96–23 Kilrain. |
| 13.235 | 90–11 Thunderbird Accessories; 90–12 Continental Airlines; 90–15 Playter; 90–17 Wilson; 92–7 West. |
| Part 14 | 92–74 & 93–2 Wendt; 95–18 Pacific Sky Supply. |
| 14.01 | 91–17 & 92–71 KDS Aviation. |
| 14.04 | 91–17, 91–52 & 92–71 KDS Aviation; 93–10 Costello; 95–27 Valley Air. |
| 14.05 | 90–17 Wilson. |
| 14.12 | 95–27 Valley Air. |
| 14.20 | 91–52 KDS Aviation; 96–22 Woodhouse. |
| 14.22 | 93–29 Sweeney. |
| 14.23 | 98–19 Martin & Jaworski. |
| 14.26 | 91–52 KDS Aviation; 95–27 Valley Air. |
| 14.28 | 95–9 Woodhouse. |
| 21.181 | 96–25 USAir. |
| 21.303 | 93–19 Pacific Sky Supply; 95–18 Pacific Sky Supply. |
| 25.787 | 97–30 Emery Worldwide Airlines. |
| 25.855 | 92–37 Giuffrida; 97–30 Emery Worldwide Airlines. |
| 39.3 | 92–10 Flight Unlimited; 94–4 Northwest Aircraft Rental. |
| 43.3 | 92–73 Wyatt; 97–31 Sanford Air; 98–18 General Aviation. |
| 43.5 | 96–18 Kilrain; 97–31 Sanford Air. |
| 43.9 | 91–8 Watts Agricultural Aviation; 97–31 Sanford Air; 98–4 Larry's Flying Service. |

| | |
|---|---|
| 43.13 | 90–11 Thunderbird Accessories; 94–3 Valley Air; 94–38 Bohan; 96–3 America West Airlines; 96–25 USAir; 97–9 Alphin; 97–10 Alphin; 97–30 Emery Worldwide Airlines; 97–31 Sanford Air; 97–32 Florida Propeller. |
| 43.15 | 90–25 & 90–27 Gabbert; 91–8 Watts Agricultural Aviation; 94–2 Woodhouse; 96–18 Kilrain. |
| 61.3 | 99–11 Evergreen Helicopters. |
| 65.15 | 92–73 Wyatt. |
| 65.92 | 92–73 Wyatt. |
| 91.7 | 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–16 Mauna Kea; 98–18 General Aviation; 99–5 Africa Air. |
| 91.8 (91.11 as of 8/18/90) | 92–3 Park. |
| 91.9 (91.13 as of 8/18/90) | 90–15 Playter; 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt; 92–48 USAir; 92–49 Richardson & Shimp; 92–47 Cornwall; 92–70 USAir; 93–9 Wendt; 93–17 Metcalf; 93–18 Westair Commuter; 93–29 Sweeney; 94–29 Sutton; 95–26 Hereth; 96–17 Fenner. |
| 91.11 | 96–6 Ignatov; 97–12 Mayer; 98–12 Stout; 99–16 Dorfman. |
| 91.29 (91.7 as of 8/18/90) | 91–8 Watts Agricultural Aviation; 92–10 Flight Unlimited; 94–4 Northwest Aircraft Rental. |
| 91.65 (91.111 as of 8/18/90) | 91–29 Sweeney; 94–21 Sweeney. |
| 91.67 (91.113 as of 8/18/90) | 91–29 Sweeney. |
| 91.71 | 97–11 Hampton. |
| 91.75 (91.123 as of 8/18/90) | 91–12 & 91–31 Terry & Menne; 92–8 Watkins; 92–40 Wendt; 92–49 Richardson & Shimp; 93–9 Wendt. |
| 91.79 (91.119 as of 8/18/90) | 90–15 Playter; 92–47 Cornwall; 93–17 Metcalf. |
| 91.87 (91.129 as of 8/18/90) | 91–12 & 91–31 Terry & Menne; 92–8 Watkins. |
| 91.103 | 95–26 Hereth. |
| 91.111 | 96–17 Fenner. |
| 91.113 | 96–17 Fenner. |
| 91.151 | 95–25 Hereth. |
| 91.173 (91.417 as of 8/18/90) | 91–8 Watts Agricultural Aviation. |
| 91.203 | 99–5 Africa Air. |
| 91.205 | 98–18 General Aviation |
| 91.213 | 97–11 Hampton. |
| 91.403 | 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–31 Sanford Air. |
| 91.405 | 97–16 Mauna Kea; 98–4 Larry's Flying Service; 98–18 General Aviation; 99–5 Africa Air. |
| 91.407 | 98–4 Larry's Flying Service; 99–5 Africa Air. |
| 91.417 | 98–18 General Aviation. |
| 91.517 | 98–12 Stout. |
| 91.703 | 94–29 Sutton. |
| 105.29 | 98–3 Fedele; 98–19 Martin & Jaworski. |
| 107.1 | 90–19 Continental Airlines; 90–20 Degenhardt; 91–4 [Airport Operator]; 91–58 [Airport Operator]; 98–7 LAX. |
| 107.9 | 98–7 LAX. |
| 107.13 | 90–12 & 90–19 Continental Airlines; 91–4 [Airport Operator]; 91–18 [Airport Operator]; 91–40 [Airport Operator]; 91–41 [Airport Operator]; 91–58 [Airport Operator]; 96–1 [Airport Operator]; 97–23 Detroit Metropolitan; 98–7 LAX. |
| 107.20 | 90–24 Bayer; 92–58 Hoedl; 97–20 Werle; 98–20 Koenig. |
| 107.21 | 89–5 Schultz; 90–10 Webb; 90–22 Degenhardt; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–39 Hart; 91–3 Lewis; 91–10 Graham; 91–30 Trujillo; 91–38 Esau; 91–53 Koller; 92–32 Barnhill; 92–38 Cronberg; 92–46 Sutton-Sautter; 92–51 Koblick; 92–59 Petek-Jackson; 94–5 Grant; 94–31 Smalling; 97–7 Stalling. |
| 107.25 | 94–30 Columna. |
| 108.5 | 90–12, 90–18, 90–19, 91–2 & 91–9 Continental Airlines; 91–33 Delta Air Lines; 91–54 Alaska Airlines; 91–55 Continental Airlines; 92–13 & 94–1 Delta Air Lines; 94–44 American Airlines; 96–16 WestAir; 96–19 [Air Carrier]; 98–22 Northwest Airlines; 99–1 American; 99–12 TWA. |
| 108.7 | 90–18 & 90–19 Continental Airlines; 99–1 American. |
| 108.9 | 98–22 Northwest Airlines. |
| 108.10 | 96–16 WestAir. |
| 108.11 | 90–23 Broyles; 90–26 Waddell; 91–3 Lewis; 92–46 Sutton–Sautter; 94–44 American Airlines. |
| 108.13 | 90–12 & 90–19 Continental Airlines; 90–37 Northwest Airlines. |
| 108.18 | 98–6 Continental Airlines; 99–12 TWA. |
| 121.133 | 90–18 Continental Airlines. |
| 121.153 | 92–48 & 92–70 USAir; 95–11 Horizon; 96–3 America West Airlines; 96–24 Horizon; 96–25 USAir; 97–21 Delta; 97–30 Emery Worldwide Airlines. |
| 121.221 | 97–30 Emery Worldwide Airlines. |
| 121.317 | 92–37 Giuffrida; 94–18 Luxemburg; 99–6 Squire; 99–16 Dorfman. |

| | |
|---|---|
| 121.318 | 92–37 Giuffrida. |
| 121.367 | 90–12 Continental Airlines; 96–25 USAir. |
| 121.571 | 92–37 Giuffrida. |
| 121.575 | 98–11 TWA. |
| 121.577 | 98–11 TWA. |
| 121.589 | 97–12 Mayer. |
| 121.628 | 95–11 Horizon; 97–21 Delta; 97–30 Emery Worldwide Airlines. |
| 121.693 | 99–13 Falcon Air Express. |
| 121.697 | 99–13 Falcon Air Express. |
| 135.1 | 95–8 Charter Airlines; 95–25 Conquest. |
| 135.3 | 99–15 Blue Ridge. |
| 135.5 | 94–3 Valley Air; 94–20 Conquest Helicopters; 95–25 Conquest; 95–27 Valley Air; 96–15 Valley Air. |
| 135.25 | 92–10 Flight Unlimited; 94–3 Valley Air; 95–27 Valley Air; 96–15 Valley Air. |
| 135.63 | 94–40 Polynesian Airways; 95–17 Larry's Flying Service; 95–28 Atlantic; 96–4 South Aero; 99–7 Premier Jets. |
| 135.87 | 90–21 Carroll. |
| 135.95 | 95–17 Larry's Flying Service; 99–15 Blue Ridge. |
| 135.179 | 97–11 Hampton. |
| 135.185 | 94–40 Polynesian Airways. |
| 135.234 | 99–15 Blue Ridge. |
| 135.243 | 99–11 Evergreen Helicopters; 99–15 Blue Ridge. |
| 135.263 | 95–9 Charter Airlines; 96–4 South Aero. |
| 135.267 | 95–8 Charter Airlines; 95–17 Larry's Flying Service; 96–4 South Aero. |
| 135.293 | 95–17 Larry's Flying Service; 96–4 South. |
| | Aero; 99–15 Blue Ridge. |
| 135.299 | 99–15 Blue Ridge. |
| 135.343 | 95–17 Larry's Flying Service; 99–15 Blue Ridge. |
| 135.411 | 97–11 Hampton. |
| 135.413 | 94–3 Valley Air; 96–15 Valley Air; 97–8 Pacific Av. d/b/a Inter-Island Helicopters; 97–16 Mauna Kea; 99–14 Alika Aviation. |
| 135.421 | 93–36 Valley Air; 94–3 Valley Air; 96–15 Valley Air; 99–14 Alika Aviation. |
| 135.437 | 94–3 Valley Air: 96–15 Valley Air. |
| 141.101 | 98–18 General Aviation. |
| 145.1 | 97–10 Alphin. |
| 145.3 | 97–10 Alphin. |
| 145.25 | 97–10 Alphin. |
| 145.45 | 97–10 Alphin. |
| 145.47 | 97–10 Alphin. |
| 145.49 | 97–10 Alphin. |
| 145.53 | 9–11 Thunderbird Accessories. |
| 145.57 | 94–2 Woodhouse; 97–9 Alphin; 97–32 Florida Propeller. |
| 145.61 | 90–11 Thunderbird Accessories. |
| 191 | 90–12 & 90–19 Continental Airlines; 90–37 Northwest Airlines; 98–6 Continental Airlines; 99–12 TWA. |
| 298.1 | 92–10 Flight Unlimited. |
| 302.8 | 92–22 USAir. |

**49 CFR**

| | |
|---|---|
| 1.47 | 92–76 Safety Equipment. |
| 171 et seq. | 95–10 Diamond. |
| 171.2 | 92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr. |
| 171.8 | 92–77 TCI. |
| 172.101 | 92–77 TCI; 94–28 Toyota; 94–31 Smalling; 96–26 Midtown. |
| 172.200 | 92–77 TCI; 94–28 Toyota; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr. |
| 172.202 | 92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr. |
| 172.203 | 94–28 Toyota. |
| 172.204 | 92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr. |
| 172.300 | 94–31 Smalling; 95–16 Mulhall; 96–26 Midtown; 98–2 Carr. |
| 172.301 | 94–31 Smalling; 95–16 Mulhall; 98–2 Carr. |
| 172.304 | 92–77 TCI; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr. |
| 172.400 | 92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr. |
| 172.402 | 94–28 Toyota. |
| 172.406 | 92–77 TCI. |
| 173.1 | 92–77 TCI; 94–28 Toyota; 94–31 Smalling; 95–16 Mulhall; 98–2 Carr. |

| | |
|---|---|
| 173.3 | 94–28 Toyota; 94–31 Smalling; 98–2 Carr. |
| 173.6 | 94–28 Toyota. |
| 173.22(a) | 94–28 Toyota; 94–31 Smalling; 98–2 Carr. |
| 173.24 | 94–28 Toyota; 95–16 Mulhall. |
| 173.25 | 94–28 Toyota. |
| 173.27 | 92–77 TCI. |
| 173.62 | 98–2 Carr. |
| 173.115 | 92–77 TCI. |
| 173.240 | 92–77 TCI. |
| 173.243 | 94–28 Toyota. |
| 173.260 | 94–28 Toyota. |
| 173.266 | 94–28 Toyota; 94–31 Smalling. |
| 175.25 | 94–31 Smalling. |
| 191.5 | 97–13 Westair Commuter. |
| 191.7 | 97–13 Westair Commuter. |
| 821.30 | 92–73 Wyatt. |
| 821.33 | 90–21 Carroll. |

**Statutes**

| | |
|---|---|
| 5 U.S.C.: | |
| 504 | 90–17 Wilson; 91–17 & 92–71 KDS Aviation; 92–74, 93–2 & 93–9 Wendt; 93–29 Sweeney; 94–17 TCI; 95–27 Valley Air; 96–22 Woodhouse; 98–19 Martin & Jaworski. |
| 552 | 90–12, 90–18 & 90–19 Continental Airlines; 93–10 Costello. |
| 554 | 90–18 Continental Airlines; 90–21 Carroll; 95–12 Toyota. |
| 556 | 90–21 Carroll; 91–54 Alaska Airlines. |
| 557 | 90–20 Degenhardt; 90–21 Carroll; 90–37 Northwest Airlines; 94–28 Toyota. |
| 705 | 95–14 Charter Airlines. |
| 5332 | 95–27 Valley Air. |
| 11 U.S.C.: | |
| 362 | 91–2 Continental Airlines. |
| 28 U.S.C.: | |
| 2412 | 93–10 Costello; 96–22 Woodhouse. |
| 2462 | 90–21 Carroll. |
| 49 U.S.C.: | |
| 5123 | 95–16 Mulhall; 96–26 & 97–1 Midtown Neon Sign; 98–2 Carr. |
| 40102 | 96–17 Fenner. |
| 41706 | 99–6 Squire. |
| 44701 | 96–6 Ignatov; 96–17 Fenner; 99–12 TWA. |
| 44704 | 96–3 America West Airlines; 96–15 Valley Air. |
| 46110 | 96–22 Woodhouse; 97–1 Midtown Neon Sign. |
| 46301 | 97–1 Midtown Neon Sign; 97–16 Mauna Kea; 97–20 Werle; 99–15 Blue Ridge. |
| 46302 | 98–24 Stevens. |
| 46303 | 97–7 Stalling. |
| 49 U.S.C. App.: | |
| 1301(31) (operate) | 93–18 Westair Commuter. |
| (32)(person) | 93–18 Westair Commuter. |
| 1356 | 90–18 & 90–19, 91–2 Continental Airlines. |
| 1357 | 90–18 90–19 & 91–2 Continental Airlines; 91–41 [Airport Operator]; 91–58 [Airport Operator]. |
| 1421 | 92–10 Flight Unlimited; 92–48 USAir; 92–70 USAir; 93–9 Wendt. |
| 1429 | 92–73 Wyatt. |
| 1471 | 89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–12, 90–18 & 90–19. Continental Airlines; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–37 Northwest Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–53 Koller; 92–5 Delta Airlines; 92–10 Flight Unlimited; 92–46 Sutton-Sautter; 92–51 Koblick; 92–74 Wendt; 92–76 Safety Equipment; 94–20 Conquest Helicopters; 94–40 Polynesian Airways; 96–6 Ignatov; 97–7 Stalling. |
| 1472 | 96–6 Ignatov. |
| 1475 | 90–20 Degenhardt; 90–12 Continental Airlines; 90–18, 90–19 & 91–1 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 94–40 Polynesian Airways. |
| 1486 | 90–21 Carroll; 96–22 Woodhouse. |
| 1809 | 92–77 TCI; 94–19 Pony Express; 94–28 Toyota; 94–31 Smalling; 95–12 Toyota. |

**Civil Penalty Actions—Orders Issued by the Administrator Digests**

(This digest includes all decisions and orders issued by the Administrator from October 1, 1999, to December 31, 1999.)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from October 1, 1999, to December 31, 1999. The FAA publishes non-cumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

*These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.*

*In the Matter of Trans World Airlines, Inc.*

Order No. 99–12 (10/7/99)

*Security Cases.* This is a consolidated appeal of two separate security cases against TWA. In each case, the law judge found that TWA violated one FAA security directive and several regulations. The law judge assessed a $6,500 civil penalty in each case, for a total of $13,000. In the first case, a TWA agent failed during check-in to ask an FAA inspector posing as a passenger if she had received anything from unknown persons. In the second case, the agent failed to ensure proper passenger/baggage checking. As a result, TWA transported the baggage aboard the airplane, even though the undercover agent never boarded. In each case, TWA admitted facts, but denied violations.

*Validity of the Security Directives.* On appeal, TWA challenges the validity of the FAA security directives on several fronts. The law judge, however, did not err in declining to consider issues involving the validity of the security directives. As previously held, the Federal courts provide a more appropriate forum for challenging the validity of FAA security directives.

*Non-Delegability of Air Carrier Responsibilities.* TWA argues it should not be held fully responsible for unauthorized omissions of its employees. It has been held repeatedly that air carriers are responsible for violations committed by their employees while acting within scope of employment. By holding air carriers responsible for violations committed by their employees, the public is assured that air carriers will do everything in their power to ensure that their employees comply with the security and safety regulations. No one is in a better position to bring pressure to bear on air carrier employees to comply with the regulations than the air carriers themselves. It would be contrary to public interest to permit TWA and other air carriers to transfer away their crucial safety and security responsibilities.

*Sanction.* TWA argues that the law judge should have reduced the proposed sanctions more than he did. The law judge reduced the sanction in each case from $7,500 to $6,500. In setting the sanctions, however, the law judge carefully balanced the seriousness of the violations against any mitigating factors. He gave adequate weight to the mitigating factor of TWA's corrective action. Previous cases have held that simple reminders of pre-existing security responsibilities, standing alone, do not ordinarily justify a reduction in an otherwise reasonable civil penalty. The $6,500 sanctions set by the law judge already take into account the inadvertent nature of the violations and TWA's compliance disposition. If the violations had been deliberate or if TWA had demonstrated a non-compliant disposition, higher penalties would have been appropriate.

*Financial Hardship.* TWA offered no witness who could testify to TWA's inability to absorb the proposed sanctions. Moreover, TWA's admission in its appeal briefs that the $6,500 civil penalties ''will certainly not drastically harm'' it undercuts its financial hardship argument. Due to the seriousness of the violations, which left the system vulnerable to terrorist attack, the law judge did not err in assessing a $6,500 in each case.

*Conclusion.* This decision denies TWA's appeal and affirms the ALJ's assessment of $6,500 in each case, for a total of $13,000.

*In the Matter of Falcon Air Express, Inc.*

Order No. 99–13 (12/22/99)

*Passenger List Requirement.* This case involves an alleged failure to keep an accurate list of passenger names. During a routine inspection, FAA inspectors found a discrepancy: although the weight and balance manifest said there were 135 passengers on a Falcon flight from the Dominican Republic to the U.S., the passenger list only contained 84 names.

Falcon's Operations director said he would obtain a complete list and fax it to the FAA in about 10 minutes. Falcon contacted Aerolineas, the carrier for whom it conducted the flight, to obtain a complete list. The next day, the inspectors returned to Falcon to get the new list, which had 139 names—a different number than on either of the other 2 lists. Neither Falcon's President nor its Operations Director could explain the discrepancy, or say which individuals were actually on board. As it turned out, the list from Aerolineas was encoded. Some of the names were no-shows or duplicates.

*Accuracy of Weight and Balance Calculations.* On appeal, Falcon disputes the law judge's statement that the weight and balance calculations could have been inaccurate. It is true that the purser obtained the correct number of passengers by doing a head count. But there is evidence supporting the law judge's statement that the calculations could have been inaccurate: Falcon's own safety director testified that one reason for keeping the passenger list was for weight and balance calculations. In any event, safety is still at issue because Falcon was unable to tell inspectors the correct number of passengers. If the list contains too few names, rescuers could end a post-accident search prematurely. If it contains too many names, rescuers could be endangered while searching for passengers not on flight.

*Accuracy of Passenger List.* Falcon argues the list it obtained from Aerolineas was accurate because the codes indicated which passengers were on flight. But a passenger list, no matter how accurate, is of little use if the carrier cannot decode it without delay.

Also, Falcon argues that its President and Operations Director do not need to be able to explain technical matters, and that other personnel who knew the codes would have been involved in an emergency. But Falcon's management did not know the codes. Twice inspectors visited Falcon asking how many passengers were on board and twice they left without the information.

*Sanction.* Falcon argues no penalty should be assessed because it was a simple misunderstanding regarding the codes. But a civil penalty needs to be assessed to ensure that in an emergency, carriers able to provide an accurate number and the names of passengers without any confusion or delay.

Falcon also argues that the $5,000 civil penalty should be reduced due to a typo on the complaint, which erroneously stated the maximum penalty as $1,000 instead of $10,000. But both the notice and the final notice of proposed civil penalty said the maximum was $10,000. Moreover, even the complaint, even though it misstated the maximum, stated the agency was

seeking $7,500. Falcon has not shown it was harmed. Falcon's appeal is denied and the $5,000 civil penalty assessed by the law judge is affirmed.

*In the Matter of Alika Aviation, Inc.*

FAA Order No. 99–14 (12/22/99)

This case arises from a post-accident inspection of a Hughes 369D helicopter, operated by Alika Aviation, d/b/a Alexair, in which it was found that the N1 and N2 tach generators were each missing 2 opposing mounting nuts and the oil pressure regulating valve was missing its safety wire. The law judge held that it was demonstrated beyond mere probability that these defects existed at the time of the aircraft's last 100-hour inspection. Alexair operated the aircraft for 71 hours between the time of its last 100-hour inspection and the time of the accident that led to the inspection by the FAA inspectors. The law judge held that these discrepancies should have been discovered during the 100-hour inspection, and assessed a $6,000 civil penalty.

*Settlement Offer.* Alexair argues on appeal that the law judge wrongly rejected evidence of the pre-hearing settlement offer made by Complainant, arguing that that evidence would have demonstrated the excessiveness of the $10,000 civil penalty sought by Complainant at the hearing. This argument is rejected. The introduction of evidence of settlement offers is prohibited under Federal Rule of Evidence 408 when that evidence is sought to dispute the validity of the amount of the claim (or in this case, the appropriateness of the civil penalty.)

*Informal Conference.* Alexair argues on appeal that the agency attorney conducted the informal conference improperly. It is held that what happened at the informal is not at issue before the law judge at the hearing stage or the Administrator on appeal.

*Operator responsible for the acts and omissions of its employees.* A Part 135 operator is responsible for the acts and omissions of its employees in the scope of their employment and for the condition of its aircraft. Citing 14 CFR 135.413(a); *In the Matter of TWA,* FAA Order No. 98–11 (June 16, 1998); *In the Matter of USAir, Inc.,* FAA Order No. 92–48 at 7 (July 22, 1992), petition for reconsideration denied, FAA Order No. 92–70 at 5–6 (December 21, 1992); accord, *In the Matter of Pacific Aviation International,* FAA Order No. 97–11 at 5 (February 20, 1997); *In the Matter of Horizon Air Industries,* FAA Order 96–24 (August 13, 1996).

*Sanction.* The Administrator rejects Alexair's argument that the civil penalty should be reduced based on the fact that Alexair fired the mechanic who performed the 100-hour inspection. Terminating an employee eliminates someone who made a mistake but it does nothing positive to ensure that other or future employees will not make that same mistake. The Administrator also is not persuaded that the civil penalty should be reduced in light of the low civil penalty assessed against the mechanic. The Administrator may assess a civil penalty of up to $1,000 against an individual, but may assess a civil penalty up to $10,000 against an operator, like Alexair, that transports passengers or property or compensation or hire. The Administrator affirmed the $6,000 civil penalty assessed by the law judge.

*In the Matter of Blue Ridge Airlines*

Order No. 99–15 (12/22/99)

*Air Carrier Use of Unqualified Pilot.* In this case, the law judge found that Blue Ridge's President piloted a Blue Ridge flight even though he holds only a private pilot certificate. Blue Ridge is a small Part 135 air carrier. Its president and owner, Douglas Haynes, is not authorized to serve as pilot in command of Blue Ridge flights. It is undisputed that Haynes flew a plane with three passengers from Colorado to Kansas and back. Blue Ridge claims that the flights were cost-sharing flights in which the pilot and passengers had a common purpose, so they fall under Part 91 instead of Part 135. But the evidence at the hearing showed that Haynes charged the passengers $800 for the flight. The law judge did not believe Haynes' unlikely story that it was just a coincidence that his passengers wanted to go to the same small town in Kansas on the very same day that he was already going there to visit his cousin.

*New Testimony.* On appeal, Blue Ridge asks the Administrator to send the case back to the law judge to permit the carrier to permit it to present new testimony. But Blue Ridge has not explained what the testimony would be, how it might change the outcome, nor has it presented supporting affidavits, which are normally required when a party asks to present new evidence. Also, Blue Ridge has not shown why it did not present the testimony at the hearing in the first place. The request to remand is denied.

*Sanction.* Complainant has also filed an appeal, arguing that the law judge improperly ignored the Enforcement Sanction Guidance Table. *Compliance and Enforcement Order*, FAA Order 2150.3A, Appendix 4. Complainant argues that under the table, the law judge should have assessed $5,000 instead of $1,600. It is true that the sanction table does need to be followed to ensure fairness, and there is no support for the method the law judge used in setting the sanction—that is, multiplying by two the revenue Blue Ridge generated for the improper flights. Nevertheless, there is a valid basis in the table for reducing the $5,000 sanction proposed by the agency—the violator's ability to absorb the proposed sanction. Blue Ridge's income is extremely limited—it operated only a couple of flights under Part 135 and is no longer operating. So even though the law judge used an unauthorized method, the error was harmless because he arrived at an appropriate sanction anyway.

*In the Matter of Sharon Dorfman*

FAA Order No. 99–16 (12/22/99)

Ms. Dorfman was a passenger on board an American Airlines flight in May 1997. At the conclusion of a hearing, the law judge held that Ms. Dorfman did not violate 14 CFR 91.11, 121.317(f) and 121.317(k).

*Late Answer.* Complainant argues that the law judge should have dismissed the request for hearing because Ms. Dorfman did not demonstrate good cause for failing to file her answer on time. The Administrator holds that the question of whether the law judge should have held a hearing on the merits was a moot question after the hearing was held and briefs on the merits filed.

*Assault on the flight attendant not found.* Complainant argued that the law judge should have found that the preponderance of the evidence supported a finding that Ms. Dorfman pushed the flight attendant into a closet in violation of 14 CFR 91.11. Because Complainant failed to mention this incident in the complaint, the law judge correctly held that Complainant was precluded from arguing at the hearing that this incident amounted to a violation of Section 91.11. See 14 CFR 13.208(c). Moreover, the law judge found that Ms. Dorfman accidentally jostled the flight attendant. Accidental jostling does not amount to a battery, which is an intentional tort. The law judge's finding was reasonable in light of the evidence.

*Interference with the flight attendant no found.* Ms. Dorfman had her legs stretched across the aisle, and ignored the flight attendant's requests to move her legs. The flight attendant moved Ms. Dorfman's legs out of the way with her cart. The law judge held that this momentary and inconsequential

interference was too insignificant to rise to the level of a violation of 14 C.F.R. § 91.11. The Administrator agrees that this behavior did not amount to a violation of Section 91.11.

*Interference with the captain not found.* The captain testified that he was told that Ms. Dorfman would not stow her luggage and sit down. The law judge found credible Ms. Dorfman's testimony that she never carries her own luggage because she has a bad back, and therefore, she could not have been the person who did not stow her luggage. The administrator sees no reason to disturb this credibility finding by the law judge.

*Violations of seat belt regulations not found.* The law judge held that there was no evidence that Ms. Dorfman stood for more than a moment during the climb out, and he found the evidence that she stood up in response to the instruction to remain seated not to be compelling. The law judge wrote that Ms. Dorfman's demeanor did not suggest that she would flout flight attendant instructions. The Administrator sees no reason to distrub this credibility decision.

Complainant's appeal is denied and the law judge's decision is affirmed.

**Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders**

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications:

*Civil Penalty Cases Digest Service,* published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;

*Federal Aviation Decisions,* Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–221–9428.

2. *CD–ROM.* The Administrator's orders and decisions are available on CD–ROM through Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available through the following on-line services:

- Westlaw (the Database ID is FTRAN–FAA).
- LEXIS [Transportation (TRANS) Libarary, FAA file.].
- Compuserve.
- FedWorld.

**Docket**

The FAA Hearing Docket is located at FAA Headquarters, 800 Independence Avenue, SW, Room 926A, Washington, DC, 20591 (tel. no. 202–267–3641.) The clerk of the FAA Hearing Docket is Ms. Stephanie McClain. All documents that are required to be filed in civil penalty proceedings must be filed with the FAA Hearing Docket Clerk at the FAA Hearing Docket. (See 14 CFR 13.210.) Materials contained in the dockets of any case not containing sensitive security information (protected by 14 CFR Part 191) may be viewed at the FAA Hearing Docket.

In addition, materials filed in the FAA Hearing Docket in non-security cases in which the complaints were filed on or after December 1, 1997, are available for inspection at the Department of Transportation Docket, located at 400 7th Street, SW, Room PL–401, Washington, DC, 20590, (tel. no. 202–366–9329.) While the originals will be retained in the FAA Hearing Docket, the DOT Docket will scan copies of documents in non-security cases in which the complaint was filed after December 1, 1997, into their computer database. Individuals who have access to the Internet can view the materials in these dockets using the following Internet address: http://dms.dot.gov.

**FAA Offices**

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters: FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW., Room 926A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Regional Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169; (405) 954–3296.

Office of the Regional Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters, 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Regional Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Regional Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Fitzgerald Federal Building, Jamaica, NY 11430; (718) 553–3285.

Office of the Regional Counsel for the Great Lakes Region (AGL–7), Great Lakes Region Headquarters, O'Hare Lake Office Center, 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (847) 294–7085.

Office of the Regional Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803; (781) 238–7040.

Office of the Regional Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055; (425) 227–2007.

Office of the Regional Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Regional Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137; (817) 222–5064.

Office of the Regional Counsel for the Technical Center (ACT–7), William J. Hughes Technical Center, Atlantic City International Airport, Atlantic City, NJ 0845; (609) 485–7088.

Office of the Regional Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Hawthorne, CA 90261; (310) 725–7100.

Issued in Washington, DC on January 5, 2000.

**James S. Dillman,**

*Assistant Chief Counsel for Litigation.*

[FR Doc. 00–583 Filed 1–10–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Transfer of Federally Assisted Land or Facility

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of intent to transfer Federally assisted land or facility.

**SUMMARY:** Section 5334(g) of the Federal Transit Laws, as codified, 49 U.S.C. § 5301, *et seq.*, permits the Administrator of the Federal Transit Administration (FTA) to authorize a recipient of FTA funds to transfer land or a facility to a public body for any public purpose with no further obligation to the Federal Government if,

among other things, no Federal agency is interested in acquiring the asset for Federal use. Accordingly, FTA is issuing this Notice to advise Federal agencies that the Bloomington Public Transportation Corporation intends to transfer a municipal transit facility, consisting of approximately 62,635 square feet of land situated within a light industrial district of Bloomington, Indiana, with frontage on East Miller Drive.

**EFFECTIVE DATE:** Any Federal agency interested in acquiring the land or facility must notify the FTA Region V Office of its interest by February 10, 2000.

**ADDRESSES:** Interested parties should notify the Regional Office by writing to Joel P. Ettinger, Regional Administrator, Federal Transit Administration, 200 West Adams, Suite 2410, Chicago, IL 60606.

**FOR FURTHER INFORMATION CONTACT:** Louise Carter, Director of Operations and Program Management at 312/353–2789.

**SUPPLEMENTARY INFORMATION:**

**Background**

49 U.S.C. 5334(g) provides guidance on the transfer of capital assets. Specifically, if a recipient of FTA assistance decides an asset acquired under this chapter at least in part with that assistance is no longer needed for the purpose for which it was acquired, the Secretary of Transportation may authorize the recipient to transfer the asset to a local governmental authority to be used for a public purpose with no further obligation to the Government. 49 U.S.C. 5334(g)(1).

Determinations

The Secretary may authorize a transfer for a public purpose other than mass transportation only if the Secretary decides:

(A) The asset will remain in public use for at least 5 years after the date the asset is transferred;

(B) There is no purpose eligible for assistance under this chapter for which the asset should be used;

(C) The overall benefit of allowing the transfer is greater than the interest of the Government in liquidation and return of the financial interest of the Government in the asset, after considering fair market value and other factors; and

(D) Through an appropriate screening or survey process, that there is no interest in acquiring the asset for Government use if the asset is a facility or land.

**Federal Interest in Acquiring Land or Facility**

This document implements the requirements of 49 U.S.C. 5334(g)(1)(D) of the Federal Transit Laws. Accordingly, FTA hereby provides notice of the availability of the land or facility further described below. Any Federal agency interested in acquiring the affected land or facility should promptly notify the FTA.

If no Federal agency is interested in acquiring the existing land or facility, FTA will make certain that the other requirements specified in 49 U.S.C. 5334(g)(1) (A) through (C) are met before permitting the asset to be transferred.

**Additional Description of Land or Facility**

The property is a municipal transit facility, consisting of approximately 62,635 square feet of land situated within a light industrial district of Bloomington, Indiana, with frontage on East Miller Drive. The Facility is a one-story steel and masonry warehouse/service garage building attached to a block wash bay on the north side of the main building. The interior of the office building consists of average trim, standard industrial grade carpeting and typical office fixtures. The building consists of a finished office area containing 2,575 square feet. The warehouse/service garage contains 7,931 square feet and the storage mezzanine area has 2,050 square feet. The north side of the office building has a drive-through wash bay containing 1,240 square feet; however, the equipment is inoperable and not repairable. The service area has radiant heaters, 5 drive-through bays and is insulated. The main parking area is located on the East Side of the building; there is also parking and drive area on the West Side of the building. The entire area has perimeter chain link fencing. There are outdoor lights and the asphalt is in average condition.

Issued on: January 5, 2000.

**Donald Gismondi,**

*Acting Regional Administrator.*

[FR Doc. 00–571 Filed 1–10–00; 8:45 am]

**BILLING CODE 4910–57–P**

## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

**[STB Finance Docket No. 33839]**

## Dallas Area Rapid Transit—Acquisition and Operation Exemption—Line of Union Pacific Railroad Co.

Dallas Area Rapid Transit (DART), a political subdivision of the State of Texas, has filed a notice of exemption under 49 CFR 1150.41 to acquire by purchase a rail line of Union Pacific Railroad Company (UP) extending between approximately milepost 747.25 and approximately milepost 746.25, a distance of approximately 1 route mile in Rowlett, TX (line).[1]

The earliest the transaction could be consummated was December 27, 1999, the effective date of the exemption (7 days after the exemption was filed).

If the verified notice 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 does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33839, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Kevin M. Sheys, Esq., Oppenheimer Wolff Donnelly & Bayh LLP, 1350 Eye Street, NW, Suite 200, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: January 4, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–527 Filed 1–10–00; 8:45 am]

**BILLING CODE 4915–00–P**

[1] DART states that it will grant trackage rights to UP (or UP's designee) on the line and that freight railroad operations on the line will be conducted by UP (or UP's designee) pursuant to the trackage rights. According to DART, UP (or UP's designee) will seek the Board's approval for the trackage rights in a separate filing.

## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

**[STB Docket No. AB–57 (Sub–No. 50X)]**

### Soo Line Railroad Company—Abandonment Exemption—in Marshall and Roberts Counties, SD

Soo Line Railroad Company (Soo) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 8.1±mile portion of its line of railroad between milepost 228.2±west of Claire City and milepost 236.3±, at the end of the track near Veblen, in Marshall and Roberts Counties, SD. The line traverses United States Postal Service Zip Codes 57224 and 57270.

Soo has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 10, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 21, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 31, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Diane P. Gerth, Esq., Leonard, Street and Deinard Professional Association, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Soo has filed an environmental report which addresses the effects of the abandonment, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by January 14, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Soo shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Soo's filing of a notice of consummation by January 11, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: January 3, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–419 Filed 1–10–00; 8:45 am]

**BILLING CODE 4915–00–P**

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF THE TREASURY

## Bureau of Alcohol, Tobacco, and Firearms

**[ATF O 1130.14]**

### Delegation Order—Delegation of the Director's Authorities in Subpart I of 27 CFR Part 296

**1. Purpose**

This order delegates the authorities of the Director to subordinate ATF officers and prescribes the subordinate ATF officers with whom persons file documents which are not ATF forms. Specifically, this order specifies the appropriate ATF officers that are designated in Treasury Decision ATF–423, which revised subpart I of part 296 of Title 27 of the Code of Federal Regulations (CFR) for the floor stocks tax on cigarettes.

**2. Cancellation**

This order cancels ATF O 1100.154, Delegation Order—Delegation of Certain Authorities of the Director in 27 CFR parts 170 and 296.

**3. Background**

Under current regulations, the Director has authority to take final action on matters relating to tobacco products and cigarette papers and tubes. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

**4. Delegations**

Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–1 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in subpart I of part 296 of Title 27 CFR to subordinate officers. Also, this ATF order prescribes the subordinate officers with whom applications, notices, and reports required by subpart I of part 296 of Title 27 CFR, which are not ATF forms, are filed. The attached table identifies the regulatory sections, documents and authorized ATF officers. The authorities in the table may not be redelegated. An ATF organization chart showing the directorates and the positions involved in this delegation order has been attached.

**John W. Magaw,**

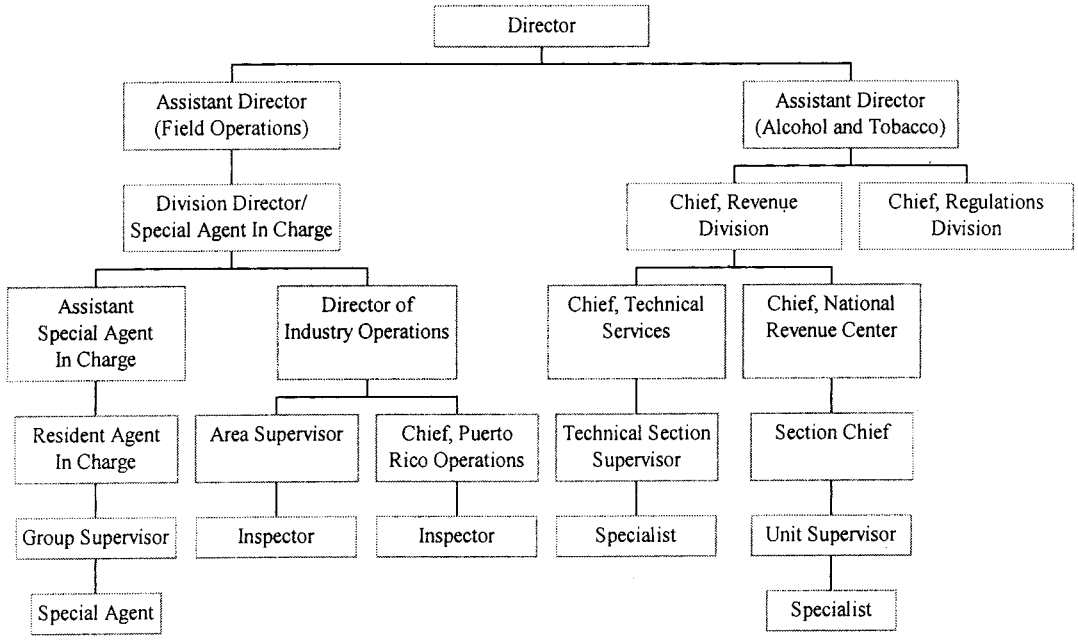
*Director.*

TABLE OF AUTHORITIES, DOCUMENTS TO BE FILED, AND AUTHORIZED OFFICIALS

| Regulatory section | Officer(s) authorized to act or receive document |
|---|---|
| § 296.242 | Director of Industry Operations. |
| § 296.244 | Inspector, Specialist or Special Agent. |
| § 296.253 | Section Chief, National Revenue Center (NRC), to approve (by affixing the signature of the Director) claims of more than $5,000 for remission, abatement, credit, or refund of tax. |
| § 296.253 | Unit Supervisor, NRC, to approve (by affixing the signature of the Director) claims of $5,000 or less for remission, abatement, credit, or refund of tax. |
| § 296.263 | Chief, Regulations Division. If the alternate method or procedure does not affect import or export recordkeeping, Chief, NRC, may act upon the same alternate method that has been approved by the Chief, Regulations Division. |
| § 296.264 | Chief, Regulations Division. If the alternate method or procedure does not affect import or export recordkeeping, Chief, NRC, may act upon the same alternate method that has been approved by the Chief, Regulations Division. |
| § 296.271 | Inspector, Specialist or Special Agent. |
| § 296.272 | Director of Industry Operations. |
| § 296.274 | Section Chief, NRC. |

BILLING CODE 4810–31–P

# ATF Organization




This is not a complete organizational chart of ATF.

[FR Doc. 00–329 Filed 1–10–00; 8:45 am]

BILLING CODE 4810–31–C

## UNITED STATES INSTITUTE OF PEACE

### Sunshine Act Meeting

**AGENCY:** United States Institute of Peace.

**DATE/TIME:** Thursday, January 20, 2000, 9:00 a.m.–5:30 p.m.

**LOCATION:** 1200 17th Street, NW, Suite 200, Washington, DC 20036.

**STATUS:** Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

**AGENDA:** January 2000 Board Meeting; Approval of Minutes of the Ninety-Second Meeting (November 18, 1999) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Review of Unsolicited Grant Applications; Other General Issues.

**CONTACT:** Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: January 3, 2000.

**Charles E. Nelson,**

*Vice President for Management and Finance, United States Institute of Peace.*

[FR Doc. 00–692 Filed 1–7–00; 1:12 pm]

**BILLING CODE 3155–01–M**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–NEW (Survey of Benefits Usage)]**

## Agency Information Collection Activities Under OMB Review

**AGENCY:** Office of Planning and Analysis, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of Planning and Analysis (OP&A), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before February 10, 2000.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to ''Survey of Department of Veterans Affairs (VA) Benefits Usage.''

**SUPPLEMENTARY INFORMATION:**

*Title:* Survey of Department of Veterans Affairs (VA) Benefits Usage.

*Type of Review:* New collection.

*Abstract:* The proposed telephone survey is intended to collect data as part of a program evaluation to assess the effectiveness and efficiency of Department of Veterans Affairs (VA) programs which assist the survivors of veterans and servicemembers who die of service-connected disabilities (in the case of Dependency and Indemnity Compensation) or with service-connected disabilities (in the case of Insurance) and certain other veterans. This evaluation will fulfill the ongoing requirements of Public Law 103–62, the Government Performance and Results Act of 1993; Title 38, U.S.C., section 527, Evaluation and Data Collection; and Title 38 CFR, § 1.15, Standards for Program Evaluation. In addition, this evaluation will fulfill the specific requirements of Public Law 105–368, Section 303, Assessment of Effectiveness of Insurance and Survivor Benefits Programs for Survivors of Veterans with Service-connected Disabilities.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 28, 1999, at page 58130.

*Affected Public:* Individuals or households.

*Estimated Time Per Respondent and Annual Burden:*

a. Beneficiaries of DIC Program:

789 Spouses @ 35 minutes per response = 460 hours.

203 Children @ 35 minutes per response = 118 hours.

b. 1,643 Nonparticipating Servicemembers/Veterans @ 35 minutes per response = 411.

c. 1,637 Subscribing Servicemembers/Veterans @ 20 minutes = 546 hours.

d. 1,220 Insurance Beneficiaries @ 30 minutes = 610.

*Frequency of Response:* One-time.

*Estimated Number of Respondents:* 5,492.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''Survey of Department of Veterans Affairs (VA) Benefits Usage.''

Dated: December 28, 1999.

By Direction of the Secretary.

**Sandra McIntyre,**

*Management Analyst, Information Management Service.*

[FR Doc. 00–607 Filed 1–10–00; 8:45 am]

**BILLING CODE 8320–01–P**

# Corrections

**Federal Register**

Vol. 65, No. 7

Tuesday, January 11, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 503

**[FRL-6513-3]**

**RIN 2040-AC25**

### Standards for the Use or Disposal of Sewage Sludge

*Correction*

In proposed rule document 99–33033, beginning on page 72045, in the issue of Thursday, December 23, 1999, make the following correction:

**§503.13 [Corrected]**

On page 72061, in table 1 of §503.13—Ceiling Concentrations, under the heading ''Ceiling concentration (milligrams per kilogram)[1], in the first line ''0.003 TEQ'' should read ''0.0003 TEQ''.

[FR Doc. C9–33033 Filed 1–10–00; 8:45 am]

**BILLING CODE 1505–01–D**

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 650

**RIN 3052–AB56**

### Federal Agricultural Mortgage Corporation; Risk-Based Capital Requirements

*Correction*

In proposed rule document 99–29214 beginning on page 61740, in the issue of Friday, November 12, 1999, make the following corrections:

1. On page 61750, in the first column, in the eighth line from the bottom above the footnotes, ''($\Sigma_e^2$)'' should read ''($\sigma_e^2$)''.

2. On page 61752, in the second column, in Table 1, in the sixth line entry beginning ''Overall Portfolio'', remove the numerals ''828'' and ''3,187''; and in the fifth line entry directly above which begins ''Assets'', add the numerals ''828'' and ''3,187'' in their respective columns.

**Appendix A to Subpart B of Part 650 [Corrected]**

3. On page 61758, in the third column, in Appendix A to Subpart B of Part 650, under the heading *2.3 Example Calculation of Dollar Loss on One Loan*, in *Step 1:*, in the third and fourth lines, ''$1,278,750 = $1,250,000 • 1.023'' should read ''$1,278,750 = $1,250,000 • 1.023''.

4. On page 61759, in the first column, under the same heading, in *Step 4:*, in lines 19 and 20, ''0.06575 = 0.02340 ÷(−16.69—−19.50)'' should read ''0.06575 = 0.02340 • (-16.69 − -19.50)''.

5. On the same page, in the same column, under the same heading, in *Step 5:*, in the third line, ''0.03010 = 0.144026 ÷ 0.209'' should read ''0.03010 = 0.144026 • 0.209''.

6. On the same page, in the same column, under the same heading, in *Step 6:*, in the third line, ''$37,625=$1,250,000×0.03010'' should read ''$37,625 = $1,250,000 • 0.03010''.

7. On the same page, in the same column, under the same heading, in *Step 7:*, in the third line, ''$15,644=$37,625 − ($37,625×0.584215)'' should read ''$15,644 = $37,625 − ($37,625 • 0.584215)''.

8. On the same page, in the second column, under the heading *2.4 Treatment of Long-term Standby Purchase Commitments*, in paragraph 2.4a, in line 24, ''($1,000,000 × 0.03) = $30,000.'' should read ''($1,000,000 • 0.03) = $30,000.''

9. On the same page, in the same column, under the same heading, in the tenth line from the bottom above the footnote, ''Estimated'' should read ''b. Estimated''.

10. On page 61763, in the first column, under the heading *4.2Assumptions and Relationships*, in paragraph 4.2b(4)(A), in line 19, ''0.014 = 0.069—0.0554'' should read ''0.014 = 0.069 − 0.0554''.

[FR Doc. C9–29214 Filed 1–10–00; 8:45 am]

**BILLING CODE 1505–01–D**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 270

**[T.D. ATF-420]**

**RIN 1512-AB88**

### Increase in Tax on Tobacco Products and Cigarette Papers and Tubes [99R-88P]

*Correction*

In rule document 99–32605 beginning on page 71937 in the issue of Wednesday, December 22, 1999, make the following correction:

**§270.187 [Corrected]**

On page 71941, in the second column, in §270.187, in the second line of amendatory instruction 14 before ''and'' add amendatory instruction 15 to read as follows ''**Par. 15.** Section 270.187a is redesignated as §270.187. Newly redesignated §270.187 is amended by revising the heading to read as set forth below and by removing the reference to §270.22a''.

[FR Doc. C9–32605 Filed 1–10–00; 8:45 am]

**BILLING CODE 1505–01–D**

Federal Register

**Tuesday**

**January 11, 2000**

## Part II

# Department of Agriculture

### Federal Crop Insurance Corporation

### Revenue Assurance; Notice

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### Revenue Assurance

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with section 508(h) of the Federal Crop Insurance Act (Act), the Federal Crop Insurance Corporation (FCIC) Board of Directors (Board) approves for reinsurance and subsidy the insurance of canola/rapeseed, corn, feed barley, spring wheat, soybeans, and sunflowers, in select states and counties under the Revenue Assurance (RA) plan of insurance for the 2000 crop year. This notice is intended to inform eligible producers and the private insurance industry of the availability of RA coverage for canola/rapeseed, corn, feed barley, spring wheat, soybeans, and sunflowers, the areas of availability, and provide its terms and conditions.

**FOR FURTHER INFORMATION CONTACT:** Tim Hoffmann, Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, Missouri, 64131, telephone (816) 926–7387.

**SUPPLEMENTARY INFORMATION:** Section 508(h) of the Act allows for the submission of a policy to FCIC's Board and authorizes the Board to review and, if the Board finds that the interests of producers are adequately protected and that any premiums charged to the producers are actuarially appropriate, approve the policy for reinsurance and subsidy in accordance with section 508(e) of the Act. Any subsequent changes to the policy will be made through notice in the **Federal Register** or actual notice to the producer.

In accordance with section 508(h) of the Act, the Board approved a program of insurance known as ''Revenue Assurance'' submitted by Farm Bureau Mutual Insurance Company of Iowa as a pilot project covering corn and soybeans for the 1997 and 1998 crop years.

The RA program was approved for reinsurance and premium subsidy, including subsidy for administrative and operating expenses in an amount authorized under section 508(e) of the Act. RA was designed to protect a producer's revenue whenever low prices or low yields, or a combination of both, caused the harvest revenue to fall below a guaranteed level. The producer selected a per-acre revenue guarantee that could not be less than 65 percent, or more than 75 percent, of the expected revenue for a unit. The policy indemnity was finalized when the county harvest price and the producer's actual production were determined. This determination typically occurred in December for corn, and in November for soybeans. The crop prices were established on a county basis. The RA policy provides coverage for basic units, optional units, enterprise units, and whole-farm units.

For the 1999 crop year, at the request of American Farm Bureau Insurance Services, Inc., the RA program for corn and soybeans was expanded into Illinois, South Dakota, Minnesota, and North Dakota, and spring wheat was approved as a new crop for North Dakota. Producers could select a coverage level percentage up to 80 percent for whole-farm units, and a fall harvest price option that used the greater of the projected harvest price or the fall harvest price in determining the revenue guarantee. The RA program was changed to use the Chicago Board of Trade futures for crop prices rather than using the county crop prices. The Chicago Board of Trade futures and the actual production history were the basis for determining the revenue guarantee and RA premium rates.

For the 2000 crop year, the RA program is expanded for corn and soybeans in Indiana; for spring wheat in Idaho, Minnesota, and South Dakota; for feed barley and canola/rapeseed in Idaho and North Dakota; and for sunflowers in North Dakota. The maximum coverage level for enterprise and whole-farm units is also increased to 85 percent.

FCIC herewith gives notice of the above stated changes for the 2000 crop year for RA canola/rapeseed, corn, feed barley, spring wheat, soybeans, and sunflowers for use by private insurance companies.

The RA underwriting rules, crop provisions, and basic provisions for canola/rapeseed, corn, feed barley, spring wheat, soybeans, and sunflowers will be released electronically to all reinsured companies through FCIC's Reporting Organization Server.

**Notice:** The Basic Provisions and Crop Provisions for the 2000 RA canola/rapeseed, corn, feed barley, spring wheat, soybeans, and sunflower programs of insurance are as follows:

**Revenue Assurance Insurance Policy**

This policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the authority of section 508(h) of the Federal Crop Insurance Act, as amended (7 U.S.C. 1508(h)). The provisions of the policy may not be waived or varied in any way by the crop insurance agent or the company. Neither FCIC or the Risk Management Agency have the authority to revise, amend, or otherwise alter this policy. They can only approve or disapprove for reinsurance those terms submitted by the creator of this policy.

In the event we cannot pay your loss, your claim will be settled in accordance with the provisions of this policy and paid by FCIC. No state guarantee fund will be liable to pay your loss.

Throughout the policy, ''you'' and ''your'' refer to the named insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the insurance company providing insurance. Unless the context indicates otherwise, use of the plural form of a word includes the singular and use of the singular form of the word includes the plural.

Agreement to Insure: In return for the payment of the premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in the policy. If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) The Crop Provisions; and (3) These Basic Provisions with (1) controlling (2), etc.

**Basic Provisions**

*Terms and Conditions*

1. Definitions

*Abandon*—Failure to continue to care for the crop, providing care so insignificant as to provide no benefit to the crop, or failure to harvest in a timely manner, unless an insured cause of loss prevents you from properly caring for or harvesting the crop or causes damage to it to the extent that most producers of the crop on acreage with similar characteristics in the area would not normally further care for or harvest it.

*Acreage report*—A report required by section 7 of these Basic Provisions that contains, in addition to other required information, your report of your share of all acreage of an insured crop in the county, whether insurable or not insurable.

*Acreage reporting date*—The date contained in the Special Provisions or as provided in section 7 by which you are required to submit your acreage report.

*Act*—The Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

*Actuarial documents*—The material for the crop year that is available for public inspection in your agent's office, and which shows the coverage level percent, premium factors, types, practices, insurable acreage, and other related information regarding crop insurance in the county.

*Administrative fee*—An amount you must pay for coverage for each crop year as specified in section 8.

*Agricultural commodity*—All insurable crops and other fruit, vegetable or nut crops produced for human or animal consumption.

*Another use, notice of*—The written notice required when you wish to put acreage to another use (see section 15).

*Application*—The form required to be completed by you and accepted by us before insurance coverage will commence. This form must be completed and filed in your agent's office not later than the sales closing date of the initial insurance year for each crop for which insurance coverage is requested. If cancellation or termination of insurance coverage occurs for any reason, including but not limited to indebtedness, suspension, debarment, disqualification, cancellation by you or us, or violation of the controlled substance provisions of the Food Security Act of 1985, a new application must be filed for the crop. Insurance coverage will not be provided if you are ineligible under the contract or under any Federal statute or regulation.

*Approved yield*—The yield determined in accordance with 7 CFR part 400, subpart G.

*Assignment of indemnity*—A transfer of policy rights, made on our form, and effective when approved by us. It is the arrangement whereby you assign your right to an indemnity payment to any party of your choice for the crop year.

*Base premium rate*—The premium rate, contained in the actuarial documents, for the risk of a revenue loss.

*Cancellation date*—The calendar date specified in the Crop Provisions on which coverage for the crop will automatically renew unless canceled in writing by either you or us, or terminated in accordance with the policy terms.

*Claim for indemnity*—A claim made on our form by you for damage or loss to an insured crop and submitted to us not later than 60 days after the fall harvest price is released (see section 15).

*Consent*—Approval in writing by us allowing you to take a specific action.

*Contract*—(See definition of ''policy'').

*Contract change date*—The calendar date by which we make any policy changes available for inspection in the agent's office (see section 5). The contract change date is not applicable to any policy for which application is made in the crop year in which such changes are initially effective.

*County*—Any county, parish, or other political subdivision of a state shown on your accepted application, including acreage in a field that extends into an adjoining county if the county boundary is not readily discernible.

*Coverage*—The insurance provided by this policy against insured loss of revenue, by unit, as shown on your summary of coverage.

*Coverage begins, date*—The calendar date insurance begins on the insured crop, as contained in the Crop Provisions.

*Coverage level percent*—The percent, expressed in decimals (.xxxx), determined by dividing the per-acre revenue guarantee by the expected per-acre revenue rounded to hundredths for enterprise or whole-farm units.

*Crop premium per acre*—Your per-acre revenue guarantee multiplied by the applicable base rate.

*Crop Provisions*—The part of the policy that contains the specific provisions of insurance for each insured crop.

*Crop year*—The period within which the insured crop is normally grown, regardless of whether or not it is actually grown, and designated by the calendar year in which the insured crop is normally harvested.

*Damage*—Injury, deterioration, or loss of revenue of the insured crop due to insured or uninsured causes.

*Damage, notice of*—A written notice required to be filed in your agent's office whenever you initially discover the insured crop has been damaged to the extent that a loss is probable (see section 15).

*Days*—Calendar days.

*Deductible*—The amount determined by subtracting the coverage level percent you choose from 100 percent. For example, if you elected a 65 percent coverage level, your deductible would be 35 percent (100% − 65% = 35%).

*Delinquent account*—Any account you have with us in which premiums, administrative fees, and interest on those amounts is not paid by the termination date specified in the Crop Provisions, or any other amounts due us, such as indemnities found not to have been earned, which are not paid within 30 days of our mailing or other delivery of notification to you of the amount due.

*Earliest planting date*—The earliest date established for planting the insured crop (see Special Provisions and section 14).

*End of insurance period, date of*—The date upon which your crop insurance coverage ceases for the crop year (see Crop Provisions and section 12).

*Expected per-acre revenue*—The approved yield times the projected harvest price (see section 1 of the Crop Provisions).

*FCIC*—The Federal Crop Insurance Corporation, a wholly owned government corporation within USDA.

*Field*—All acreage of tillable land within a natural or artificial boundary (*e.g.,* roads, waterways, fences, etc.).

*Final planting date*—The date contained in the Special Provisions for the insured crop by which the crop must initially be planted in order to be insured for the full per-acre revenue guarantee.

*FSA*—The Farm Service Agency, an agency within USDA, or a successor agency.

*FSA Farm Serial Number*—The number assigned to the farm by the local FSA office.

*Good farming practices*—The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the per-acre revenue guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

*Insured*—The named person as shown on the application accepted by us. This term does not extend to any other person having a share or interest in the crop (for example, a partnership, landlord, or any other person) unless specifically indicated on the accepted application.

*Insured crop*—The crop for which coverage is available under these Basic Provisions and the applicable Crop Provisions as shown on the application accepted by us.

*Interplanted*—Acreage on which two or more crops are planted in a manner that does not permit separate agronomic maintenance or harvest of the insured crop.

*Irrigated practice*—A method of producing a crop by which water is artificially applied during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the per-acre revenue guarantee on the irrigated acreage planted to the insured crop.

*Late planted*—Acreage initially planted to the insured crop after the final planting date.

*Late planting period*—The period that begins the day after the final planting date for the insured crop and ends 25 days after the final planting date, unless otherwise specified in the Crop Provisions or Special Provisions.

*Loss, notice of*—The notice required to be given by you not later than 72 hours after certain occurrences or 15 days after the end of the insurance period, whichever is earlier (see section 15).

*MPCI*—Multiple peril crop insurance program, a program of insurance offered under the Act and implemented in 7 CFR chapter IV.

*Negligence*—The failure to use such care as a reasonably prudent and careful person would use under similar circumstances.

*Per-acre revenue guarantee*—The coverage level percent times your approved yield, times the projected harvest price. If you choose the fall harvest price option provided in the Crop Provisions, the per-acre revenue guarantee equals the coverage level percent, times the approved yield, times the greater of the projected harvest price or the fall harvest price (see section 1 of the Crop Provisions). For basic and optional units, the per-acre revenue guarantee may vary by unit. For an enterprise unit, the per-acre revenue guarantee will be the same for all insured acres of the crop in the county. For the whole farm unit, the per-acre revenue guarantee will be the same for all insured acres in the county.

*Person*—An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State. ''Person'' does not include the United States Government or any agency thereof.

*Planted acreage*—Land in which seed has been placed, appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice.

*Policy*—The agreement between you and us consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, other applicable endorsements or options, the actuarial documents for the insured crop, and the applicable regulations published in 7 CFR chapter IV.

*Practical to replant*—Our determination, after loss or damage to the insured crop, based on all factors, including, but not limited to moisture availability, marketing window, condition of the field, and time to crop maturity, that replanting the insured crop will allow the crop to attain maturity prior to the calendar date for the end of the insurance period. It will not be considered practical to replant after the end of the late planting period, or the final planting date if no late planting period is applicable, unless replanting is generally occurring in the area. Unavailability of seed will not be considered a valid reason for failure to replant.

*Premium billing date*—The earliest date upon which you will be billed for insurance coverage based on your acreage report. The premium billing date is contained in the Special Provisions.

*Premium calculator*—A computer program that determines your per-acre premium based on your approved yield, per-acre revenue guarantee, coverage level percent, projected harvest price, unit options, and other factors such as crop, type, practice and county.

*Prevented planting*—Failure to plant the insured crop with proper equipment by the final planting date designated in the Special Provisions for the insured crop in the county. You may also be eligible for a prevented planting payment if you failed to plant the insured crop with the proper equipment within the late planting period. You must have been prevented from planting the insured crop due to an insured cause of loss that is general in the surrounding area and that prevents other producers from planting acreage with similar characteristics.

*Production report*—A written record showing your annual production and used by us to determine your yield for insurance purposes (see section 4). The report contains yield information for previous years, including planted acreage and harvested production. This report must be supported by written verifiable records from a warehouseman or buyer of the insured crop, or by measurement of farm stored production, or by other records of production approved by us on an individual case basis.

*Replanting*—Performing the cultural practices necessary to prepare the land to replace the seed of the damaged or destroyed insured crop and then replacing the seed of the same crop in the insured acreage with the expectation of producing at least the yield used to determine the per-acre revenue guarantee.

*Representative sample*—Portions of the insured crop that must remain in the field for examination and review by our loss adjuster when making a crop appraisal, as specified in the Crop Provisions. In certain instances, we may allow you to harvest the crop and require only that samples of the crop residue be left in the field.

*Revenue guarantee*—The per-acre revenue guarantee times the number of insurable acres in the unit, and times your respective share.

*Sales closing date*—A date contained in the Special Provisions by which an application must be filed. The last date by which you may change your crop insurance coverage for a crop year.

*Section*—(for the purposes of unit structure) A unit of measure under a rectangular survey system describing a tract of land usually one mile square and usually containing approximately 640 acres.

*Share*—Your percentage of interest in the insured crop as an owner, operator, or tenant at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss, or the beginning of harvest.

*Special provisions*—The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area.

*State*—The state shown on your accepted application.

*Substantial beneficial interest*—An interest held by any person of at least 10 percent in the applicant or insured.

*Summary of coverage*—Our statement to you, based upon your acreage report, specifying the insured crop and the revenue guarantee provided by unit.

*Tenant*—A person who rents land from another person for a share of the crop or a share of the proceeds of the crop (see the definition of ''share'').

*Termination date*—The calendar date contained in the Crop Provisions upon which your insurance ceases to be in effect because of nonpayment of any amount due us under the policy, including premium.

*Timely planted*—Planted on or before the final planting date designated in the Special Provisions for the insured crop in the county.

*Unit*—

(a) Basic unit—A basic unit established in accordance with section 2(a).

(b) Optional unit—A unit established from basic units in accordance with section 2(b).

(c) Enterprise unit—A unit established from basic units or optional units in accordance with section 2(c).

(d) Whole-farm unit—A unit established from enterprise units in accordance with section 2(d).

*USDA*—United States Department of Agriculture.

*Void*—When the policy is considered not to have existed for a crop year as a result of concealment, fraud or misrepresentation (see section 27).

*Written agreement*—A document that alters designated terms of a policy as

authorized under these Basic Provisions. (See section 34).

2. Unit Structure

(a) Basic unit—All insurable acreage of the insured crop in the county on the date coverage begins for the crop year:

(1) In which you have a 100 percent crop share; or (2) Which is owned by one person and operated by another person on a share basis. (Example: If, in addition to the land you own, you rent land from five landlords, three on a crop share basis and two on a cash basis, you would be entitled to four units, one for each crop share lease and one that combines the two cash leases and the land you own.) Land which would otherwise be one unit may, in certain instances, be divided according to guidelines contained in this section and in the applicable Crop Provisions.

(b) Optional unit—Unless limited by the Crop Provisions or Special Provisions, a basic unit as defined in section 2(a) of these Basic Provisions may be divided into optional units if, for each optional unit:

(1) You meet the following:

(i) You must plant the crop in a manner that results in a clear and discernible break in the planting pattern at the boundaries of each optional unit;

(ii) All optional units you select for the crop year are identified on the acreage report for that crop year (Units will be determined when the acreage is reported but may be adjusted or combined to reflect the actual unit structure when adjusting a loss. No further unit division may be made by you after the acreage reporting date for any reason);

(iii) You have records, that are acceptable to us, of planted acreage and the production from each optional unit for at least the last crop year used to determine your revenue guarantee; and (iv) You have records of marketed or stored production from each optional unit maintained in such a manner that permits us to verify the production from each optional unit, or the production from each optional unit is kept separate until loss adjustment is completed by us.

(2) Each optional unit must also meet one or more of the following, unless otherwise specified in the Crop Provisions:

(i) Optional units may be established if each optional unit is located in a separate section. In the absence of sections, we may consider parcels of land legally identified by other methods of measure such as Spanish grants, as the equivalents of sections for unit purposes. In areas which have not been surveyed using sections, section equivalents or in areas where boundaries are not readily discernible, each optional unit must be located in a separate FSA farm serial number; and (ii) In addition to, or instead of, establishing optional units by section, section equivalent, or FSA farm serial number, optional units may be based on irrigated and non-irrigated acreage. To qualify as separate irrigated and non-irrigated optional units, the non-irrigated acreage may not continue into the irrigated acreage in the same rows or planting pattern. The irrigated acreage may not extend beyond the point at which the irrigation system can deliver the quantity of water needed to produce the yield on which your revenue guarantee is based, except the corners of a field in which a center-pivot irrigation system is used may be considered as irrigated acreage if the corners of a field in which a center-pivot irrigation system is used do not qualify as a separate non-irrigated optional unit. In this case, production from both practices will be used to determine your approved yield.

(3) If you do not comply fully with the provisions in this section, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined by us to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(c) Enterprise unit—All insurable acreage of the insured crop in the county in which you have a share on the date coverage begins for the crop year. An enterprise unit must consist of:

(1) One or more basic units of the same insured crop that are located in two or more separate sections, section equivalents, or FSA farm serial numbers: or

(2) Two or more optional units of the same insured crop established by separate sections, section equivalents, or FSA farm serial numbers.

(d) Whole-farm unit—All insurable acreage of the insurable crops in the county in which you have a share on the date coverage begins for each crop for the crop year. This unit is established from enterprise units as defined in section 2(c). The insurable acreage must qualify for at least two enterprise units under this section, and each crop must comprise at least 10 percent of the total liability of all crops combined produced on the farm.

(e) Exclusivity Between Units—If you select whole-farm unit coverage, you cannot select any other unit structure. However, you may select an enterprise unit for one crop and basic or optional unit coverage for other crops.

(f) Selection of unit structure—You may elect an enterprise unit or a whole farm unit subject to the following:

(1) You must make such election by the sales closing date for the insured crops and report such unit structure to us in writing. Your unit selection will remain in effect from year to year unless you notify us in writing by the sales closing date for the crop year for which you wish to change this election. These units may not be further divided. If you select and qualify for an enterprise or whole-farm unit, you will qualify for a premium discount. If you do not qualify for enterprise or whole farm units when the acreage is reported, we will assign the basic unit structure.

(2) For a whole-farm unit:

(i) You must report on your acreage report the acreage for each optional or basic unit for each crop produced in the county that comprises the whole-farm unit; and

(ii) Although you may insure all of your crops under a whole-farm unit, you will be required to pay separate applicable administrative fees for each crop included in the whole farm unit.

(g) All applicable unit structures must be stated on the acreage report for each crop year.

3. Life of Policy, Cancellation, and Termination

(a) This is a continuous policy and will remain in effect for each crop year following the acceptance of the original application until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy, or by us.

(b) Your application for insurance must contain all the information required by us to insure the crop. Applications that do not contain all social security numbers and employer identification numbers, as applicable (except as stated herein), coverage level percent, crop, type, variety, or class, plan of insurance, and any other material information required to insure the crop, are not acceptable. If a person with a substantial beneficial interest in the insured crop refuses to provide a social security number or employer identification number, the amount of coverage available under the policy will be reduced proportionately by that person's share of the crop.

(c) After acceptance of the application, you may not cancel this policy for the initial crop year. Thereafter, the policy will continue in force for each succeeding crop year unless canceled or terminated as provided below.

(d) Either you or we may cancel this policy after the initial crop year by providing written notice to the other on or before the cancellation date shown in the Crop Provisions.

(e) If any amount due, including administrative fees or premium, is not paid or an acceptable arrangement for payment is not made on or before the termination date for the crop on which the amount is due, you will be determined to be ineligible to participate in any crop insurance program authorized under the Act in accordance with 7 CFR part 400, subpart U.

(1) For a policy with unpaid administrative fees or premium, the policy will terminate effective on the termination date immediately subsequent to the billing date for the crop year;

(2) For a policy with other amounts due, the policy will terminate effective on the termination date immediately after the account becomes delinquent;

(3) Ineligibility will be effective as of the date that the policy was terminated for the crop for which you failed to pay an amount owed and for all other insured crops with coincidental termination dates;

(4) All other policies that are issued by us under the authority of the Act will also terminate as of the next termination date contained in the applicable policy;

(5) If you are ineligible, you may not obtain any crop insurance under the Act until payment is made, you execute an agreement to repay the debt and make the payments in accordance with the agreement, or you file a petition to have your debts discharged in bankruptcy;

(6) If you execute an agreement to repay the debt and fail to timely make any scheduled payment, you will be ineligible for crop insurance effective on the date the payment was due until the debt is paid in full or you file a petition to discharge the debt in bankruptcy and subsequently obtain discharge of the amounts due. Dismissal of the bankruptcy petition before discharge will void all policies in effect retroactive to the date you were originally determined ineligible to participate.

(7) Once the policy is terminated, the policy cannot be reinstated for the current crop year unless the termination was in error;

(8) After you again become eligible for crop insurance, if you want to obtain coverage for your crops, you must reapply on or before the sales closing date for the crop (Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment after the sales closing date, you cannot apply for insurance until the next crop year); and

(9) If we deduct the amount due us from an indemnity, the date of payment for the purpose of this section will be the date you sign the properly executed claim for indemnity.

(10) For example, if crop A, with a termination date of October 31, 1999, and crop B, with a termination date of March 15, 2000, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 1999, and crop A's policy is terminated on that date. Crop B's policy is terminated as of March 15, 2000. If you enter an agreement to repay the debt on April 25, 2000, you can apply for insurance for crop A by the October 31, 2000, sales closing date and crop B by March 15, 2001, sales closing date. If you fail to make a scheduled payment on November 1, 2000, you will be ineligible for crop insurance effective on November 1, 2000, and you will not be eligible unless the debt is paid in full or you file a petition to have the debt discharged in bankruptcy and subsequently receive discharge.

(f) If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the policy will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after coverage begins for any crop year, the policy will continue in force through the crop year and terminate at the end of the insurance period and any indemnity will be paid to the person or persons determined to be beneficially entitled to the indemnity. The premium will be deducted from the indemnity or collected from the estate. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

(g) We may terminate your policy if no premium is earned for 3 consecutive years.

(h) The cancellation and termination dates are contained in the Crop Provisions.

(i) When obtaining coverage, you must provide information regarding crop insurance coverage on any crop previously obtained from an approved insurance provider, including the date such insurance was obtained and the amount of the administrative fee.

(j) You are not eligible to participate in the Revenue Assurance program if you have elected the MPCI Catastrophic Risk Protection Endorsement except in the following instance: If you execute a High-Risk Land Exclusion Option for a Revenue Assurance Policy, you may elect to insure the ''high-risk land'' under an MPCI Catastrophic Risk Protection Endorsement provided that the Catastrophic Risk Protection Endorsement is obtained from us. If both policies are in force, the acreage of the crop covered under the Revenue Assurance policy and the acreage covered under an MPCI Catastrophic Risk Protection Endorsement will be considered as separate crops for insurance purposes, including the payment of administrative fees.

4. Insurance Coverages

(a) Your revenue guarantee, coverage level percent, approved yields, per-acre revenue guarantee, and projected harvest price will be shown on your summary of coverage.

(b) You must select a coverage level percent by the sales closing date. The maximum allowable coverage level is 75 percent (.7500 decimal format) and the minimum allowable is 65 percent (.6500 decimal format) for basic and optional units. The maximum allowable coverage level is 85 percent (.8500 decimal format) and the minimum allowable is 65 percent (.6500 decimal format) for whole-farm units and enterprise units.

(c) You may only select one coverage level percent that is applicable for all insurable acreage of the crop. You may change your coverage level percent for the following crop year by giving written notice to us not later than the sales closing date for the insured crop. If you do not select a new crop coverage level percent on or before the sales closing date, we will assign the previous year's coverage level percent or the nearest coverage level percent available. (For example: If you selected a 65 percent coverage level for the previous crop year and you do not select a new coverage level percent for the current crop year, we will assign the 65 percent coverage level for the current crop year if it is still available.)

(d) This policy is an alternative to the MPCI program and satisfies the requirements of section 508(b)(7) of the Act.

(e) You must report production to us for the previous crop year by the earlier of the acreage reporting date or 45 days after the cancellation date unless otherwise stated in the Special Provisions:

(1) If you do not provide the required production report, we will assign a yield for the previous crop year. The yield assigned by us will not be more than 75 percent of the yield used by us to determine your coverage for the previous crop year. The production report or assigned yield will be used to compute your approved yield for the purpose of determining your revenue guarantee for the current crop year.

(2) If you have filed a claim for any crop year, the documents signed by you which state the amount of production used to complete the claim for indemnity will be the production report for that year unless otherwise specified by FCIC.

(3) Production and acreage for the prior crop year must be reported for each proposed optional unit by the production reporting date. If you do not provide the information stated above, the optional units will be combined into the basic unit.

(f) We may revise your revenue guarantee for any unit, and revise any indemnity paid based on that revenue guarantee, if we find that your production report under paragraph (e) of this section:

(1) Is not supported by written verifiable records in accordance with the definition of production report; or

(2) Fails to accurately report actual production, acreage, or other material information.

(g) Any person may sign any document relative to crop insurance coverage on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or such other legally sufficient document authorizing such person to sign.

5. Contract Changes

(a) We may change the terms of your coverage under this policy from year to year.

(b) Any changes in policy provisions, prices, available coverage level percents, premium rates and program dates will be provided by us to your crop insurance agent not later than the contract change date contained in the Crop Provisions. You may view the documents or request copies from your crop insurance agent.

(c) You will be notified, in writing, of changes to the Basic Provisions, Crop Provisions, and Special Provisions not later than 30 days prior to the cancellation date for the insured crop. Acceptance of changes will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

6. Liberalization

If we adopt any revisions that broaden the coverage under this policy subsequent to the contract change date without additional premium, the broadened coverage will apply.

7. Report of Acreage

(a) An annual acreage report must be submitted to us on our form for each insured crop in the county on or before the acreage reporting date contained in the Special Provisions, except as follows:

(1) If you insure multiple crops with us that have final planting dates on or after August 15 but before December 31, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops; and

(2) If you insure multiple crops with us that have final planting dates on or after December 31 but before August 15, you must submit an acreage report for all such crops on or before the latest applicable acreage reporting date for such crops.

(3) Notwithstanding the provisions in sections 7(a)(1) and (2):

(i) If the Special Provisions designate separate planting periods for a crop, you must submit an acreage report for each planting period on or before the acreage reporting date contained in the Special Provisions for the planting period; and

(ii) If planting of the insured crop continues after the final planting date or you are prevented from planting during the late planting period, the acreage reporting date will be the later of:

(A) The acreage reporting date contained in the Special Provisions;

(B) The date determined in accordance with sections 7(a)(1) or (2); or

(C) Five days after the end of the late planting period for the insured crop, if applicable.

(b) If you do not have a share in an insured crop in the county for the crop year, you must submit an acreage report on or before the acreage reporting date, so indicating.

(c) Your acreage report must include the following information, if applicable:

(1) All acreage of the crop in the county (insurable and not insurable) in which you have a share;

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type or variety; and

(5) The date the insured crop was planted.

(d) Because incorrect reporting on the acreage report may have the effect of changing your premium and any indemnity that may be due, you may not revise this report after the acreage reporting date without our consent.

(e) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances we determine to have existed, subject to the provisions contained in section 7(g).

(f) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all units, we may elect to determine by unit the insurable crop acreage, share, type and practice, or to deny liability on such units. If we deny liability for the unreported units, your share of any production from the unreported units will be allocated, for loss purposes only, as production to count to the reported units in proportion to the liability on each reported unit. However, such production will not be allocated to prevented planting acreage or otherwise affect any prevented planting payment.

(g) If the information reported by you on the acreage report for share, acreage, practice, type or other material information is inconsistent with the information that is determined to actually exist for a unit and results in:

(1) A lower liability than the actual liability determined, the revenue guarantee on the unit will be reduced to an amount that is consistent with the reported information. In the event that insurable acreage is under-reported for any unit, all production or value from insurable acreage in that unit will be considered production or value to count in determining the indemnity; and

(2) A higher liability than the actual liability determined, the information contained in the acreage report will be revised to be consistent with the correct information. If we discover that you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years that substantiates your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense.

(h) Errors in reporting units may be corrected by us at the time of adjusting a loss to reduce our liability and to conform to applicable unit division guidelines.

8. Annual Premium and Administrative Fees

(a) The annual premium is earned and payable at the time coverage begins. You will be billed for premium due not earlier than the premium billing date specified in the Special Provisions. The premium due, plus any accrued interest, will be considered delinquent if it is not paid on or before the termination date specified in the Crop Provisions.

(b) Any amount you owe us related to any crop insured with us under the authority of the Act will be deducted from any prevented planting payment or indemnity due you for any crop insured with us under the authority of the Act.

(c) Your annual premium amount is determined by unit by multiplying the crop premium per acre, times the insured crop acreage, times any premium adjustment factor that may apply, times your respective share at the time coverage begins, and less producer premium subsidy.

(d) The producer premium equals the annual premium times the producer premium subsidy factor. The producer premium subsidy factor depends on the coverage level percent according to the following equation: premium subsidy factor = $1-(3.7074-(7.90314\times CLP)+(4.371429\times CLP\times CLP))$ where CLP equals coverage level percent expressed in decimal form (.xxxx). The premium subsidy factor is rounded to three digits (.xxx). The producer premium subsidy cannot exceed the premium subsidy available under an MPCI policy with the same coverage level.

(e) In addition to the premium charged:

(1) You must pay an administrative fee of $20 per crop for each crop year in which crop insurance coverage remains in effect;

(2) The administrative fee must be paid no later than the time that premium is due; and

(3) Payment of an administrative fee will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop. If you falsely file a zero acreage report, you may be subject to criminal and administrative sanctions.

(4) The administrative fee is not subject to any limits, and may not be waived.

(5) Failure to pay the administrative fees when due may make you ineligible for certain other USDA benefits.

9. Insured Crop

(a) The insured crop will be that shown on your accepted application and as specified in the Crop Provisions or Special Provisions and must be grown on insurable acreage.

(b) A crop which will **NOT** be insured will include, but will not be limited to, any crop:

(1) If the farming practices carried out are not in accordance with the farming practices for which the premium rates or revenue guarantees have been established;

(2) Of a type, class or variety established as not adapted to the area or excluded by the policy provisions;

(3) That is a volunteer crop;

(4) That is a second crop following the same crop (insured or not insured) harvested in the same crop year unless specifically permitted by the Crop Provisions or the Special Provisions;

(5) That is planted for the development or production of hybrid seed or for experimental purposes, unless permitted by the Crop Provisions; or

(6) That is used solely for wildlife protection or management. If the lease states that specific acreage must remain unharvested, only that acreage is uninsurable. If the lease specifies that a percentage of the crop must be left unharvested, your share will be reduced by such percentage.

10. Insurable Acreage

(a) Acreage planted to the insured crop in which you have a share is insurable except acreage:

(1) That has not been planted and harvested within one of the 3 previous crop years, unless:

(i) Such acreage was not planted:

(A) To comply with any other USDA program;

(B) Because of crop rotation, (*e.g.,* corn, soybean, alfalfa; and the alfalfa remained for 4 years before the acreage was planted to corn again);

(C) Due to an insurable cause of loss that prevented planting; or

(D) Because a perennial tree, vine, or bush crop was grown on the acreage.

(ii) Such acreage was planted but was not harvested due to an insurable cause of loss; or

(iii) The Crop Provisions specifically allow insurance for such acreage.

(2) That has been strip-mined, unless an agricultural commodity other than a cover, hay, or forage crop (except corn silage), has been harvested from the acreage for at least five crop years after the strip-mined land was reclaimed;

(3) On which the insured crop is damaged and it is practical to replant the insured crop, but the insured crop is not replanted;

(4) That is interplanted, unless allowed by the Crop Provisions;

(5) That is otherwise restricted by the Crop Provisions or Special Provisions; or

(6) That is planted in any manner other than as specified in the policy provisions for the crop.

(b) If insurance is provided for an irrigated practice, you must report as irrigated only that acreage for which you have adequate facilities, and adequate water, or the reasonable expectation of receiving adequate water at the time coverage begins, to carry out a good irrigation practice. If you knew or had reason to know that your water may be reduced before coverage begins, no reasonable expectation exists.

(c) Notwithstanding the provisions in section 9(b)(1), if acreage is irrigated and we do not provide a premium rate for an irrigated practice, you may either report and insure the irrigated acreage as ''non-irrigated,'' or report the irrigated acreage as not insured.

(d) We may restrict the amount of acreage that we will insure to the amount allowed under any acreage limitation program established by the USDA if we notify you of that restriction prior to the sales closing date.

11. Share Insured

(a) Insurance will attach only to the share of the person completing the application and will not extend to any other person having a share in the crop unless the application clearly states that:

(1) The insurance is requested for an entity such as a partnership or a joint venture; or

(2) You as landlord will insure your tenant's share, or you as tenant will insure your landlord's share. In this event, you must provide evidence of the other party's approval (lease, power of attorney, etc.). Such evidence will be retained by us. You also must clearly set forth the percentage shares of each person on the acreage report.

(b) We may consider any acreage or interest reported by or for your spouse, child or any member of your household to be included in your share.

(c) Acreage rented for a percentage of the crop, or a lease containing provisions for BOTH a minimum payment (such as a specified amount of cash, bushels, pounds, etc.) AND a crop share, will be considered a crop share lease.

(d) Acreage rented for cash, or a lease containing provisions for EITHER a minimum payment OR a crop share (such as a 50/50 share or $100.00 per acre, whichever is greater), will be considered a cash lease.

12. Insurance Period

(a) Except for prevented planting coverage (see section 18), coverage begins on each unit or part of a unit at the later of:

(1) The date we accept your application (For the purposes of this paragraph, the date of acceptance is the date that you submit a properly executed application in accordance with section 3);

(2) The date the insured crop is planted; or

(3) The calendar date contained in the Crop Provisions for the beginning of the insurance period.

(b) Coverage ends at the earliest of:

(1) Total destruction of the insured crop on the unit;

(2) Harvest of the unit;

(3) Final adjustment of a loss on a unit;

(4) The calendar date contained in the Crop Provisions for the end of the insurance period;

(5) Abandonment of the crop on the unit; or

(6) As otherwise specified in the Crop Provisions.

13. Causes of Loss

The insurance provided is against only unavoidable loss of revenue directly caused by specific causes of loss contained in the Crop Provisions. All other causes of loss, including but not limited to the following, are NOT covered:

(a) Negligence, mismanagement, or wrongdoing by you, any member of your family or household, your tenants, or employees;

(b) Failure to follow recognized good farming practices for the insured crop;

(c) Water contained by any governmental, public, or private dam or reservoir project;

(d) Failure or breakdown of irrigation equipment or facilities; or

(e) Failure to carry out a good irrigation practice for the insured crop if applicable.

14. Replanting Payment

(a) If allowed by the Crop Provisions, a replanting payment may be made on an insured crop replanted after we have given consent and the acreage replanted is at least the lesser of 20 acres or 20 percent of the insured planted acreage for the unit (as determined on the final planting date or within the late planting period if a late planting period is applicable). The 20 acres or 20 percent requirement is to be applied for each crop in a whole-farm unit.

(b) No replanting payment will be made on acreage:

(1) On which our appraisal establishes that production will exceed the level set by the Crop Provisions;

(2) Initially planted prior to the earliest planting date established by the Special Provisions; or

(3) On which one replanting payment has already been allowed for the crop year.

(c) The replanting payment per acre will be your actual cost for replanting, but will not exceed the amount determined in accordance with the Crop Provisions.

(d) No replanting payment will be paid if we determine it is not practical to replant.

15. Duties In The Event of Damage or Loss

Your Duties

(a) In case of damage to any insured crop you must:

(1) Protect the crop from further damage by providing sufficient care;

(2) Give us notice within 72 hours of your initial discovery of damage (but not later than 15 days after the end of the insurance period), by unit, for each insured crop (we may accept a notice of loss provided later than 72 hours after your initial discovery if we still have the ability to accurately adjust the loss);

(3) Leave representative samples intact for each field of the damaged unit as may be required by the Crop Provisions;

(4) Give us notice of your expected revenue loss not later than 45 days after the date the fall harvest price is released; and

(5) Cooperate with us in the investigation or settlement of the claim, and, as often as we reasonably require:

(i) Show us the damaged crop;

(ii) Allow us to remove samples of the insured crop; and

(iii) Provide us with records and documents we request and permit us to make copies.

(b) You must obtain consent from us before, and notify us after you:

(1) Destroy any of the insured crop that is not harvested;

(2) Put the insured crop to an alternative use;

(3) Put the acreage to another use; or

(4) Abandon any portion of the insured crop. We will not give consent for any of the actions in sections 15(b)(1) through (4) if it is practical to replant the crop or until we have made an appraisal of the potential production of the crop.

(c) In addition to complying with all other notice requirements, you must submit a claim for indemnity declaring the amount of your loss not later than 60 days after the fall harvest price is released. This claim must include all the information we require to settle the claim.

(d) Upon our request, you must:

(1) Provide a complete harvesting and marketing record of each insured crop by unit including separate records showing the same information for production from any acreage not insured; and

(2) Submit to examination under oath.

(e) You must establish the total production or value received for the insured crop on the unit, that any loss of production or value occurred during the insurance period, and that the loss of production or value was directly caused by one or more of the insured causes specified in the Crop Provisions.

(f) All notices required in this section that must be received by us within 72 hours may be made by telephone or in person to your crop insurance agent but must be confirmed in writing within 15 days.

Our Duties—

(a) If you have complied with all the policy provisions, we will pay your loss within 30 days after:

(1) We reach agreement with you;

(2) Completion of arbitration or appeal proceedings; or

(3) The entry of a final judgment by a court of competent jurisdiction.

(b) In the event we are unable to pay your loss within 30 days, we will give you notice of our intentions within the 30-day period.

(c) We may defer the adjustment of a loss until the amount of loss can be accurately determined. We will not pay for additional damage resulting from your failure to provide sufficient care for the crop during the deferral period.

(d) We recognize and apply the loss adjustment procedures established or approved by FCIC.

16. Production Included In Determining Indemnities

(a) The total production to be counted for a unit will include all production determined in accordance with the policy.

(b) The amount of production of any unharvested insured crop may be determined on the basis of our field appraisals conducted after the end of the insurance period.

(c) The amount of an indemnity that may be determined under the applicable provisions of your crop policy may be reduced by an amount, determined in accordance with the Crop Provisions or Special Provisions, to reflect out-of-pocket expenses that were not incurred by you as a result of not planting, caring for, or harvesting the crop. Indemnities paid for acreage prevented from being planted will be based on a reduced revenue guarantee as provided for in the crop policy and will not be further reduced to reflect expenses not incurred.

(d) Appraised production will be used to calculate your claim if you will not be harvesting the acreage. To determine your indemnity based on appraised production, you must agree to notify us if you harvest the crop and advise us of the production. If the acreage will be harvested, harvested production will be

used to determine any indemnity due, unless otherwise specified in the policy.

17. Late Planting

Unless limited by the Crop Provisions, insurance will be provided for acreage planted to the insured crop after the final planting date in accordance with the following:

(a) The per-acre revenue guarantee for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date.

(b) Acreage planted after the late planting period (or after the final planting date for crops that do not have a late planting period) may be insured as follows:

(1) The per-acre revenue guarantee for each acre planted as specified in this subsection will be determined by multiplying the per-acre revenue guarantee that is provided for acreage of the insured crop that is timely planted by the prevented planting coverage level percent you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Planting on such acreage must have been prevented by the final planting date (or during the late planting period, if applicable) by an insurable cause occurring within the insurance period for prevented planting coverage; and

(3) All production from acreage as specified in this section will be included as production to count for the unit.

(c) The premium amount for insurable acreage specified in this section will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for such acreage exceeds the liability, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid).

(d) Any acreage on which an insured cause of loss is a material factor in preventing completion of planting, as specified in the definition of ''planted acreage'' (*e.g.,* seed is broadcast on the soil surface but cannot be incorporated) will be considered as acreage planted after the final planting date and the per-acre revenue guarantee will be calculated in accordance with section 17(b)(1).

18. Prevented Planting

(a) Unless limited by the policy provisions, a prevented planting payment may be made to you for eligible acreage if:

(1) You were prevented from planting the insured crop by an insured cause that occurs:

(i) On or after the sales closing date contained in the Special Provisions for the insured crop in the county for the crop year the application for insurance is accepted; or

(ii) For any subsequent crop year, on or after the sales closing date for the previous crop year for the insured crop in the county, provided insurance has been in force continuously since that date (Cancellation for the purpose of transferring the policy to a different insurance provider for the subsequent crop year will not be considered a break in continuity for the purpose of the preceding sentence);

(2) You include any acreage of the insured crop that was prevented from being planted on your acreage report; and

(3) You did not plant the insured crop during or after the late planting period. If such acreage was planted to the insured crop during or after the late planting period, it is covered under the late planting provisions.

(b) The actuarial documents may contain additional levels of prevented planting coverage that you may purchase for the insured crop:

(1) Such purchase must be made on or before the sales closing date;

(2) If you do not purchase one of those additional levels by the sales closing date, you will receive the prevented planting coverage specified in the Crop Provisions;

(3) If you have an MPCI Catastrophic Risk Protection Endorsement for any acreage of ''high-risk land,'' the additional levels of prevented planting coverage will not be available for that acreage; and

(4) You may not increase your elected or assigned prevented planting coverage level for any crop year if a cause of loss that will or could prevent planting is evident prior to the time you wish to change your prevented planting coverage level.

(c) The premium amount for acreage that is prevented from being planted will be the same as that for timely planted acreage. If the amount of premium you are required to pay (gross premium less our subsidy) for acreage that is prevented from being planted exceeds the liability on such acreage, coverage for those acres will not be provided (no premium will be due and no indemnity will be paid for such acreage).

(d) Drought or failure of the irrigation water supply will be considered to be an insurable cause of loss for the purposes of prevented planting only if, on the final planting date (or within the late planting period if you elect to try to plant the crop):

(1) For non-irrigated acreage, the area that is prevented from being planted has insufficient soil moisture for germination of seed and progress toward crop maturity due to a prolonged period of dry weather. Prolonged precipitation deficiencies must be verifiable using information collected by sources whose business it is to record and study the weather, including, but not limited to, local weather reporting stations of the National Weather Service; or

(2) For irrigated acreage, there is not a reasonable probability of having adequate water to carry out an irrigated practice.

(e) The maximum number of acres that may be eligible for a prevented planting payment for any crop will be determined as follows:

(1) The total number of acres eligible for prevented planting coverage for all crops cannot exceed the number of acres of cropland in your farming operation for the crop year, unless you are eligible for prevented planting coverage on double-cropped acreage in accordance with section 18(f)(4) or (5). The eligible acres for each insured crop will be determined in accordance with the following table.

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| Type of crop | Eligible acres if, in any of the 4 most recent crop years, you have planted any crop in the county for which prevented planting insurance was available or have received a prevented planting insurance guarantee. | Eligible acres if, in any of the 4 most recent crop years, you have not planted any crop in the county for which prevented planting insurance was available or have not received a prevented planting insurance guarantee. |
| (i) The crop is not required to be contracted with a processor to be insured. | (A) The maximum number of acres certified for APH purposes or reported for insurance for the crop in any one of the 4 most recent crop years (not including reported prevented planting acreage that was planted to a substitute crop other than an approved cover crop). The number of acres determined above for a crop may be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the total cropland acres that you farmed in the previous year, provided that you submit proof to us that for the current crop year you have purchased or leased additional land or that acreage will be released from any USDA program which prohibits harvest of a crop. Such acreage must have been purchased, leased, or released from the USDA program, in time to plant it for the current crop year using good farming practices. No cause of loss that will or could prevent planting may be evident at the time the acreage is purchased, leased, or released from the USDA program. | (B) The number of acres specified on your intended acreage report which is submitted to us by the sales closing date for all crops you insure for the crop year and that is accepted by us. The total number of acres listed may not exceed the number of acres of cropland in your farming operation at the time you submit the intended acreage report. The number of acres determined above for a crop may only be increased by multiplying it by the ratio of the total cropland acres that you are farming this year (if greater) to the number of acres listed on your intended acreage report, if you meet the conditions stated in section 18(e)(1)(i)(A). |
| (ii) The crop must be contracted with a processor to be insured. | (A) The number of acres of the crop specified in the processor contract, if the contract specifies a number of acres contracted for the crop year; or the result of dividing the quantity of production stated in the processor contract by your approved yield, if the processor contract specifies a quantity of production that will be accepted. (For the purposes of establishing the number of prevented planting acres, any reductions applied to the transitional yield for failure to certify acreage and production for four prior years will not be used.). | (B) The number of acres of the crop as determined in section 18(e)(1)(ii)(A). |

(2) Any eligible acreage determined in accordance with the table contained in section 18(e)(1) will be reduced by subtracting the number of acres of the crop (insured and uninsured) that are timely and late planted, including acreage specified in section (17(b).

(f) Regardless of the number of eligible acres determined in section 18(e), prevented planting coverage will not be provided for any acreage:

(1) That does not constitute at least 20 acres or 20 percent of the insurable crop acreage in the unit, whichever is less (Any prevented planting acreage within a field that contains planted acreage will be considered to be acreage of the same crop, type, and practice that is planted in the field unless the acreage that was prevented from being planted constitutes at least 20 acres or 20 percent of the total insurable acreage in the field and you produced both crops, crop types, or followed both practices in the same field in the same crop year within any of the 4 most recent crop years);

(2) For which the actuarial documents do not designate a premium rate;

(3) Used for conservation purposes or intended to be left unplanted under any program administered by the USDA;

(4) On which the insured crop is prevented from being planted, if you or any other person receives a prevented planting payment for any crop for the same acreage in the same crop year (excluding share arrangements), unless you have coverage greater than the Catastrophic Risk Protection Plan of Insurance and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage;

(5) On which the insured crop is prevented from being planted, if any crop from which any benefit is derived under any program administered by the USDA is planted and fails, or if any crop is harvested, hayed or grazed on the same acreage in the same crop year (other than a cover crop which may be hayed or grazed after the final planting date for the insured crop), unless you have coverage greater than that applicable to the Catastrophic Risk Protection Plan of Insurance and have records of acreage and production that are used to determine your approved yield that show the acreage was double-cropped in each of the last 4 years in which the insured crop was grown on the acreage (If one of the crops being double-cropped is not insurable, other verifiable records of it being planted may be used);

(6) Of a crop that is prevented from being planted if a cash lease payment is also received for use of the same acreage in the same crop year (not applicable if acreage is leased for haying or grazing only) (If you state that you will not be cash renting the acreage and claim a

prevented planting payment on the acreage, you could be subject to civil and criminal sanctions if you cash rent the acreage and do not return the prevented planting payment for it);

(7) For which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes;

(8) That exceeds the number of acres eligible for a prevented planting payment;

(9) That exceeds the number of eligible acres physically available for planting;

(10) For which you cannot provide proof that you had the inputs available to plant and produce a crop with the expectation of at least producing the yield used to determine the per-acre revenue guarantee (Evidence that you have previously planted the crop on the unit will be considered adequate proof unless your planting practices or rotational requirements show that the acreage would have remained fallow or been planted to another crop);

(11) Based on an irrigated practice per-acre revenue guarantee unless adequate irrigation facilities were in place to carry out an irrigated practice on the acreage prior to the insured cause of loss that prevented you from planting (Acreage with an irrigated practice per-acre revenue guarantee will be limited to the number of acres allowed for that practice under sections 18(e) and (f)); or

(12) Based on a crop type that you did not plant, or did not receive a prevented planting insurance guarantee for, in at least one of the four most recent crop years. Types for which separate prices or per-acre revenue guarantees are available must be included in your APH database in at least one of the four most recent crop years, or crops that do not require yield certification (crops for which the insurance guarantee is not based on APH) must be reported on your acreage report in at least one of the four most recent crop years except as allowed in section 18 (e)(1)(i)(B). We will limit prevented planting payments based on a specific crop type to the number of acres allowed for that crop type as specified in sections 18(e) and (f).

(g) If you purchased a Revenue Assurance Policy for a crop, and you executed a High Risk Land Exclusion Option that separately insures acreage which has been designated as ''high-risk'' land by FCIC under a Catastrophic Risk Protection Endorsement for that crop, the maximum number of acres eligible for a prevented planting payment will be limited for each policy as specified in sections 18 (e) and (f).

(h) If you are prevented from planting a crop for which you do not have an adequate base of eligible prevented planting acreage, as determined in accordance with section 18(e)(1), your prevented planting per-acre revenue guarantee, premium, and prevented planting payment will be based on the crops insured for the current crop year, for which you have remaining eligible prevented planting acreage. The crops used for this purpose will be those that result in a prevented planting payment most similar to the prevented planting payment that would have been made for the crop that was prevented from being planted.

(1) For example, assume you were prevented from planting 200 acres of corn and have 100 acres eligible for a corn prevented planting guarantee that would result in a payment of $40 per acre. You also had 50 acres of potato eligibility that would result in a $100 per acre payment, 90 acres of grain sorghum eligibility that would result in a $30 per acre payment, and 100 acres of soybean eligibility that would result in a $25 per-acre payment. Your prevented planting coverage for the 200 acres would be based on 100 acres of corn ($40 per acre), 90 acres of grain sorghum ($30 per acre), and 10 acres of soybeans ($25 per acre).

(2) Prevented planting coverage will be allowed as specified in section 18(h) only if the crop that was prevented from being planted meets all policy provisions, except for having an adequate base of eligible prevented planting acreage. Payment may be made based on crops other than those that were prevented from being planted even though other policy provisions, including but not limited to, processor contract and rotation requirements, have not been met for the crop on which payment is being based.

(i) The prevented planting payment for any eligible acreage within a basic or optional unit will be determined by:

(1) Multiplying the per-acre revenue guarantee for timely planted acreage of the insured crop by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 18(i)(1) by the number of eligible prevented planting acres in the unit; and

(3) Multiplying the result of section 18(i)(2) by your share.

(j) The prevented planting payment for any eligible acreage within an enterprise unit will be determined by:

(1) Multiplying the per-acre revenue guarantee within the enterprise unit for timely planted acreage of the insured crop by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 18(j)(1) by the number of eligible prevented planting acres in the enterprise unit;

(3) Totaling the results from section 18(j)(3); and

(4) Multiplying the result of section 18(j)(2) by your share.

(k) The prevented planting payment for any eligible acreage within a whole-farm unit will be determined by:

(1) Multiplying the per-acre revenue guarantee for the whole-farm unit, for timely planted acreage of the insured crop by the prevented planting coverage level percentage you elected, or that is contained in the Crop Provisions if you did not elect a prevented planting coverage level percentage;

(2) Multiplying the result of section 18(k)(1) by the number of eligible prevented planting acres in the whole-farm unit;

(3) Totaling the results from section 18(k)(3); and

(4) Multiplying the result of section 18(k)(2) by your share.

19. Crops As Payment

You must not abandon any crop to us. We will not accept any crop as compensation for payments due us.

20. Arbitration

(a) If you and we fail to agree on any factual determination, the disagreement will be resolved in accordance with the rules of the American Arbitration Association. Failure to agree with any factual determination made by FCIC must be resolved through the FCIC appeal provisions published at 7 CFR part 11.

(b) No award determined by arbitration or appeal can exceed the amount of liability established or which should have been established under the policy.

21. Access To Insured Crop and Records, and Record Retention

(a) We reserve the right to examine the insured crop as often as we reasonably require.

(b) For three years after the end of the crop year, you must retain, and provide upon our request, complete records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit. This requirement also applies to the records

used to establish the basis for the production report for each unit. You must also provide upon our request, separate records showing the same information for production from any acreage not insured. We may extend the record retention period beyond three years by notifying you of such extension in writing. Your failure to keep and maintain such records will, at our option, result in:

(1) Cancellation of the policy;

(2) Assignment of production to the units by us;

(3) Combination of the optional units; or

(4) A determination that no indemnity is due.

(c) Any person designated by us will, at any time during the record retention period, have access:

(1) To any records relating to this insurance at any location where such records may be found or maintained; and

(2) To the farm.

(d) By applying for insurance under the authority of the Act or by continuing insurance for which you previously applied, you authorize us, or any person acting for us, to obtain records relating to the insured crop from any person who may have custody of those records including, but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist us in obtaining all records which we request from third parties.

(e) This policy will be considered a continuation of any prior crop insurance policy issued under the authority of the Act for actual production history purposes under 7 CFR part 400, subpart G.

22. Other Insurance

(a) Other Like Insurance—You must not obtain any other crop insurance issued under the authority of the Act, on your share of the insured crop. If we determine that more than one policy on your share is intentional, you may be subject to the sanctions authorized under this policy, the Act, or any other applicable statute. If we determine that the violation was not intentional, the policy with the earliest date of application will be in force and all other policies will be void. Nothing in this paragraph prevents you from obtaining other insurance not issued under the Act.

(b) Other Insurance Against Fire—If you have other insurance, whether valid or not, against damage to the insured crop by fire during the insurance period, we will be liable for loss due to fire only for the smaller of:

(1) The amount of indemnity determined pursuant to this policy without regard to such other insurance; or

(2) The amount by which the loss from fire is determined to exceed the indemnity paid or payable under such other insurance.

(c) For the purpose of section 22(b), the amount of loss from fire will be the reduction in revenue of the insured crop on the unit involved determined pursuant to this policy.

23. Conformity To Food Security Act

Although your violation of a number of federal statutes, including the Act, may cause cancellation, termination, or voidance of your insurance contract, you should be specifically aware that your policy will be canceled if you are determined to be ineligible to receive benefits under the Act due to violation of the controlled substance provisions (title XVII) of the Food Security Act of 1985 (Pub. L. 99–198) and the regulations published at 7 CFR part 400, subpart F. Your insurance policy will be canceled if you are determined, by the appropriate Agency, to be in violation of these provisions. We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less a reasonable amount for expenses and handling not to exceed 20 percent of the premium paid or to be paid by you.

24. Amounts Due Us

(a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any portion thereof, on any unpaid amount due us. For the purpose of premium amounts due us, the interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(b) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount. Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us. The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us.

(c) All amounts paid will be applied first to expenses of collection (see section 24(d)) if any, second, to the reduction of accrued interest, and then to the reduction of the principal balance.

(d) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.

(e) Amounts owed to us by you may be collected in part through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37.

25. Legal Action Against Us

(a) You may not bring legal action against us unless you have complied with all of the policy provisions.

(b) If you do take legal action against us, you must do so within 12 months of the date of denial of the claim. Suit must be brought in accordance with the provisions of 7 U.S.C. 1508(j).

(c) Your right to recover damages (compensatory, punitive, or other), attorney's fees, or other charges is limited or excluded by this contract or by Federal Regulations.

26. Payment and Interest Limitations

(a) Under no circumstances will we be liable for the payment of damages (compensatory, punitive, or other), attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim.

(b) We will pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment of a court of competent jurisdiction, from and including the 61st day after the date you sign, date, and submit to us the properly completed claim on our form. Interest will be paid only if the reason for our failure to timely pay is NOT due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year, and may vary with each publication.

27. Concealment, Misrepresentation or Fraud

(a) If you have falsely or fraudulently concealed the fact that you are ineligible to receive benefits under the Act or if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this policy:

(1) This policy will be voided; and

(2) You may be subject to remedial sanctions in accordance with 7 CFR part 400, subpart R.

(b) Even though the policy is void, you may still be required to pay 20 percent of the premium due under the policy to offset costs incurred by us in the service of this policy. If previously paid, the balance of the premium will be returned.

(c) Voidance of this policy will result in you having to reimburse all indemnities paid for the crop year in which the voidance was effective.

(d) Voidance will be effective on the first day of the insurance period for the crop year in which the act occurred and will not affect the policy for subsequent crop years unless a violation of this section also occurred in such crop years.

28. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for the payment of the premium and administrative fees. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

29. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year. The assignment must be on our form and will not be effective until approved in writing by us. The assignee will have the right to submit all loss notices and forms as required by the policy. If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within 60 days after the fall harvest price is released, the assignee may submit the claim for indemnity not later than 15 days after the 60-day period has expired. We will honor the terms of the assignment only if we can accurately determine the amount of the claim. However, no action will lie against us for failure to do so.

30. Subrogation (Recovery of Loss from a Third Party)

Since you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve this right. If we pay you for your loss, your right to recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

31. Descriptive Headings

The descriptive headings of the various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions.

32. Notices

(a) All notices required to be given by you must be in writing and received by your crop insurance agent within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice. If the date by which you are required to submit a report or notice falls on Saturday, Sunday, or a Federal holiday, or if your agent's office is, for any reason, not open for business on the date you are required to submit such notice or report, such notice or report must be submitted on the next business day.

(b) All notices and communications required to be sent by us to you will be mailed to the address contained in your records located with your crop insurance agent. Notice sent to such address will be conclusively presumed to have been received by you. You should advise us immediately of any change of address.

33. Multiple Benefits

(a) If you are eligible to receive an indemnity under an additional coverage plan of insurance and are also eligible to receive benefits for the same loss under any other USDA program, you may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law.

(b) The total amount received from all such sources may not exceed the amount of your actual loss. The total amount of the actual loss is the difference between the fair market value of the insured commodity before and after the loss, based on your production records and the highest price election or amount of insurance available for the crop.

(c) FSA will determine and pay the additional amount due you for any applicable USDA program, after first considering the amount of any crop insurance indemnity.

34. Written Agreements

Only rates of premium for this policy may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 34(e);

(b) The application for a written agreement must contain the rate of premium applicable to this policy that will be in effect if the written agreement rate is not approved;

(c) If approved, the written agreement will specify the rate of premium that will be in effect;

(d) Each written agreement will only be valid for one crop year (If the written agreement is not specifically renewed the following year, the rate of premium for subsequent crop years will be the rate of premium specified in the actuarial document), or if no rate is specified, the acreage will not be insurable; and

(e) An application for a written agreement submitted after the sales closing date may be approved if you demonstrate your physical inability to apply prior to the sales closing date, or it is submitted in accordance with any regulation which may be promulgated under 7 CFR part 400, and after inspection of the acreage by us, if required, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

**Revenue Assurance**

*Canola and Rapeseed Crop Provisions*

This is a pilot risk management program. This risk management tool will be reinsured under the authority provided by the Federal Crop Insurance Act as amended. If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) these Crop Provisions; and (3) the Basic Provisions, with (1) controlling (2), etc.

1. Definition

*Canola*—A crop of the genus Brassica as defined in the Official United States Standards for Grain Subpart C—U.S. Standards for Canola.

*Fall harvest price*—The price used to value production to count. The fall harvest price is the simple average of the final daily settlement prices in September for the WCE November canola futures contract divided by 2,205. This factor converts the WCE price from Canadian dollars per metric ton to Canadian dollars per pound. To convert into U.S. dollars, multiply the price in Canadian dollars per pound by the simple average of the of the final daily settlement prices in September on the September Canadian dollar futures contract on the MERC, using the current U.S./Canadian exchange rate. This price will be released on or before October 5.

*Fall harvest price option*—A coverage option that allows you to use the greater of the projected harvest price or the fall harvest price to determine your per-acre revenue guarantee. For basic, optional, and enterprise units, this option applies to all insurable acres of the canola and rapeseed in the county. For the whole-farm unit, this option will apply to all insurable acres of the applicable crops in the county. This option must be selected by the sales closing date and is continuous unless canceled by the crop sales closing date.

*Harvest*—Combining or threshing the canola or rapeseed for seed. A crop that is swathed prior to combining is not considered harvested.

*Local market price*—The cash price per pound for U.S. No. 2 grade canola that reflects the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade canola. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein, oil or moisture content, or milling quality will not be considered.

*MERC*—Chicago Mercantile Exchange.

*Planted acreage*—In addition to the definition contained in the Basic Provisions, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions.

*Prevented planting guarantee*—The prevented planting guarantee for such acreage will be the selected percentage of the per-acre revenue guarantee for timely planted acres.

*Projected harvest price*—The price used to determine expected per-acre revenue. The projected harvest price is the simple average of the final daily settlement prices in February for the WCE November canola futures contract divided by 2,205. This factor converts the WCE price from Canadian dollars per metric ton to Canadian dollars per pound. To convert into U.S. dollars, multiply the price in Canadian dollars per pound by the simple average of the final daily settlement prices in February on the September Canadian dollar futures contract on the MERC, using the current U.S./Canadian exchange rate. This price will be released on or before March 5 of the current crop year.

*Rapeseed*—A crop of the genus Brassica that contains at least 30 percent of an industrial type of oil as shown on the Special Provisions and that is measured on a basis free from foreign material.

*Swathed*—Severance of the stem and seed pods from the ground and placing into windrows without removal of the seed from the pod.

*WCE*—Winnipeg Commodity Exchange.

2. Unit Division

In addition to optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices, optional units may be by type if the type is designated on the Special Provisions.

3. Contract Changes

In accordance with section 5 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

4. Cancellation and Termination Dates

In accordance with section 3 of the Basic Provisions, the cancellation and termination dates are March 15.

5. Annual Premium

In addition to the provisions of section 8 of the Basic Provisions, your per-acre premium on a unit is determined using the premium calculator. Your per-acre premiums will differ by crop and unit structure.

(a) Basic unit: The annual premium for a basic unit equals the per-acre premium, times the number of insured acres in the unit, times your share.

(b) Optional unit: The annual premium for an optional unit equals the per-acre premium, times an optional unit surcharge factor, times the number of insured acres in the optional unit, times your share. The optional unit surcharge factor is 1.10.

(c) Enterprise unit: The per-acre premium decreases as the number of legally defined sections in which you have insured acreage increases up to a maximum of 10 sections. The annual premium for an enterprise unit equals the per-acre premium, times the number of insured acres in the unit, times your share.

(d) Whole-farm unit: The annual premium for a whole-farm unit equals the per-acre premium, times the number of insured acres in the unit, times your share. The insured per-acre premium decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections. The per-acre premium also depends on the proportion of insured crop acres on the unit. For example, if the unit contains corn, soybeans, and canola, the per-acre premium will depend on the ratio of corn to soybean insured acres, the ratio of corn to canola insured acres, and the ratio of soybean to canola insured acres.

6. Insured Crop

In accordance with section 9 of the Basic Provisions, the crop insured will be all the canola and rapeseed in the county for which a premium rate is provided by the premium calculator:

(a) In which you have a share;

(b) That is planted for harvest as seed; and

(c) That is not, unless allowed by the Special Provisions:

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

7. Insurable Acreage

In addition to the provisions of section 10 of the Basic Provisions,

(a) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions; and

(b) Any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

8. Insurance Period

In accordance with the provisions of section 12 of the Basic Provisions, the calendar date for the end of the insurance period is October 31 immediately following planting.

9. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions, insurance is provided only against the following causes of loss which occur within the insurance period that results in an unavoidable loss of revenue:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption;

(h) Failure of the irrigation water supply if due to a cause of loss contained in sections 9(a) through (g) occurring within the insurance period; or

(i) A decline in the fall harvest price below the projected harvest price.

10. Replanting Payment

(a) In accordance with section 14 of the Basic Provisions:

(1) A replanting payment for the insured crop is allowed if the insured

crop is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the per-acre guarantee for the acreage and it is practical to replant. The projected harvest price is used to determine if 90 percent of the per-acre revenue guarantee can be achieved.

(2) The maximum amount of the replanting payment per acre will be your insured share multiplied by the lesser of 20 percent of the per-acre revenue guarantee based on the projected harvest price or an amount equal to 175 pounds times the projected harvest price.

(b) When the canola or rapeseed is replanted using a practice that is uninsurable as an original planting, the per-acre revenue guarantee based on the projected harvest price will be reduced by the amount of the replanting payment that is attributable to your share. The premium amount will not be reduced.

11. Duties In The Event of Damage or Loss

In accordance with your duties under section 15 of the Basic Provisions, if you initially discover damage to the insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim using the following procedures:

(1) Basic and Optional units: We will settle your claim on each basic or optional unit by:

(i) Multiplying the per-acre revenue guarantee by the number of insured acres in the unit;

(ii) Multiplying the fall harvest price by production to count for each unit (see section 12(c) through (e));

(iii) Subtracting the result of section 12(b)(1)(ii) from the result of section 12(b)(1)(i); and

(iv) Multiplying the results of section 12(b)(2)(iii) by your share.

If the result of section 12(b)(1)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result of section 12(b)(1)(iv) is less than or equal to zero, no indemnity will be paid.

(2) Enterprise units: We will settle your claim on an enterprise unit by:

(i) Multiplying the per-acre revenue guarantee by the number of insured acres in the enterprise unit;

(ii) Multiplying the fall harvest price by the production to count for the enterprise unit;

(iii) Subtracting the result of section 12(b)(2)(ii) from the result of section 12(b)(2)(i); and

(iv) Multiplying the result of section 12(b)(2)(iii) by your share.

If the result of section 12(b)(2)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.

(3) Whole-farm units: We will settle your claim on a whole-farm unit by:

(i) Multiplying the per-acre revenue guarantee for each crop by the number of insured acres planted to each crop;

(ii) Totaling the results of section 12(b)(3)(i);

(iii) Multiplying the fall harvest price for each crop by the production to count for each crop;

(iv) Totaling the results of section 12(b)(3)(iii);

(v) Subtracting the result of section 12(b)(3)(iv) from the result of section 12(b)(3)(ii); and

(vi) Multiplying the result of section 12(b)(3)(v) by your share.

If the result of section 12(b)(2)(vi) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.

(c) The total production to count (in pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the per-acre revenue guarantee will be used for such acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 12(d)); and

(iv) Potential production on insured acreage you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature canola may be adjusted for excess moisture and quality deficiencies. Mature rapeseed may be adjusted for excess moisture only. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Canola and rapeseed production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 8.5 percent. We may obtain samples of the production to determine the moisture content.

(2) Canola production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in canola not meeting the grade requirements for U.S. No. 3 or better (U.S. Sample grade) because of kernel damage (excluding heat damage), or a musty, sour, or commercially objectionable foreign odor; or

(ii) Substances or conditions are present, including mycotoxins, that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss in canola production only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions and which occurs within the insurance period;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grader licensed to grade canola under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by our loss adjuster.

(4) Canola eligible for quality adjustment, as specified in sections 12(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on an unadjusted weight basis.

13. Prevented Planting

Your prevented planting coverage will be 60 percent of your per-acre revenue guarantee for timely planted acreage. You may increase your prevented planting coverage to a level specified in the actuarial documents by paying an additional premium.

**Revenue Assurance**

*Corn and Soybean Crop Provisions*

This is a pilot risk management program. This risk management tool will be reinsured under the authority provided by the Federal Crop Insurance Act as amended. If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) These Crop Provisions; and (3) The Basic Provisions with (1) controlling (2), etc.

1. Definitions

*CBOT*—Chicago Board of Trade.

*Fall harvest price*—The price used to value production to count. For corn, the fall harvest price is the simple average of the final daily settlement prices in November for the CBOT December corn futures contract. For soybeans, the fall harvest price is the simple average of the final daily settlement prices in October for the CBOT November soybean futures contract. These prices will be released on or before November 5 for soybeans and on or before December 5 for corn.

*Fall harvest price option*—A coverage option that allows you to use the greater of the projected harvest price or the fall harvest price to determine your per-acre revenue guarantee. For basic, optional, and enterprise units, this option applies to all insurable acres of a crop in the county. For the whole-farm unit, this option will apply to all insurable acres of the applicable crops in the county. This option must be selected by the sales closing date and is continuous unless canceled by the crop sales closing date.

*Harvest*—Combining, threshing, or picking the insured crop for grain.

*Local market price*—The cash grain price per bushel for U.S. No. 2 yellow corn or U.S. No. 1 soybeans, offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for U.S. No. 2 grade for yellow corn or U.S. No. 1 grade for soybeans. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein and oil, will not be considered.

*Planted acreage*—In addition to the definition contained in the Basic Provisions, corn and soybeans must initially be planted in rows (corn must be planted in rows far enough apart to permit mechanical cultivation), unless otherwise provided by the Special Provisions.

*Prevented planting guarantee*—The prevented planting guarantee for such acreage will be the selected percentage of the per-acre revenue guarantee for timely planted acres.

*Projected harvest price*—The price used to determine expected per-acre revenue. For corn, the projected harvest price is the simple average of the final daily settlement prices in February for the CBOT December corn futures contract. For soybeans, the projected harvest price is the simple average of the final daily settlement prices in February for the CBOT November soybean futures contract. The crop projected harvest prices will be released on or before March 5 of the current crop year.

*Silage*—A product that results from severing the plant from the land and chopping it for the purpose of livestock feed.

2. Contract Changes

In accordance with section 5 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

3. Cancellation and Termination Dates

In accordance with section 3 of the Basic Provisions, the cancellation and termination dates are March 15.

4. Annual Premium

In addition to the provisions of section 8 of the Basic Provisions, your per-acre premium on a unit is determined using the premium calculator. Your per-acre premiums will differ by crop and unit structure.

(a) Basic unit: The annual premium for a basic unit equals the per-acre premium, times the number of insured acres in the unit, times your share.

(b) Optional unit: The annual premium for an optional unit equals the per-acre premium times an optional unit surcharge factor, times the number of insured acres in the optional unit, times your share. The optional unit surcharge factor is 1.10.

(c) Enterprise unit: The per-acre premium decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections. The annual premium for an enterprise unit equals the per-acre premium, times the number of insured acres in the unit, times your share.

(d) Whole-farm unit: The annual premium for a whole-farm unit equals the per-acre premium, times the number of insured acres in the unit, times your share. The insured per-acre premium decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections. The per-acre premium also depends on the proportion of insured crop acres on the unit. For example, if the unit contains sunflowers, soybeans, and corn, the per-acre premium will depend on the ratio of sunflowers to soybean insured acres, the ratio of sunflowers to corn insured acres, and the ratio of soybean to corn insured acres.

5. Insured Crop

(a) Corn—In accordance with section 9 of the Basic Provisions, the crop insured will be all the corn in the county for which a premium rate is provided by the premium calculator:

(1) In which you have a share;

(2) That is adapted to the area based on days to maturity and is compatible with agronomic and weather conditions in the area;

(3) That is planted for harvest as grain; and

(4) That is not (unless allowed by the Special Provisions):

(i) Interplanted with another crop; or
(ii) Planted into an established grass or legume.

(b) In addition to the provisions of section 5(a), the corn crop insured will be all corn that is yellow dent or white corn, including mixed yellow and white, waxy, high-lysine corn, high-oil corn blends containing mixtures of at least 90 percent high yielding yellow dent female plants with high-oil male pollinator plants, commercial varieties of high-protein hybrids, and excluding:

(1) High-amylose, high-oil except as defined in section 5(b), flint, flour, Indian, or blue corn, or a variety genetically adapted to provide forage for wildlife or any other open pollinated corn.

(2) A variety of corn adapted for silage use when the corn is reported for insurance as grain.

(c) Soybeans—In accordance with section 9 of the Basic Provisions, the crop insured will be all the soybeans in the county for which a premium rate is provided by the premium calculator:

(1) In which you have a share;

(2) That are adapted to the area based on days to maturity and is compatible with agronomic and weather conditions in the area;

(3) That are planted for harvest as beans; and

(4) That are not (unless allowed by the Special Provisions):

(i) Interplanted with another crop; or

(ii) Planted into an established grass or legume.

6. Insurable Acreage

In addition to the provisions of section 10 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. Insurance Period

In accordance with the provisions of section 12 of the Basic Provisions, the calendar date for the end of the insurance period is December 10 immediately following planting.

8. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions, insurance is provided only against the following causes of loss which occur within the insurance period that results in an unavoidable loss of revenue:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption;

(h) Failure of the irrigation water supply if due to a cause of loss contained in sections 8(a) through (g) occurring within the insurance period; or

(i) A decline in the fall harvest price below the projected harvest price.

9. Replanting Payment

(a) In accordance with section 14 of the Basic Provisions:

(1) Replanting payments for corn and soybeans are allowed if the corn and soybeans are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the per-acre revenue guarantee for the acreage and it is practical to replant. The projected harvest price is used to determine if 90 percent of the per-acre revenue guarantee can be achieved.

(2) The maximum amount of the replanting payment per-acre will be your insured share times the lesser of 20 percent of the per-acre revenue guarantee based on the projected harvest price or:

(i) For corn, an amount equal to 8 bushels times the projected harvest price,

(ii) For soybeans, an amount equal to 3 bushels times the projected harvest price.

(b) When the insured crop is replanted using a practice that is uninsurable as an original planting, the per-acre revenue guarantee based on the projected harvest price will be reduced by the amount of the replanting payment which is attributable to your share. The premium amount will not be reduced.

10. Duties in the Event of Damage or Loss

(a) In accordance with your duties under section 15 of the Basic Provisions, if you initially discover damage to any insured crop within 15 days of, or during harvest, you must leave representative samples of the unharvested crop for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

(b) In addition to the provisions of section 15 of the Basic Provisions, you must notify us before harvest begins if you intend to harvest any corn acreage for silage.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim using the following procedures:

(1) Basic and Optional units: We will settle your claim on each basic or optional unit by:

(i) Multiplying the per-acre revenue guarantee by the number of insured acres in the unit;

(ii) Multiplying the fall harvest price by the production to count for each unit (see sections 11(c) through (e));

(iii) Subtracting the result of section 11(b)(1)(ii) from the result of section 11(b)(1)(i); and

(iv) Multiplying the results of section 11(b)(2)(iii) by your share.

If the result of section 11(b)(1)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result of section 11(b)(1)(iv) is less than or equal to zero, no indemnity will be paid.

(2) Enterprise units: We will settle your claim on an enterprise unit by:

(i) Multiplying the per-acre revenue guarantee by the number of insured acres in the enterprise unit;

(ii) Multiplying the fall harvest price by the production to count for the enterprise unit;

(iii) Subtracting the result of section 11(b)(2)(ii) from the result of section 11(b)(2)(i); and

(iv) Multiplying the result of section 11(b)(2)(iii) by your share.

If the result of section 11(b)(2)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.

(3) Whole-farm units: We will settle your claim on a whole-farm unit by:

(i) Multiplying the per-acre revenue guarantee for each crop by the number of insured acres planted to each crop;

(ii) Totaling the results of section 11(b)(3)(i);

(iii) Multiplying the fall harvest price for each crop by the production to count for each crop;

(iv) Totaling the results of section 11(b)(3)(iii);

(v) Subtracting the result of section 11(b)(3)(iv) from the result of section 11(b)(3)(ii); and

(vi) Multiplying the result of section 11(b)(3)(v) by your share.

If the result of section 11(b)(2)(vi) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.

(c) The total production to count (in bushels) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the per-acre revenue guarantee will be used for such acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is planted for grain but harvested as silage, if you fail to give us notice before harvest begins;

(D) That is damaged solely by uninsured causes; or

(E) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 11(d)); and

(iv) Potential production on insured acreage you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature crop production (excluding corn harvested as silage) may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of:

(i) Fifteen percent for corn (If moisture exceeds 30 percent, production will be reduced 0.2 percent for each 0.1 percentage point above 30 percent); and

(ii) Thirteen percent for soybeans.

We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in:

(A) Corn not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor; or

(B) Soybeans not meeting the grade requirements for U.S. No. 4 (grades U.S. Sample grade) because of test weight or kernel damage (excluding heat damage) or having a musty, sour, or commercially objectionable foreign odor (except garlic odor), or which meet the special grade requirements for garlicky soybeans; or

(ii) Substances or conditions are present, including mycotoxins, that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions and which occurs within the insurance period;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grader licensed to grade the insured crops under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by our loss adjuster.

(4) The grain production that is eligible for quality adjustment, as specified in sections 11(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on a weight basis.

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your per-acre revenue guarantee for timely planted acreage. You may increase your prevented planting coverage to a level specified in the actuarial documents by paying an additional premium.

**Revenue Assurance**

*Feed Barley Crop Provisions*

This is a pilot risk management program. This risk management tool will be reinsured under the authority provided by the Federal Crop Insurance Act as amended. If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) these Crop Provisions; and (3) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

*Fall harvest price*—The price used to value production to count. The fall harvest price is the simple average of the final daily settlement prices in August for the WCE October feed barley futures contract multiplied by 0.02177. This factor converts the WCE price from Canadian dollars per metric ton to Canadian dollars per bushel. To convert into U.S. dollars, multiply the price in Canadian dollars per bushel by the simple average of the final daily settlement prices in August on the September Canadian dollar futures contract on the MERC, using the current U.S./Canadian exchange rate. This price will be released on or before September 5.

*Fall harvest price option*—A coverage option that allows you to use the greater of the projected harvest price or the fall harvest price to determine your per-acre revenue guarantee. For basic, optional, and enterprise units, this option applies to all insurable acres of feed barley in the county. For the whole-farm unit, this option will apply to all insurable acres of the applicable crops in the county. This option must be selected by the sales closing date and is continuous unless canceled by the crop sales closing date.

*Harvest*—Combining or threshing the barley for grain. A crop that is swathed prior to combining is not considered harvested.

*Local market price*—The cash grain price per bushel for the U.S. No. 2 grade of the insured crop offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade of the insured crop. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein, oil or moisture content, or milling quality will not be considered.

*MERC*—Chicago Mercantile Exchange.

*Nurse crop (companion crop)*—A crop planted into the same acreage as another crop, that is intended to be harvested separately, and which is planted to improve growing conditions for the crop with which it is grown.

*Prevented planting guarantee*—The prevented planting guarantee for such acreage will be the selected percentage of the per-acre revenue guarantee for timely planted acres.

*Projected harvest price*—The price used to determine the expected per-acre revenue. The projected harvest price is the simple average of the final daily settlement prices in February for the WCE October feed barley futures contract multiplied by 0.02177. This factor converts the WCE price from Canadian dollars per metric ton to Canadian dollars per bushel. To convert into U.S. dollars, multiply the price in Canadian dollars per bushel by the simple average of the final daily settlement prices in February on the September Canadian dollar futures contract on the MERC, using the current U.S./Canadian exchange rate. The projected harvest price will be released on or before March 5 of the current crop year.

*Swathed*—Severance of the stem and grain head from the ground and placing into windrows without removal of the seed from the head.

*WCE*—Winnipeg Commodity Exchange.

2. Contract Changes

In accordance with section 5 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

3. Cancellation and Termination Dates

In accordance with section 3 of the Basic Provisions, the cancellation and termination dates are March 15.

4. Annual Premium

In addition to the provisions of section 8 of the Basic Provisions, your per-acre premium on a unit is determined using the premium calculator. Your per-acre premiums will differ by crop and unit structure.

(a) Basic unit: The annual premium for a basic unit equals the per-acre premium, times the number of insured acres in the unit, times your share.

(b) Optional unit: The annual premium for an optional unit equals the per-acre premium, times an optional unit surcharge factor, times the number of insured acres in the optional unit, times your share. The optional unit surcharge factor is 1.10.

(c) Enterprise unit: The per-acre premium decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections. The annual premium for an enterprise unit equals the per-acre premium, times the number of insured acres in the unit, times your share.

(d) Whole-farm unit: The annual premium for a whole-farm unit equals the per-acre premium, times the number of insured acres in the unit, times your share. The insured per-acre premium decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections. The per-acre premium also depends on the proportions of insured crop acres on the unit. For example, if the unit contains corn, soybeans, and barley, the per-acre premium will depend on the ratio of corn to soybean insured acres, the ratio of corn to barley insured acres, and the ratio of soybean to barley insured acres.

5. Insured Crop

In accordance with section 9 of the Basic Provisions, the crop insured will be all the feed barley in the county for which a premium rate is provided by the premium calculator:

(a) In which you have a share;

(b) That is planted for harvest as grain; and

(c) That is not (unless allowed by the Special Provisions):

(1) Interplanted with another crop;

(2) Planted into an established grass or legume; or

(3) Planted as a nurse crop, unless planted as a nurse crop for new forage seeding, but only if seeded at a normal rate and intended for harvest as grain.

6. Insurable Acreage

In addition to the provisions of section 10 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. Insurance Period

In accordance with the provisions of section 12 of the Basic Provisions, the calendar date for the end of the insurance period is October 31 immediately following planting.

8. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions, insurance is provided only against the following causes of loss which occur within the insurance period that results in an unavoidable loss of revenue.

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption;

(h) Failure of the irrigation water supply if due to a cause of loss contained in sections 8(a) through (g) occurring within the insurance period; or

(i) A decline in the fall harvest price below the projected harvest price.

9. Replanting Payment

(a) In accordance with section 14 of the Basic Provisions:

(1) A replanting payment for barley is allowed if the barley is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the per-acre revenue guarantee for the acreage and it is practical to replant. The projected harvest price is used to determine if 90 percent of the per-acre revenue guarantee can be achieved.

(2) The maximum amount of the replanting payment per acre will be your insured share multiplied by the lesser of 20 percent of the per-acre revenue guarantee based on the projected harvest price or an amount equal to 3 bushels times the projected harvest price.

(b) When barley is replanted using a practice that is uninsurable as an original planting, the per-acre revenue guarantee based on the projected harvest price will be reduced by the amount of the replanting payment which is attributable to your share. The premium amount will not be reduced.

10. Duties In The Event of Damage or Loss

In accordance with your duties under section 15 of the Basic Provisions, if you initially discover damage to the feed barley within 15 days of, or during harvest, you must leave representative samples of the unharvested feed barley for our inspection. The samples must be at least 10 feet wide and the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim using the following procedures:

(1) Basic and Optional units: We will settle your claim on each basic or optional unit by:

(i) Multiplying the per-acre revenue guarantee by the number of insured acres in the unit;

(ii) Multiplying the fall harvest price by production to count for each unit (see sections 11(c) through (e));

(iii) Subtracting the result of section 11(b)1(ii) from the result of section 11(b)(1)(i); and

(iv) Multiplying the results of section 11(b)(2)(iii) by your share.

If the result of section 11(b)(1)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result of section 11(b)(1)(iv) is less than or equal to zero, no indemnity will be paid.

(2) Enterprise units: We will settle your claim on an enterprise unit by:

(i) Multiplying the per-acre revenue guarantee by the number of insured acres in the enterprise unit;

(ii) Multiplying the fall harvest price by the production to count for the enterprise unit;

(iii) Subtracting the result of section 11(b)(2)(ii) from the result of section 11(b)(2)(i); and

(iv) Multiplying the result of section 11(b)(2)(iii) by your share.

If the result of section 11(b)(2)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.

(3) Whole-farm units: We will settle your claim on a whole-farm unit by :

(i) Multiplying the per-acre revenue guarantee for each crop by the number of insured acres planted to each crop;

(ii) Totaling the results of section 11(b)(3)(i);

(iii) Multiplying the fall harvest price for each crop by the production to count for each crop;

(iv) Totaling the results of section 11(b)(3)(iii);

(v) Subtracting the result of section 11(b)(3)(iv) from the result of section 11(b)(3)(ii); and

(vi) Multiplying the result of section 11(b)(3)(v) by your share.

If the result of section 11(b)(2)(vi) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.

(c) The total production to count (in bushels) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the per-acre revenue guarantee will be used for such acreage:

(A) That is abandoned;

(B) That is put to another use without our consent;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 11(d)); and

(iv) Potential production on insured acreage you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature barley production may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 14.5 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in barley not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, percentage of sound barley (heat damaged kernels will be considered to be sound barley), damaged kernels (heat-damaged kernels will not be considered to be damaged), thin barley, black barley, a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor), or grading blighted, smutty, garlicky or ergoty;

(ii) Substances or conditions are present, including mycotoxins, that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions, and which occurs within the insurance period.

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grader licensed to grade barley under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for

quality adjustment purposes may be determined by our loss adjuster.

(4) The barley eligible for quality adjustment, as specified in sections 11(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(e) Any production harvested from plants growing in the barley may be counted as production of barley on a weight basis.

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your per-acre revenue guarantee for timely planted acreage. You may increase your prevented planting coverage to a level specified in the actuarial documents by paying an additional premium.

**Revenue Assurance**

*Spring Wheat Crop Provisions*

This is pilot risk management program. This risk management tool will be reinsured under the authority provided by the Federal Crop Insurance Act as amended. If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) These Crop Provisions; and (3) The Basic Provisions with (1) Controlling (2), ETC.

1. Definitions

*Fall harvest price*—The price used to value production to count. The fall harvest price is the simple average of the final daily settlement prices in August for the MGE September hard red spring wheat futures contract. This price will be released on or before September 5.

*Fall harvest price option*—A coverage option that allows you to use the greater of the projected harvest price or the fall harvest price to determine your per-acre revenue guarantee. For basic, optional, and enterprise units, this option applies to all insurable acres of spring wheat in the county. For the whole-farm unit, this option will apply to all insurable acres of the applicable crops in the county. This option must be selected by the sales closing date and is continuous unless canceled by the crop sales closing date.

*Harvest*—Combining or threshing the wheat for grain. A crop that is swathed prior to combining is not considered harvested.

*Local market price*—The cash grain price per bushel for the U.S. No. 2 grade of wheat offered by buyers in the area in which you normally market the insured crop. The local market price will reflect the maximum limits of quality deficiencies allowable for U.S. No. 2 grade of wheat. Factors not associated with grading under the Official United States Standards for Grain, including but not limited to protein, oil or moisture content, or milling quality will not be considered.

*MGE*—Minneapolis Grain Exchange.

*Nurse crop (companion crop)*—A crop planted into the same acreage as another crop, that is intended to be harvested separately, and which is planted to improve growing conditions for the crop with which it is grown.

*Prevented planting guarantee*—The prevented planting guarantee for such acreage will be the selected percentage of the per-acre revenue guarantee for timely planted acres.

*Projected harvest price*—The price used to determine the expected per-acre revenue. The projected harvest price is the simple average of the final daily settlement prices in February for the MGE September hard red spring wheat futures contract. The projected harvest price will be released on or before March 5 of the current crop year.

*Swathed*—Severance of the stem and grain head from the ground and placing into windrows without removal of the seed from the head.

2. Contract Changes

In accordance with section 5 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

3. Cancellation and Termination Dates

In accordance with section 3 of the Basic Provisions, the cancellation and termination dates are March 15.

4. Annual Premium

In addition to the provisions of section 8 of the Basic Provisions, your per-acre premium on a unit is determined using the premium calculator. Your per-acre premiums will differ by crop and unit structure.

(a) Basic unit: The annual premium for a basic unit equals the per-acre premium, times the number of insured acres in the unit, times your share.

(b) Optional unit: The annual premium for an optional unit equals the per-acre premium, times an optional unit surcharge factor, times the number of insured acres in the optional unit, times your share. The optional unit surcharge factor is 1.10.

(c) Enterprise unit: The per-acre premium decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections. The annual premium for an enterprise unit equals the per-acre premium, times the number of insured acres in the unit, times your share.

(d) Whole-farm unit: The annual premium for a whole-farm unit equals the per-acre premium, times the number of insured acres in the unit, times your share. The insured per-acre premium decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections. The per-acre premium also depends on the proportions of insured crop acres on the unit. For example, if the unit contains corn, soybeans, and wheat, the per-acre premium will depend on the ratio of corn to soybean insured acres, the ratio of corn to wheat insured acres, and the ratio of soybean to wheat insured acres.

5. Insured Crop

In accordance with section 9 of the Basic Provisions, the crop insured will be all the spring wheat in the county for which a premium rate is provided by the premium calculator:

(a) In which you have a share;

(b) That is planted for harvest as grain; and

(c) That is not (unless allowed by the Special Provisions):

(1) Interplanted with another crop;

(2) Planted into an established grass or legume; or

(3) Planted as a nurse crop, unless planted as a nurse crop for new forage seeding, but only if seeded at a normal rate and intended for harvest as grain.

6. Insurable Acreage

In addition to the provisions of section 10 of the Basic Provisions, any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. Insurance Period

In accordance with the provisions of section 12 of the Basic Provisions, the calendar date for the end of the insurance period is October 31 immediately following planting.

8. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions, insurance is provided only against the following causes of loss which occur within the insurance period that results in an unavoidable loss of revenue.:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;
(e) Wildlife;
(f) Earthquake;
(g) Volcanic eruption;
(h) Failure of the irrigation water supply if due to a cause of loss contained in sections 8(a) through (g) occurring within the insurance period; or
(i) A decline in the fall harvest price below the projected harvest price.

9. Replanting Payment

(a) In accordance with section 14 of the Basic Provisions:
(1) A replanting payment for spring wheat is allowed if the wheat is damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the per-acre revenue guarantee for the acreage and it is practical to replant. The projected harvest price is used to determine if 90 percent of the per-acre revenue guarantee can be achieved;
(2) The maximum amount of the replanting payment per acre will be your insured share multiplied by the lesser of 20 percent of the per-acre revenue guarantee based on the projected harvest price or an amount equal to 3 bushels times the projected harvest price.
(b) When spring wheat is replanted using a practice that is uninsurable as an original planting, the per-acre revenue guarantee based on the projected harvest price will be reduced by the amount of the replanting payment which is attributable to your share. The premium amount will not be reduced.

10. Duties In The Event of Damage or Loss

In accordance with your duties under section 15 of the Basic Provisions, if you initially discover damage to the spring wheat within 15 days of, or during harvest, you must leave representative samples of the unharvested spring wheat for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:
(1) For any optional units, we will combine all optional units for which such production records were not provided; or
(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.
(b) In the event of loss or damage covered by this policy, we will settle your claim using the following procedures:
(1) Basic and Optional units: We will settle your claim on each basic or optional unit by:
(i) Multiplying the per-acre revenue guarantee by the number of insured acres in the unit;
(ii) Multiplying the applicable fall harvest price by the production to count for each unit (see sections 11(c) through (e));
(iii) Subtracting the result of section 11(b)(1)(ii) from the result of section 11(b)(1)(i); and
(iv) Multiplying the results of section 11(b)(2)(iii) by your share.
If the result of section 11(b)(1)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result of section 11(b)(1)(iv) is less than or equal to zero, no indemnity will be paid.
(2) Enterprise units: We will settle your claim on an enterprise unit by:
(i) Multiplying the per-acre revenue guarantee by the number of insured acres in the enterprise unit;
(ii) Multiplying the applicable fall harvest price by the production to count for the enterprise unit;
(iii) Subtracting the result of section 11(b)(2)(ii) from the result of section 11(b)(2)(i); and
(iv) Multiplying the result of section 11(b)(2)(iii) by your share.
If the result of section 11(b)(2)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.
(3) Whole-farm units: We will settle your claim on a whole-farm unit by:
(i) Multiplying the per-acre revenue guarantee for each crop by the number of insured acres planted to each crop;
(ii) Totaling the results of section 11(b)(3)(i);
(iii) Multiplying the applicable fall harvest price for each crop by the production to count for each crop;
(iv) Totaling the results of section 11(b)(3)(iii);
(v) Subtracting the result of section 11(b)(3)(iv) from the result of section 11(b)(3)(ii); and
(vi) Multiplying the result of section 11(b)(3)(v) by your share.
If the result of section 11(b)(2)(vi) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.
(c) The total production to count (in bushels) from all insurable acreage on the unit will include:
(1) All appraised production as follows:
(i) Not less than the per-acre revenue guarantee will be used for such acreage:
(A) That is abandoned;
(B) That is put to another use without our consent;
(C) That is damaged solely by uninsured causes; or
(D) For which you fail to provide acceptable production records;
(ii) Production lost due to uninsured causes;
(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 11(d)); and
(iv) Potential production on insured acreage you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:
(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or
(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and
(2) All harvested production from the insurable acreage.
(d) Mature wheat production may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.
(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 13.5 percent. We may obtain samples of the production to determine the moisture content.
(2) Production will be eligible for quality adjustment if:
(i) Deficiencies in quality, in accordance with the Official United

States Standards for Grain, result in wheat not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight, total damaged kernels (excluding heat damage), shrunken or broken kernels, or defects (excluding foreign material and heat damage), or grading garlicky, light smutty, smutty or ergoty;

(ii) Substances or conditions are present, including mycotoxins, that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions and which occurs within the insurance period;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grader licensed to grade wheat under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by our loss adjuster.

(4) Wheat production that is eligible for quality adjustment, as specified in sections 11(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(e) Any production harvested from plants growing in the wheat may be counted as production of the wheat on a weight basis.

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your per-acre revenue guarantee for timely planted acreage. You may increase your prevented planting coverage to a level specified in the actuarial documents by paying an additional premium.

**Revenue Assurance**

*Sunflower Crop Provisions*

This is a pilot risk management program. This risk management tool will be reinsured under the authority provided by the Federal Crop Insurance Act as amended. If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Special Provisions; (2) these Crop Provisions; and (3) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

*CBOT*—Chicago Board of Trade.

*Fall harvest price*—The price used to value production to count. The fall harvest price is the simple average of the final daily settlement prices in September for the CBOT October soybean oil futures contract divided by two, then subtract one. This price will be released on or before October 5.

*Fall harvest price option*—A coverage option that allows you to use the greater of the projected harvest price or the fall harvest price to determine your per-acre revenue guarantee. For basic, optional, and enterprise units, this option applies to all insurable acres of sunflowers in the county. For the whole-farm unit, this option will apply to all insurable acres of the applicable crops in the county. This option must be selected by the sales closing date and is continuous unless canceled by the crop sales closing date.

*Harvest*—Combining or threshing the sunflowers for seed.

*Local market price*—The cash price per pound for oil type sunflower seed grading U.S. No. 2 or better, or non-oil type sunflower seed with a test weight of at least 22 pounds per bushel and less than 5 percent kernel damage offered by buyers in the area in which you normally market sunflower seed. The local market price for oil type sunflower seed will reflect the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade of sunflower seed. Factors not associated with grading of sunflower seed under the Official United States Standards for Grain including, but not limited to, oil or moisture content will not be considered.

*Planted acreage*—In addition to the definition contained in the Basic Provisions, sunflowers must initially be planted in rows far enough apart to permit mechanical cultivation, unless otherwise provided by the Special Provisions.

*Prevented planting guarantee*—The prevented planting guarantee for such acreage will be the selected percentage of the per-acre revenue guarantee for timely planted acres.

*Projected harvest price*—The price used to determine expected per-acre revenue. The projected harvest price is the simple average of the final daily settlement prices in February for the CBOT October soybean oil futures contract divided by two, then subtract one. The projected harvest price will be released on or before March 5 of the current crop year.

2. Contract Changes

In accordance with section 5 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date.

3. Cancellation and Termination Dates

In accordance with section 3 of the Basic Provisions, the cancellation and termination dates are March 15.

4. Annual Premium

In addition to the provisions of section 8 of the Basic Provisions, your per-acre premium on a unit is determined using the premium calculator. Your per-acre premiums will differ by crop and unit structure.

(a) Basic unit: The annual premium for a basic unit equals the per-acre premium, times the number of insured acres in the unit, times your share.

(b) Optional unit: The annual premium for an optional unit equals the per-acre premium times an optional unit surcharge factor, times the number of insured acres in the optional unit, times your share. The optional surcharge factor is 1.10.

(c) Enterprise unit: The per-acre premium decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections. The annual premium for an enterprise unit equals the per-acre premium, times the number of insured acres in the unit, times your share.

(d) Whole-farm unit: The annual premium for a whole-farm unit equals the per-acre premium, times the number of insured acres in the unit, times your share. The insured per-acre premium decreases as the number of legally defined sections on which you have insured acreage increases up to a maximum of 10 sections. The per-acre premium also depends on the proportion of insured crop acres on the unit. For example, if the unit contains sunflowers, soybeans, and wheat, the per-acre premium will depend on the ratio of sunflower to soybean insured acres, the ratio of sunflower to wheat insured acres, and the ratio of soybean to wheat insured acres.

5. Insured Crop

In accordance with section 9 of the Basic Provisions, the crop insured will be all the oil and non-oil type sunflowers in the county for which a premium rate is provided by the premium calculator:

(a) In which you have a share;

(b) That is planted for harvest as sunflower seed; and

(c) That is not (unless allowed by the Special Provisions):

(1) Interplanted with another crop; or
(2) Planted into an established grass or legume.

6. Insurable Acreage

In addition to the provisions of section 10 of the Basic Provisions:
(a) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions; and
(b) Any acreage of the insured crop damaged before the final planting date, to the extent that a majority of producers in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant.

7. Insurance Period

In accordance with the provisions of section 12 of the Basic Provisions, the calendar date for the end of the insurance period is November 30, immediately following planting.

8. Causes of Loss

In accordance with the provisions of section 13 of the Basic Provisions, insurance is provided only against the following causes of loss which occur within the insurance period that results in an unavoidable loss of revenue.
(a) Adverse weather conditions;
(b) Fire;
(c) Insects, but not damage due to insufficient or improper application of pest control measures;
(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;
(e) Wildlife;
(f) Earthquake;
(g) Volcanic eruption; or
(h) Failure of the irrigation water supply if due to a cause of loss contained in sections 8(a) through (g) occurring within the insurance period; or
(i) A decline in the fall harvest price below the projected harvest price.

9. Replanting Payment

(a) In accordance with section 14 of the Basic Provisions:
(1) A replanting payment for sunflowers is allowed if the sunflowers are damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the per-acre revenue guarantee for the acreage and it is practical to replant. The projected harvest price is used to determine if 90 percent of the per-acre revenue guarantee can be achieved.
(2) The maximum amount of the replanting payment per acre will be your insured share multiplied by the lesser of 20 percent of the per-acre revenue guarantee based on the projected harvest price or an amount equal to 175 pounds of seed multiplied by the projected harvest price.
(b) When sunflowers are replanted using a practice that is uninsurable as an original planting, the per-acre revenue guarantee based on the projected harvest price, will be reduced by the amount of the replanting payment which is attributable to your share. The premium amount will not be reduced.
(c) The per-acre revenue guarantee and premium for acreage replanted to a different insurable type will be based on the replanted type and will be calculated in accordance with sections 4 and 8 of the Basic Provisions and section 4 of these Crop Provisions.

10. Duties In The Event of Damage or Loss

In accordance with your duties under section 15 of the Basic Provisions, if you initially discover damage to the sunflowers within 15 days of, or during harvest, you must leave representative samples of the unharvested sunflowers for our inspection. The samples must be at least 10 feet wide and extend the entire length of each field in the unit, and must not be harvested or destroyed until the earlier of our inspection or 15 days after harvest of the balance of the unit is completed.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:
(1) For any optional units, we will combine all optional units for which such production records were not provided; or
(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.
(b) In the event of loss or damage covered by this policy, we will settle your claim using the following procedures:
(1) Basic and Optional units: We will settle your claim on each basic or optional unit by:
(i) Multiplying the per-acre revenue guarantee by the number of insured acres in the unit;
(ii) Multiplying the fall harvest price by the production to count for each unit (see sections 11(c) through (e));
(iii) Subtracting the result of section 11(b)(1)(ii) from the result of section 11(b)(1)(i); and
(iv) Multiplying the results of section 11(b)(2)(iii) by your share.
If the result of section 11(b)(1)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result of section 11(b)(1)(iv) is less than or equal to zero, no indemnity will be paid.
(2) Enterprise units: We will settle your claim on an enterprise unit by:
(i) Multiplying the per-acre revenue guarantee by the number of insured acres in the enterprise unit;
(ii) Multiplying the applicable fall harvest price by the production to count for the enterprise unit;
(iii) Subtracting the result of section 11(b)(2)(ii) from the result of section 11(b)(2)(i); and
(iv) Multiplying the result in section 11(b)(2)(iii) by your share.
If the result of section 11(b)(2)(iv) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.
(3) Whole-farm units: We will settle your claim on a whole-farm unit by:
(i) Multiplying the per-acre revenue guarantee for each crop by the number of insured acres planted to each crop;
(ii) Totaling the results of section 11(b)(3)(i);
(iii) Multiplying the applicable fall harvest price for each crop by the production to count for each crop;
(iv) Totaling the results of section 11(b)(3)(iii);
(v) Subtracting the result of section 11(b)(3)(iv) from the result of section 11(b)(3)(ii); and
(vi) Multiplying the result of section 11(b)(3)(v) by your share.
If the result of section 11(b)(2)(vi) is greater than zero, an indemnity equal to that result will be paid to you. If the result is less than or equal to zero, no indemnity will be paid.
(c) The total production to count (in pounds) from all insurable acreage on the unit will include:
(1) All appraised production as follows:
(i) Not less than the per-acre revenue guarantee will be used for such acreage:
(A) That is abandoned;
(B) That is put to another use without our consent;
(C) That is damaged solely by uninsured causes; or
(D) For which you fail to provide acceptable production records;
(ii) Production lost due to uninsured causes;
(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 11(d)); and
(iv) Potential production on insured acreage you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon

such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature sunflower seed may be adjusted for excess moisture and quality deficiencies. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 10 percent. We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality result in

(A) Oil type sunflower seed not meeting the grade requirements for U.S. No. 2 (grades U.S. sample grade) because of test weight, kernel damage (excluding heat damage), or a musty, sour or commercially objectionable foreign odor; or

(B) Non-oil type sunflower seed having a test weight below 22 pounds per bushel or kernel damage (excluding heat damage) in excess of five percent (5%) or a musty, sour or commercially objectionable foreign odor; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions and which occurs within the insurance period;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iii) The samples are analyzed by a grader licensed to grade sunflower seed under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by our loss adjuster.

(4) Sunflower production eligible for quality adjustment, as specified in sections 11(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

(e) Any production harvested from plants growing in the sunflowers may be counted as sunflower seed on a weight basis.

12. Prevented Planting

Your prevented planting coverage will be 60 percent of your per-acre revenue guarantee for timely planted acreage. You may increase your prevented planting coverage to a level specified in the actuarial documents by paying an additional premium.

Signed in Washington, DC, on December 28, 1999.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

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## Part III

# Department of Agriculture

### Agricultural Marketing Service

**7 CFR Part 201**

**Amendments to Regulations Under the Federal Seed Act; Final Rule**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 201**

**[No. LS–94–012]**

**RIN 0581–AB55**

## Amendments to Regulations Under the Federal Seed Act

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Agricultural Marketing Service (AMS) is revising the Federal Seed Act (FSA) regulations. The rule designates seeds of species listed in the Federal Noxious Weed Act (FNWA), except for the *Cuscuta* species as, noxious and prohibits the shipment of agricultural and vegetable seeds containing them, adds two kinds to the list of those subject to the FSA, updates the seed testing regulations, updates the seed certification regulations, and corrects several minor errors. The noxious-weed seeds are being added to help prevent the spread of these highly destructive weeds. Adding two kinds, creeping foxtail and flatpea, make them subject to the same truthful labeling requirements as other seeds moving in interstate commerce. Updating the seed testing and seed certification regulations incorporates the latest in seed testing and seed certification knowledge and prevents potential conflicts with State regulations.

**EFFECTIVE DATE:** Effective February 10, 2000 except for § 201.16(b) which is effective January 11, 2001.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, Room 209, Building 306, BARC–E., Beltsville, Maryland 20705–2325 Telephone (301) 504–9430, FAX (301) 504–5454.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

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

### Executive Order 12988

The final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

There are no administrative procedures that must be exhausted prior to judicial challenge to the provision of this rule.

### Regulatory Flexibility Act and Paperwork Reduction Act

The Administrator, AMS, has certified that this action will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act. Many small entities ship seed in interstate commerce. There are about 3,000 interstate shippers. We estimate that about ninety percent of the interstate shippers are small entities. However, all shippers including small entities, usually package and label seed to comply with both the FSA and State seed laws. The testing requirements of the State laws are similar to those of the FSA. Therefore, a single test can give information to comply with both State seed laws and the FSA. Changes to the seed testing and seed certification regulations will reconcile State and Federal seed testing and seed certification procedures. Using similar testing procedures reduces the burden on small entities shipping seed in interstate commerce because a test used for interstate commerce could also be used in intrastate commerce. Adding a list of seeds that are noxious in seed shipped in interstate commerce will add some costs for seed testing. We estimate that the total cost to the industry for testing and labeling will be approximately $7,500. ((Assuming a $26.00 per hour service testing fee (based on a recent survey by the New York State Seed Laboratory) and 285 hours in connection with testing and labeling.)) In the proposal, we estimated that the total cost to the industry for testing and labeling would be approximately $12,000. That estimate assumed a $40.40 service testing fee (7 CFR part 75) for AMS and 285 hours in connection with testing and labeling. However, if we take into account an average of seed testing laboratory fees as reflected in the recent survey, the overall cost would be less. The survey, as conducted by the New York State Seed Laboratory, was a sampling of commercial, State, Federal, and university laboratories. The added cost will be small because all seed must be examined for noxious-weed seed to comply with other sections of the FSA as well as state laws. The FSA requires that seed shipped in interstate commerce comply with the noxious-weed seed requirements of that State into which the seed is shipped. Therefore, any examination for the weed seeds being added will be done when the seed is examined for State noxious-weed seeds.

Also, much of the seed handled by small entities is already tested by their suppliers. There will be no effect on the competitive position of small entities in relation to larger entities since both would have to comply with the same regulations.

We estimate a small increase to the previously approved information collection requirements of the FSA regulations. When seed is tested, the test made for the added noxious-weed seeds will be made concurrently with the test to determine compliance with the FSA requirements that seed is labeled to comply with the noxious-weed seed laws and regulations of the state into which the seed is being shipped. We estimate that the additional time required for testing will average no more than five minutes per test and that about one fourth of all shipments will be tested. Therefore, the time for testing and labeling seed previously estimated at 2.5 hours per response will be 2.52 hours per response increasing the total burden by 285 hours.

*Title:* Federal Seed Act Program.

*OMB Number:* 0581–0026.

*Expiration Date of Approval:* July 30, 2001.

*Type of Request:* Revision of currently approved information collection.

*Abstract:* This information collection is necessary for the conduct of the FSA program with respect to certain testing, labeling, and recordkeeping requirements of agricultural and vegetable seeds.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 2.08 hours per response.

*Respondents:* Interstate shippers seed.

*Estimated Number of Respondents:* 3,208.

*Estimated Number of Responses per Respondent:* 5.56.

*Estimated Total Annual Burden on Respondents:* 37,078.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this final rule were submitted to OMB for approval. The information collection requirements have been approved by OMB and assigned OMB number 0581–0026.

### Background

The FSA, Title II (7 U.S.C. 1571–1575) regulates agricultural and vegetable planting seed in interstate commerce. Agricultural and vegetable seeds shipped in interstate commerce must be labeled with certain quality information. The labeling information and any

advertisements pertaining to the seed must be truthful. Also, the FSA prohibits the shipment of agricultural seeds containing noxious-weed seeds that are not labeled according to, or exceed the allowable rate established by state law.

*Summary of Public Comment*

A notice of proposed rulemaking was published in the **Federal Register** (63 FR 55964) on October 20, 1998. Interested persons were invited to submit comments until December 21, 1998. A hearing on the proposed rule was held in Washington, DC on December 2, 1998. At that time interested parties were given an opportunity to present views concerning the proposal. No one commented at the hearing. A document extending the comment period for the proposed rule was published in the **Federal Register** on December 24, 1998. Comments were to be received on or before February 4, 1999. Six written comments were received.

*Noxious-Weed Seeds*

We received four comments concerning adding the weed species in the FNWA of 1974 (7 U.S.C. 2801 *et seq.*) as noxious-weed seeds under the FSA by revising § 201.16. Two commenters supported this action. One commenter stated that including *Cuscuta* species as noxious-weed seeds in the FSA could lead to seed shipments containing small amounts of seeds of *Cuscuta* spp. already established in the United States to be in violation of the FSA even though the seed shipments were in compliance with State seed laws. This comment is relevant because seeds of most *Cuscuta* species are indistinguishable and therefore it would be rarely possible to determine if a dodder seed is from a *Cuscuta* species listed in the FNWA or from a *Cuscuta* species already established in the United States. Since the Department determined that forty-five of forty-nine states that list *Cuscuta* spp. as noxious weeds allow more seeds than the proposed tolerance of two, §§ 201.16(b)(2) and 201.16(c) in the proposed rule were removed from the final rule.

One commenter suggested that seeds of species listed in the FNWA should not be added to the FSA as noxious-weed seeds until risk assessments and questions of agricultural, economic, and scientific merit of each species are addressed. The species listed as noxious weeds in the FNWA were studied, evaluated, and approved for addition to the FNWA by a USDA formed committee (Technical Committee to Evaluate Noxious Weeds) designated for that purpose. Before noxious weeds were added to the FNWA, it was demonstrated that they constituted a serious threat to the United States and were of foreign origin and did not occur in the United States or more than a few states. Further, an Executive Order on Invasive Species, dated February 3, 1999, (64 FR 6183) cites the FNWA of 1974 as amended and other laws and pertinent statutes, for the purpose of preventing the introduction of invasive species and providing for their control. By recognizing the Federally listed noxious weeds under the FNWA as noxious in the FSA, both the States and AMS can take action to prevent their spread on those rare occasions that they are found in planting seed. Also, the economic impact of this rule has been reviewed, as appropriate, under Executive Order 12866 and the Regulatory Flexibility Act as previously discussed. Therefore, § 201.16(b)(1) of the proposed rule has been combined with § 201.16(b) in the final rule.

A commenter was critical of § 201.16(b)(1) of the proposed rule because no tolerances would be applied to seeds of weed species listed under the FNWA when found in noxious-weed seed inspections. The commenter correctly pointed out that the seed industry is accustomed to tolerances being applied to seed that is shipped interstate and inspected by regulatory officials. However, because these noxious-weeds are highly destructive and the objective is to prevent their introduction and spread, we believe that a tolerance should not be applied to seeds of noxious weeds listed under the FNWA. Therefore, § 201.16(b) of the final rule was not revised to provide for the application of tolerances.

One commenter questioned whether individual State noxious-weed seed regulations or the proposed FSA regulations, as they pertain to *Cuscuta* species, would take precedence. This potential conflict between State and FSA regulations was resolved by deleting §§ 201.16(b)(2) and 201.16(c) from the final rule.

One commenter expressed concern that adding the weed species listed in the FNWA as noxious weeds to the FSA would not prevent seeds of these weed species from being sold as ornamentals. Seeds of these weed species would be considered noxious weeds only when they are found in the kinds listed as ''agricultural seeds'' in § 201.1(h) or as ''vegetable seeds'' in § 201.1(i). However, a permit must be received from the Animal and Plant Health Inspection Service (APHIS) before seeds of weed species listed in the FNWA can be moved interstate. The commenter also stated that an improved variety of *Pennisetum clandestinum,* a species listed in the FNWA, has been grown for commercial purposes. APHIS has issued permits for the exportation of seeds of *Pennisetum clandestinum,* and as described previously in this docket, an APHIS permit would also be required for domestic sales.

One commenter urged the Department to provide additional time for comments on adding the species listed in the FNWA to the FSA regulations. The Department feels that sufficient time has been provided for comment since the original 60 day comment period was extended for an additional 45 days. The concerns expressed by one commenter about the impact of adding the species listed in the FNWA to the FSA regulations are addressed in prior analysis in the docket.

A commenter suggested that a significant amount of time should elapse before § 201.16(b) of the final rule becomes effective, so that seed suppliers may ensure that their businesses are in compliance and seed already packaged and labeled can be distributed. Taking into account this comment, we are establishing an effective date for § 201.16(b) of one year after the final rule is published in the **Federal Register**.

The Department proposed that the scientific names for noxious-weed seeds for the District of Columbia in § 201.17 be updated to names currently recognized by the scientific community. No comments were received, consequently the changes in this section are incorporated into the final rule as they were proposed.

*Additional Kinds, Names*

The Department proposed to add creeping foxtail and flatpea to the list of agricultural seeds subject to the FSA. No comments were received, consequently these additions to § 201.2(h) and § 201.46, Table 1 were incorporated into the final rule as they were proposed.

The Department proposed to define ''Canola'' and allow the use of ''Canola'' as a synonym for varieties of four kinds of rape seed when the seed is low in erucic acid and glucosinolates. Two commenters opposed allowing the use of ''Canola'' as proposed. Further investigation determined that the amounts of seed designated for the purity test and noxious-weed seed examination and germination test conditions are not the same in the FSA for the four kinds for which the synonym ''Canola'' was proposed. The Department determined that seed labeled ''Canola'' could not be tested

because the kind would not be known and there are no testing procedures for ''Canola'' under the FSA. Therefore, the proposed changes to § 201.2(h) that define ''Canola'' and allow the use of ''Canola'' as a synonym were removed.

The Department proposed to amend § 201.2(i) by adding the new terms ''Southernpea (see Cowpea)'' and ''Favabean (see Broadbean)''. No comments were received, therefore these additions are incorporated in the final rule as they were proposed.

*Seed Testing*

The Department proposed to update § 201.46 and § 201.58 to include testing procedures for creeping foxtail and flatpea; make changes to § 201.46 to clarify how to calculate the weight of the purity working sample for mixtures of coated seed; revise the procedures for rounding purity percentages in § 201.47(c); amend § 201.50 and § 201.51 to make the purity separation of capsules of *Juncus* spp. consistent with other weed species; change § 201.55 to eliminate germination results based on three replicates of 100 seeds each; add additional instructions for germinating flatpea in § 201.57; amend § 201.58 to define soil; add germination test procedures for creeping foxtail and flatpea and revise test procedures for buffalograss, crambe, crownvetch, and sunflower in § 201.58, Table 2; revise § 201.60 so that chaffy seed tolerances are applicable to all ''foxtails'; amend § 201.65 to clarify the term ''X''. One commenter recommended adding a germination procedure to § 201.58, Table 2 for testing crownvetch samples with high percentages of hard or swollen seeds. This recommendation was not incorporated into the final rule because § 201.57 provides for extending the length of the germination test for samples of legumes, such as crownvetch, with hard or swollen seeds or seeds that have just started to germinate. Accordingly this suggestion was not adopted. The changes to these sections, as published in the proposed rule, are incorporated in the final rule.

*Seed Certification*

We received no comments on the proposals to update § 201.74, § 201.75, and § 201.76, Table 5 of the Certified Seed regulations so they are consistent with the standards and procedures of the Association of Official Seed Certifying Agencies and thus remove potential conflicts between the FSA regulations and States standards and procedures. Therefore, the changes to these sections as published in the proposed rule are incorporated in the final rule.

*Corrections*

No comments on the proposals to correct several punctuation and other errors in § 201.2, § 201.47a, § 201.56–5, § 201.56–6, § 201.76 were received, consequently the changes in these sections are incorporated in the final rule as they were proposed.

**List of Subjects in 7 CFR Part 201**

Advertising, Agricultural commodities, Imports, Labeling, Reporting and recordkeeping requirements, Seeds, Vegetables.

For reason set forth in the preamble, 7 CFR Part 201 be amended as follows:

## PART 201—FEDERAL SEED ACT REGULATIONS

1. The authority citation for part 201 would continue to read as follows:

**Authority:** 7 U.S.C. 1592.

2. Section 201.2 is amended as follows:

A. In paragraph (h), remove the period at the end of the term ''Bluestem, yellow—*Bothriochloa ischaemum* (L.) Keng'';

B. In paragraph (h), remove the term ''Meadow foxtail—*Alopecurus pratensis* L.'';

C. In paragraph (c), add a period at the end of the term ''Smilo—*Piptatherum miliaceum* (L.) Coss'';

D. In paragraph (h), add new terms in alphabetical order;

E. In paragraph (i), add new terms in alphabetical order. The additions read as follows:

### § 201.2 Terms defined.

* * * * *

(h) * * *

Flatpea—*Lathyrus sylvestris* L.

* * * * *

Foxtail, creeping—*Alopecurus arundinaceus* Poir.

Foxtail, meadow—*Alopecurus pratensis* L.

* * * * *

(i) * * *

Favabean (see Broadbean)

* * * * *

Southernpea (see Cowpea)

* * * * *

3. Section 201.16 is revised to read as follows:

### § 201.16 Noxious-weed seeds.

(a) Except for those kinds of noxious-weed seeds shown in paragraph (b) of this section, the names of the kinds of noxious-weed seeds and the rate of occurrence of each shall be expressed in the label in accordance with, and the rate of occurrence shall not exceed the rate permitted by, the law and regulations of the state into which the seed is offered for transportation or is transported. If in the course of such transportation, or thereafter, the seed is diverted to another State of destination, the person or persons responsible for such diversion shall cause the seed to be relabeled with respect to the noxious-weed seed content, if necessary to conform to the laws and regulations of the State into which the seed is diverted.

(b) Seeds or bulblets of the following plants shall be considered noxious-weed seeds in agricultural and vegetable seeds transported or delivered for transportation in interstate commerce (including Puerto Rico, Guam, and the District of Columbia). Agricultural or vegetable seed containing seeds or bulblets of these kinds shall not be transported or delivered for transportation in interstate commerce. Noxious-weed seeds include the following species on which no tolerance will be applied:

*Aeginetia* spp.
*Ageratina adenophora* (Spreng.) King and H.E. Robins.
*Alectra* spp.
*Alternanthera sessilis* (L.) DC.
*Asphodelus fistulosus* L.
*Avena sterilis* L. (including *Avena ludoviciana* Dur.)
*Azolla pinnata* R. Br.
*Borreria alata* (Aubl.) DC.
*Carthamus oxyacantha* M. Bieb.
*Chrysopogon aciculatus* (Retz.) Trin.
*Commelina benghalensis* L.
*Crupina vulgaris* Cass.
*Digitaria abyssinica Stapf.(=D. scalarum* (Schweinf.) Chiov.)
*Digitaria velutina* (Forsk.) Beauv.
*Drymaria arenarioides* Roem. and Schult.
*Eichornia azurea* (Sw.) Kunth
*Emex australis* Steinh.
*Emex spinosa* (L.) Campd.
*Galega officinalis* L.
*Heracleum mantegazzianum* Sommier & Levier
*Hydrilla verticillata* (L. f.) Royle
*Hygrophila polysperma* T. Anders.
*Imperata brasiliensis* Trin.
*Imperata cylindrica* (L.) Raeusch.
*Ipomoea aquatica* Forsk.
*Ipomoea triloba* L.
*Ischaemum rugosum* Salisb.
*Lagarosiphon major* (Ridley) Moss
*Leptochloa chinensis* (L.) Nees
*Limnophila sessiliflora* (Vahl) Blume
*Lycium ferocissimum* Miers
*Melaleuca quinquenervia* (Cav.) Blake
*Melastoma malabathricum* L.
*Mikania cordata* (Burm. f.) B.L. Robins.
*Mikania micrantha* H.B.K.
*Mimosa invisa* Mart.
*Mimosa pigra* L. var. *pigra*
*Monochoria hastata* (L.) Sloms-Laub.
*Monochoria vaginalis* (Burm. f.) K.B. Presl
*Nassella trichotoma* (Nees) Arechavaleta
*Opuntia aurantiaca* Lindl.

*Orobanche* spp.
*Oryza longistaminata* A. Cheval. and Roehr.
*Oryza punctata* Steud.
*Oryza rufipogon* Griff.
*Ottelia alismoides* (L.) Pers.
*Paspalum scrobiculatum* L.
*Pennisetum clandestinum* Chiov.
*Pennisetum macrourum* Trin.
*Pennisetum pedicellatum* Trin.
*Pennisetum polystachion* (L.) Schult.
*Prosopis alapataco* R.A. Philippi
*Prosopis argentina* Burkart
*Prosopis articulata* S. Watson
*Prosopis burkartii* Munoz
*Prosopis caldenia* Burkart
*Prosopis calingastana* Burkart
*Prosopis campestris* Griseb.
*Prosopis castellanosii* Burkart
*Prosopis denudans* Benth.
*Prosopis elata* (Burkart) Burkart
*Prosopis farcta* (Russell) Macbride
*Prosopis ferox* Griseb.
*Prosopis fiebrigii* Harms
*Prosopis hassleri* Harms
*Prosopis humilis* Hook. and Arn.
*Prosopis kuntzei* Harms
*Prosopis pallida* (Willd.) H.B.K.
*Prosopis palmeri* S. Watson
*Prosopis reptans* Benth. var. *reptans*
*Prosopis rojasiana* Burkart
*Prosopis ruizlealii* Burkart
*Prosopis ruscifolia* Griseb.
*Prosopis sericantha* Hook. and Arn.
*Prosopis strombulifera* (Lam.) Benth.
*Prosopis torquata* (Lagasca) DC.
*Rottboellia cochinchinensis* (Lour.) Clayton (=*R. exaltata (L.) L.f.)*
*Rubus fruticosus* L. (complex)
*Rubus moluccanus* L.
*Saccharum spontaneum* L.
*Sagittaria sagittifolia* L.
*Salsola vermiculata* L.
*Salvinia auriculata* Aubl.
*Salvinia biloba* Raddi
*Salvinia herzogii* de la Sota
*Salvinia molesta* D.S. Mitchell
*Setaria pallide-fusca* (Schumach.) Stapf and Hubb.
*Solanum torvum* Sw.
*Solanum viarum* Dunal
*Sparaganium erectum* L.
*Striga* spp.
*Tridax procumbens* L.
*Urochloa panicoides* Beauv.

4. Section 201.17 is revised to read as follows:

**§ 201.17 Noxious-weed seeds in the District of Columbia.**

(a) Noxious-weed seeds in the District of Columbia are: Quackgrass (*Elytrigia repens*), Canada thistle (*Cirsium arvense*), field bindweed (*Convolvulus arvensis*), bermudagrass (*Cynodon dactylon*), giant bermudagrass (*Cynodon dactylon* var. *aridus*), annual bluegrass (*Poa annua*), and wild garlic or wild onion (*Allium canadense* or *Allium vineale*). The name and number per pound of each kind of such noxious-weed seeds present shall be stated on the label.

(b) [Reserved]

5. In § 201.46, paragraph (d)(2)(iii) is revised and Table 1 is amended under Agricultural Seed by removing the entry ''Meadow foxtail'' and adding new entries ''Flatpea'', ''Foxtail, creeping'', and ''Foxtail, meadow'' in alphabetical order to read as follows:

**§ 201.46 Weight of working sample.**

* * * * *

(d) * * *

(2) * * *

(iii) The weight of the working sample shall be the product of the weight calculated in paragraph (d)(2)(i) of this section multiplied by 100 percent, divided by 100 percent minus the percentage of coating material calculated in paragraph (d)(2)(ii) of this section.

TABLE 1.—WEIGHT OF WORKING SAMPLE

| Name of seed | Minimum weight for purity analysis (grams) | Minimum weight for noxious-weed seed examination (grams) | Approximate number of seeds per gram |
|---|---|---|---|
| Agricultural Seed | | | |
| * * * * * | | * | * |
| Flatpea | 100 | 500 | 25 |
| * * * * * | | * | * |
| Foxtail, creeping | 1.5 | 15 | 1,736 |
| Foxtail, meadow | 3 | 30 | 893 |
| * * * * * | | * | * |

6. In § 201.47, paragraphs (c)(3) and (c)(4) are added to read as follows:

**§ 201.47 Separation.**

* * * * *

(c) * * *

(3) When rounding off the calculated percentages of each component to the second decimal place, round down if the third decimal place is 4 or less and round up if the third decimal place is 5 or more, except that if any component is determined to be present in any amount calculated to be less than 0.015 percent, then that component shall be reported as 0.01 percent. If any component is not found in the purity analysis, then that component shall be reported as 0.00 percent.

(4) The total percentage of all components shall be 100.00 percent. If the total does not equal 100.00 percent (e.g. 99.99 percent or 100.01 percent), then add to or subtract from the component with the largest value (usually the pure seed component).

* * * * *

**§ 201.47a [Amended]**

7. Section 201.47a, paragraph (b)(4)(ii) is amended by adding the word ''in'' following the word ''internodes'.

8. In § 201.50, paragraph (b) is removed and paragraph (c) is redesignated as paragraph (b) and paragraph (a) is revised to read as follows:

**§ 201.50 Weed seed.**

* * * * *

(a) The individual seeds are to be removed from fruiting structures such as pods and heads. The seeds are classified as weed seed and the remaining fruiting structures classified as inert matter.

* * * * *

**§ 201.51 [Amended]**

9. In § 201.51, paragraph (b)(9) is removed.

10. In § 201.55, the table in paragraph (a) is revised and the Explanatory Note immediately following paragraph (e) is removed and a Note to § 201.55 is added to read as follows:

**§ 201.55 Retests.**

(a) * * *

* * * * *

TABLE OF MAXIMUM TOLERATED RANGES BETWEEN 100-SEED REPLICATES FOR USE IN CONNECTION WITH § 201.55(A)

| Average percent germinations | Maximum allowed between replicates | |
|---|---|---|
| | 4 replicates | 2 replicates |
| 99 | 2 | 5 | |
| 98 | 3 | 6 | |
| 97 | 4 | 7 | 6 |
| 96 | 5 | 8 | 6 |
| 95 | 6 | 9 | 7 |
| 94 | 7 | 10 | 8 |
| 93 | 8 | 10 | 8 |
| 92 | 9 | 11 | 9 |
| 91 | 10 | 11 | 9 |
| 90 | 11 | 12 | 9 |
| 89 | 12 | 12 | 10 |
| 88 | 13 | 13 | 10 |
| 87 | 14 | 13 | 11 |
| 86 | 15 | 14 | 11 |
| 85 | 16 | 14 | 11 |
| 84 | 17 | 14 | 11 |
| 83 | 18 | 15 | 12 |
| 82 | 19 | 15 | 12 |
| 81 | 20 | 15 | 12 |
| 80 | 21 | 16 | 13 |
| 79 | 22 | 16 | 13 |
| 78 | 23 | 16 | 13 |
| 77 | 24 | 17 | 13 |
| 76 | 25 | 17 | 13 |
| 75 | 26 | 17 | 14 |
| 74 | 27 | 17 | 14 |
| 73 | 28 | 17 | 14 |
| 72 | 29 | 18 | 14 |
| 71 | 30 | 18 | 14 |
| 70 | 31 | 18 | 14 |
| 69 | 32 | 18 | 14 |
| 68 | 33 | 18 | 15 |
| 67 | 34 | 18 | 15 |
| 66 | 35 | 19 | 15 |
| 65 | 36 | 19 | 15 |
| 64 | 37 | 19 | 15 |
| 63 | 38 | 19 | 15 |
| 62 | 38 | 19 | 15 |
| 61 | 40 | 19 | 15 |
| 60 | 41 | 19 | 15 |
| 59 | 42 | 19 | 15 |
| 58 | 43 | 19 | 15 |
| 57 | 44 | 19 | 15 |
| 56 | 45 | 19 | 15 |
| 55 | 46 | 20 | 15 |
| 54 | 47 | 20 | 16 |
| 53 | 48 | 20 | 16 |
| 52 | 48 | 20 | 16 |
| 51 | 50 | 20 | 16 |

* * * * *

**Note to § 201.55:** To find the maximum tolerated range, compute the average percentage of all 100 seed replicates of a given test, rounding off the result to the nearest whole number. The germination is found in the first two columns of the table. When the differences between highest and lowest replicates do not exceed the corresponding values found in the ''4 replicates'' column, no additional testing is required. However, if the differences exceed the values in the ''4 replicates'' column, retesting is necessary.

**§ 201.56–5 [Amended]**

11. In § 201.56–5, paragraph (e)(1)(i) is amended by removing ''Hypegeal'' and adding ''Hypogeal'' in its place.

**§ 201.56–6 [Amended]**

12. In § 201.56–6, paragraph (c)(2)(i) the period following the word ''Cotyledons'' is removed and a colon is added in its place and paragraph (c)(2)(ii) is amended by removing the period following ''Epicotyl'' and adding a colon in its place.

13. In § 201.57, a sentence is added at the end of the section to read as follows:

**§ 201.57 Hard seeds.**

* * * For flatpea, continue the swollen seed in test for 14 days when germinating at 15–25°C or for 10 days when germinating at 20°C.

14. Section 201.58 is amended as follows:

A. In paragraph (a)(7), immediately following the words ''S = sand or soil'' the words ''where soil is an artificial planting mix of shredded peat moss, vermiculite, and perlite'' are added; and

B. In Table 2, under Agricultural Seed, the entry ''Meadow foxtail'' is removed, the entries for ''Buffalograss'', ''Crambe'', ''Crownvetch'', and ''Sunflower'' are revised and ''Flatpea'', ''Foxtail, creeping'', and ''Foxtail, meadow'' are added to read as follows:

**§ 201.58 Substrata, temperature, duration of test, and certain other specific directions for testing for germination and hard seed.**

TABLE 2.—GERMINATION REQUIREMENTS FOR INDICATED KINDS

| Name of seed | Substrata | Temperature (°C) | First count days | Final count days | Additional directions | |
|---|---|---|---|---|---|---|
| | | | | | Specific requirements | Fresh and dormant seed |
| **AGRICULTURAL SEED** | | | | | | |
| * | * | * | * | * | * | * |
| Buffalograss: | | | | | | |
| (Burs) | P,TB,TS | 20–35 | 7 | 14 | Light;$KNO_3$ | Prechill at 5° C for 2 weeks; See § 201.57a. |
| (Caryopses) | P | 20–35 | 5 | 14 | Light;$KNO_3$. | |
| * | * | * | * | * | * | * |
| Crambe | T,B | 20;25 | 4 | 7 | | $KNO_3$ |
| * | * | * | * | * | * | * |
| Crownvetch | B,T,TB,S | 20 | 7 | [1] 14 | | |
| * | * | * | * | * | * | * |
| Flatpea | T | 15–25;20 | 14 | [1] 28 | | |
| * | * | * | * | * | * | * |
| Foxtail, creeping | P | 15–30 | 7 | 21 | Light;$KNO_3$. | |
| Foxtail, meadow | P | 20–30 | 7 | 14 | Light. | |
| * | * | * | * | * | * | * |
| Sunflower | T,B | 20 | 4 | 7 | | |
| * | * | * | * | * | * | * |

[1] Hard seeds may be present (See § 201.57)

* * * * * * *

**§ 201.60 [Amended]**

15. Section 201.60 is amended in paragraph (a)(1) by removing the words ''meadow foxtail'' and adding in their place the word ''foxtails''.

16. In § 201.65, the text preceding the table is revised and the heading in the first column of the table is revised to read as follows:

**§ 201.65 Noxious-weed seeds in interstate commerce.**

Tolerances for rates of occurrence of noxious-weed seeds shall be recognized and shall be applied to the number of noxious-weed seeds found by analysis in the quantity of seed specified for noxious-weed seed determination in § 201.46, except as provided in § 201.16(b). Applicable tolerances are calculated by the formula, $Y=X+1+1.96\sqrt{X}$, where X is the number of seeds represented by the label or test and Y is the maximum number within tolerance.[1] Some tolerances are listed in the table. The number found as represented by the label or test (Column X) will be considered within tolerance if not more than the corresponding number in Column Y are found by analysis in the administration of the Act. For numbers of seeds greater than those in the table and in case of additional or more extensive analyses, a tolerance based on a degree of certainty of 5 percent (P=0.05) will be recognized.

| Number represented by the label or test (X) | * * * | * * * | * * * |
|---|---|---|---|
| * | * | * | * |

17. In § 201.74, paragraph (a) is revised to read as follows:

**§ 201.74 Labeling all classes of certified seed.**

(a) All classes of certified seed when offered for sale shall have an official certification label affixed to each container clearly identifying the certifying agency, the lot number or other identification, the variety name (if certified as to variety), and the kind and class of seed. Except that for seed

[1] Rates per pound or ounce must be converted to the equivalent number of seeds found in § 201.46, Table 1, Minimum weight for noxious-weed seed examination (grams).

mixtures and seed in containers of 5 pounds or less, the certification labels need not bear the name of the kind or kind and variety of each component, provided the name of each kind or kind and variety is shown on the analysis label.

* * * * *

18. In § 201.75, paragraph (c) is revised to read as follows:

**§ 201.75 Interagency certification.**

* * * * *

(c) Each label used in interagency certification shall be serially numbered or carry the certification identity number and clearly identify the certifying agencies involved, the variety (if certified as to variety), and the kind and class of seed. Except that for seed mixtures and seed in containers of 5 pounds or less, the certification labels need not bear the name of the kind or kind and variety of each component, provided the name of each kind or kind and variety is shown on the analysis label.

19. In § 201.76, the text preceding the table is amended by removing the word ''contamination'' and adding in its place the word ''contaminating'', removing the word ''of'' immediately following the word ''varieties'' and adding in its place the word ''or'', and amending Table 5 under the entry ''corn'' by adding the word ''Foundation'' before the words ''Back cross'' and adding a new entry ''Hybrid (Chemically assisted)'' under the entry ''Cotton'', in alphabetical order to read as follows:

**§ 201.76 Minimum Land, Isolation, Field, and Seed Standards.**

* * * * *

TABLE 5

| Crop | Foundation | | | | Registered | | | | Certified | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Land | Isolation | Field | Seed | Land | Isolation | Field | Seed | Land | Isolation | Field | Seed |
| * | | * | | * | | * | | * | | * | | |
| Cotton | * * | * * | * * | * * | * * | * * | * * | * * | * * | * * | * * | * * |
| Hybrid (Chemically assisted) | 0 | [19]0 | 10,000 | 0.03 | | | | | 0 | 2,640 ([59]804.66m) | 1,320 | 0.1 |
| * | | * | | * | | * | | * | | * | | |

* * * * * * *

Dated: December 27, 1999.

**Barry L. Carpenter,**

*Deputy Administrator, Livestock and Seed Program.*

[FR Doc. 00–205 Filed 1–10–00; 8:45 am]

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## Part IV

# Department of Housing and Urban Development

**24 CFR Part 902**

**Public Housing Assessment System (PHAS) Amendments; Final Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 902**

**[Docket No. FR–4497–F–05]**

**RIN 2577–AC08**

## Public Housing Assessment System (PHAS) Amendments to the PHAS

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, and Office of the Director of the Real Estate Assessment Center, HUD.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Public Housing Assessment System (PHAS) regulation at 24 CFR part 902 to provide additional information and revise certain procedures and establish others for the assessment of the physical condition, financial health, management operations and resident services and satisfaction with PHA services in public housing, including the technical review of physical inspection results and resident survey results, and appeals of PHAS scores. The rule also implements certain recently enacted statutory amendments. The rule takes into consideration public comments received on the June 22, 1999, proposed rule, as well as additional input HUD sought on this proposed rule through informal meetings with representatives of PHAs and public housing residents, and an analysis of PHAS advisory scores issued in calendar years 1998 and 1999.

The purpose of the PHAS is to function as a management tool that effectively and fairly measures a PHA's performance based on standards that are objective, uniform and verifiable.

**DATES:** Effective Date: February 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** For further information contact the Real Estate Assessment Center (REAC), Attention: Wanda Funk, U.S. Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20024; telephone Technical Assistance Center at (888) 245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac.

**SUPPLEMENTARY INFORMATION:**

### I. Background

HUD's Public Housing Assessment System (PHAS) provides a significant oversight tool that effectively and fairly measures the performance of a public housing agency (PHA) based on standards that are objective and uniform. The final rule implementing the PHAS was issued September 1, 1998 (63 FR 46596), and became effective October 1, 1998. Although the PHAS regulation became effective October 1, 1998, the September 1, 1998, final rule provided a delayed implementation date for the PHAS. The final rule took into consideration that time was needed by PHAS to become familiar with and make the transition to this new assessment system. The September 1, 1998, final rule provided that the PHAS becomes effective for all PHAs with fiscal years ending on and after September 30, 1999, and at that time, will replace the previous assessment system, the Public Housing Management Assessment Program (PHMAP). (As will be discussed later in this preamble, the schedule for full implementation of PHAS for certain PHAS was revised by notice published on October 21, 1999 (64 FR 56676).)

Under the PHAS, HUD evaluates a PHA based on the following four indicators: (1) The physical condition of the PHA's public housing properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) the residents' assessment (through a resident survey) of the PHA's performance. HUD's Real Estate Assessment Center (REAC) is charged with the responsibility for assessing and scoring the performance of PHAs under the PHAS.

On June 22, 1999 (64 FR 33348), HUD published a rule that proposed to amend the PHAS regulation, codified at 24 CFR part 902, to provide additional information about the PHAS scoring systems, revise certain procedures and establish others for the assessment of the physical condition, financial health, management operations and resident service and satisfaction in public housing, including the technical review of physical inspection results and appeals of PHAS scores. The June 22, 1999, rule also proposed to implement certain recently enacted statutory amendments. Although the June 22, 1999, rule only proposed to implement certain provisions of the PHAS regulation, for the convenience of the reader, HUD published the entire PHAS regulation.

On June 23, 1999, HUD published, in connection with the PHAS rule, several notices that provide additional information on the scoring process under the PHAS. These notices pertain to: (1) the Physical Condition Scoring Process (64 FR 33650); (2) the Financial Condition Scoring Process (64 FR 33700); (3) the Management Operations Scoring Process (64 FR 33708); and the Resident Service and Satisfaction Survey Scoring Process (64 FR 33712). The publication of these notices on June 23, 1999, was the second publication for each of these notices. All four notices were previously published on May 13, 1999, at 64 FR 26166, 64 FR 26222, 64 FR 26232, and 64 FR 26236. At both the time of the May 1999 publication and the June 1999 publication, HUD solicited comments on the scoring systems for each of the four PHAS Indicators. The issues raised by the public commenters on the Notices are addressed in this rule.

Sections II and III of the preamble to the June 22, 1999, proposed rule provided a detailed discussion of the changes proposed to be made to the PHAS regulations (see 64 FR 33348 at 33349–3351). The preamble to this final rule does not repeat that discussion. HUD refers the reader back to the June 22, 1999, proposed rule for the discussion of proposed changes.

The public comment period on the PHAS proposed rule closed on August 23, 1999. At the close of the public comment period, HUD had received 29 comments. The commenters included housing authorities, national organizations representing housing authorities, a law firm and a national policy organization. All the comments were carefully considered in the development of this final rule.

In addition to solicitation of public comments through the rulemaking process, following the close of the public comment period on the June 22, 1999 proposed rule, HUD held several meetings with PHAs and their representatives to discuss the PHAS, implementation of the PHAS, and to seek additional suggestions and recommendations on changes and refinements. HUD also solicited additional input from residents, and continued its analysis of the PHAS advisory scores that was started during the one year transition period following the September 1, 1998 final rule. This additional consultation and continued analysis of the PHAS was in keeping with HUD's commitment, made during the 1998 rulemaking process, to work closely with PHAs and residents and their respective representatives in making the transition to the PHAS, to make any necessary refinements to the PHAS as a result of testing PHAS and consultation with PHAs and residents, and to make PHAS an effective and efficient assessment system. This additional consultation and analysis also satisfies direction provided to HUD

in the Conference Report to HUD's Fiscal Year 2000 Appropriations Act (Pub. L. 106–74, 113 Stat 1047, approved October 20, 1999). The conferees directed HUD to (1) delay implementation of the PHAS until, in consultation with PHAs and their designated representatives, HUD conducted a thorough analysis of all advisory PHAS assessments and reviewed the GAO's analysis of the PHAS, and (2) publish a new consensus-based PHAS final rule that incorporates any recommendations resulting from this consultation and review process. Although GAO's report on its analysis of the PHAS has not been issued in final form, HUD has had ongoing discussions with GAO on its analysis of the PHAS to date, and has considered this analysis in the development of the final rule. This final rule published today reflects input from this consultation and review process.

Section III of this preamble highlights the changes made at this final rule stage. Section IV of this preamble addresses the significant issues raised by the public commenters. Section V of this preamble addresses the comments received on the scoring process notices published on June 23, 1999. In the preamble to the June 22, 1999 proposed rule, HUD specifically solicited comments on certain issues. The comments received on these issues are provided in Section VI of the preamble to this final rule. Section VII addresses general comments directed to this rulemaking.

HUD notes that some of the comments from housing authorities raised issues very specific to their public housing developments or their advisory scores, and were not issues directed to the regulatory provisions in the proposed rule or the scoring systems described in the notices. Accordingly, these comments are not addressed in this rule. HUD, however, appreciates PHAs advising HUD of these specific concerns. HUD has followed up with several PHAs and will continue to follow-up with PHAs where there appear to be issues of discrepancies or problems with their physical inspections, or with other aspects of the PHAS particular to the PHA that commented.

Section II of this preamble, which immediately follows, provides a brief overview of the public comments received on the proposed rule.

## II. Overview of Public Comments on Proposed Rule

As noted earlier in this preamble, HUD received 29 comments on the PHAS proposed rule published on June 22, 1999. The majority of the commenters expressed their support for a uniform and objective system to assess a PHA's performance. The majority of the commenters, however, also believed that neither HUD nor PHAs were ready for full implementation of the PHAS commencing October 1, 1999, as originally scheduled. Many of the PHAs stated that they had only recently received their PHAS advisory scores, and needed additional time to review and comprehend these scores and prepare for implementation of PHAS. Other PHAs stated that HUD needed additional time to prepare for PHAS because PHAs were experiencing problems with electronic data submission to HUD, as required by the PHAS regulation, and problems were encountered with HUD systems. These commenters stated that neither HUD nor PHAs were ready for implementation of PHAS, and requested that HUD delay implementation of PHAS for another year. (Concerns about specific components of PHAS are addressed in Section IV of this preamble.)

HUD recognizes that with the start-up of any new system, problems will arise and aspects of the system will need to be fine-tuned. For these reasons, HUD provided, in its PHAS final rule issued on September 1, 1998, that PHAS would be implemented for PHAs with fiscal years ending on and after September 30, 1999. During the year of transition that preceded the scheduled implementation of PHAS (September 1998 to September 1999), HUD continued to examine its PHAS processes, tested PHAS systems, obtained feedback about the PHAS from PHAs and public housing residents, and, as a result, gained valuable information, which HUD has used to refine various elements of the PHAS. During this period, HUD also continued its PHAS education and training program for PHAs both through HUD's internet site and through training conducted across the nation. For these reasons, HUD does not believe delaying implementation of the PHAS for all PHAs for another full year is necessary. However, as HUD already has shown through publication of its October 21, 1999 notice, HUD agrees that additional time is necessary for certain PHAs, and additional time was provided to these PHAs.

HUD recognized that even with the one-year delayed implementation of PHAS, those PHAs which, under the September 1, 1998 final rule, will be the first PHAs to be issued PHAS scores (PHAs with fiscal years ending September 30, 1999 and December 31, 1999), additional time and/or additional assistance may be necessary to review advisory scores and prepare for compliance with the requirements of the new assessment system. For these PHAs, HUD already has advised that it will not issue PHAS scores for fiscal years ending September 30, 1999 and December 31, 1999. For these PHAs, HUD will issue a PHAS advisory scores for all four PHAS Indicators. For these PHAS, HUD also will issue an assessment score based only on the management component of the PHAS (subpart D of the part 902 regulation). Section III of this preamble discusses this assistance in more detail.

An additional concern raised by many PHA commenters is that a PHA's score under PHAS was very different from the score the PHA previously received under PHMAP, and PHAs were concerned about the discrepancy between the two scores. As HUD stated in the first PHAS proposed rule published on June 30, 1998, the PHAS is a different system from PHMAP. The PHAS was designed to assess more than the management operations of PHAs. The PHAS provides for an assessment of a PHA's physical condition, financial condition, management operations, and resident services and satisfaction, and the PHAS provides for this assessment to be done using, to the extent feasible, uniform and objective measures. With this broader assessment, a PHA's overall PHAS score will be different from the PHA's overall PHMAP score.

Another concern voiced by commenters is that the PHAS is not consistent with the flexibility provided to PHAs by the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998) (commonly referred to as the ''Public Housing Reform Act.''). This statute which amended the U.S. Housing Act of 1937 (the 1937 Act) made significant changes to HUD's public housing and Section 8 assistance programs. HUD agrees with the commenters that the Public Housing Reform Act increased PHA flexibility with respect to management and operations of their programs. The statute, however, did not relieve HUD of the obligation to fulfill its public trust responsibilities, which include the appropriate oversight of the entities receiving taxpayers funds to administer HUD programs. To the contrary, HUD believes that the Public Housing Reform Act strengthened HUD's oversight authority with respect to assessment of the performance of PHAs.

On the subject of improvement and refinement of the PHAS, HUD notes that the number of comments and concerns raised about PHAS were significantly less than those raised during the initial

rulemaking on the PHAS in 1998. HUD received 776 comments on the first PHAS proposed rule, published on July 30, 1998. Although 670 of the 776 comments were form letters, in reviewing the comments raised on the first PHAS proposed rule and this second proposed rule, HUD believes that it has made significant progress in addressing initial concerns about the PHAS, and both HUD and PHAs benefitted from the transition period that followed the September 1, 1998, final rule.

HUD recognizes that there is anxiety about significant change, and the PHAS represents a marked departure from the PHMAP. HUD believes, however, that the PHAS represents not only a marked departure from, but an improvement over, the PHMAP. HUD also acknowledges that the PHAS is not a perfect system, but no system is perfect. HUD expects that in the implementation of PHAS, problems will arise from time to time. Where those problems result from HUD's systems, HUD will work to quickly remedy the problems and correct any errors. Where the PHAS shows that problems are with the PHA in the performance of one or more areas, HUD will work with the PHA to remedy its problems, and, when necessary, take appropriate actions to ensure that PHAs are in compliance with applicable laws and regulations. At the foundation of PHAS is the goal to have all PHAs perform as high performers, which means PHAs are delivering decent, safe and affordable housing to their residents.

## III. Changes Made to the PHAS at the Final Rule Stage

*PHAS Scoring Notices*

The scoring notices for the four PHAS Indicators were published on June 23, 1999, and HUD solicited public comment on these notices. As a result of public comment and further consultation with PHAs and residents, several clarifying changes and improvements were made to the notices. Each notice will describe the changes made since the previous publication. These four notices published in conjunction with this final rule, to be published soon, establish the scoring processes for the four PHAS Indicators. These scoring notices will remain in place as published. As provided in the rule, in the event HUD decides to make any future substantive changes to these notices, they will be published for comment before being issued in final form.

Two scoring notices will be published for the Management Operations Indicator. As will be explained later in this preamble, this final rule revises the sub-indicators of the Management Operations Indicator. One Management Operations scoring notice establishes the scoring process for the Management Operations Indicator, before it was revised by this final rule, and the second notice establishes the scoring process for the revised Management Operations Indicator.

*PHAS Regulation*

In this final rule, HUD has made the following changes to the regulation:

• Section 902.1 (Purpose and General Description), HUD revised paragraph (e) that provided that a PHA may not change its fiscal year for the first three full fiscal years following October 1, 1998. HUD added language to this section to provide that a PHA may not change its fiscal year ''unless the change has been approved by HUD.'' The requirements under the new PHA Plan regulations, published as an interim rule on February 18, 1999 (64 FR 8170), and as a final rule on October 21, 1999 (64 FR 56844), may necessitate a change in fiscal years for some PHAs in future years. This language will provide HUD and the PHAs with the flexibility to address this matter if necessary.

• Section 902.5 (Applicability) was reorganized to include the discussion of the applicability of the PHAS regulation to Resident Management Corporations (RMCs) and Alternative Management Entities (AMEs) in one paragraph of this section, revised paragraph (a). Revised paragraph (a) recognizes that RMCs may now be direct recipients of certain HUD funds. Section 532 of the Public Housing Reform Act amended section 20 of the 1937 Act to provide, among other things that the Secretary shall directly provide assistance from the Operating and Capital Funds to a RMC under certain conditions. If the Secretary provides direct funding to RMCs (DF–RMCs) as provided by section 20, section 20 provides that the PHA shall not be responsible for the actions of the RMC.

Revised paragraph (a) provides that RMCs and DF–RMCs will be assessed and issued their own numeric scores under the PHAS based on the public housing developments or portions of public housing developments that they manage and the responsibilities they assume which can be scored under PHAS. Paragraph (a) provided that because the PHA and not the RMC/AME is ultimately responsible to HUD under the Annual Contributions Contract (ACC), the PHAS score of a PHA will be based on all of the developments covered by the ACC, including those with management operations assumed by an RMC or AME (including a court ordered receivership agreement, if applicable). Revised paragraph (a) includes this language but also provides that the PHAS score of a PHA will not be based on developments managed by a DF–RMC. Again, a PHA is not responsible for developments managed by a DF–RMC.

References in the PHAS regulation to PHAs include RMCs, unless otherwise stated. References in the PHAS regulation to RMCs include DF–RMCs, unless otherwise stated, and the PHAS regulation is applicable to RMCs, including DF–RMCs, unless otherwise stated.

Revised paragraph (a) also clarifies that AMEs are not issued PHAS scores. The performance of the AME contributes to the PHAS score of the PHA or the PHAs for which they assumed management responsibilities.

• In § 902.5, as part of the reorganization of this section, HUD amended paragraph (b) to reflect the following revised implementation schedule of PHAS for PHAs with fiscal years ending September 30, 1999, or December 31, 1999, that was published in the **Federal Register** on October 21, 1999. Section 902.5 provides that for PHAs with fiscal years ending September 30, 1999, or December 31, 1999, HUD will not issue PHAS scores for the fiscal years ending on these dates. For these PHAs, in lieu of a PHAS score, HUD will issue the following:

(1) *PHAS Advisory Score.* A PHA with a fiscal year ending September 30, 1999, or December 31, 1999, will be issued a PHAS advisory score for all four PHAS Indicators. The PHA must comply with the requirements of this part so that HUD may issue the advisory score. Physical inspections will be conducted using HUD uniform physical inspection protocol. For these PHAs to successfully make the transition to PHAS, they must comply with the requirements of PHAS and be assessed by HUD under the PHAS, if only on an advisory basis.

(2) *Management Assessment Score.* A PHA with a fiscal year ending September 30, 1999, or December 31, 1999, will receive an assessment score on the basis of HUD's assessment of the PHA's management operations in accordance with subpart D of part 902.

This section also provides that PHAs with fiscal years ending after December 31, 1999, will be issued PHAS scores.

• In § 902.7 (Definitions), HUD added a definition of ''Act'' to refer to the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), which is referenced throughout the rule.

• In § 902.7, HUD removed language from the definition of ''Alternative Management Entity (AME)'' which was duplicative of the language in § 902.5. HUD included in the definition of ''AME'' reference to an entity that has entered into a Regulatory and Operating Agreement with a PHA to clarify that the units managed by an AME under this agreement are covered by this rule.

• In § 902.7, in the definition of ''reduced actual vacancy rate within the previous three years,'' HUD clarifies that this rate only applies to PHAs with fiscal years ending September 30, 1999, and December 31, 1999. As provided in the PHAS Transition Notice, published on October 21, 1999, PHAs with fiscal years ending September 30, 1999, and December 31, 1999, will be assessed under requirements of part 902, subpart D, as in effect before issuance of this final rule.

• In § 902.7, HUD added definitions for ''unit months available'' and ''unit months leased.''

• In § 902.7, HUD removed the definition of ''vacancy loss'' and replaced this definition with one for ''occupancy loss.''

• In § 902.20 (Physical Condition Assessment), HUD clarifies that occupied units, which are the units subject to physical inspection are subject to inspection but not as dwelling units; for example, units used for daycare or for meetings (units used for such purposes are inspected as common areas).

• In § 902.23 (Physical Condition Standards), HUD added language to clarify that HUD's Uniform Physical Condition Standards are concerned with acceptable basic living conditions, not the decor or cosmetic appearance of the housing.

• In § 902.23, HUD added language to clarify that the five major inspectable areas may include the components for each area listed in this section, but need not, in each case, include all these components, or may include other components, similar to those listed, but unique to the housing being inspected, or referred to by another name other than the term referenced in the rule.

• In § 902.24 (Physical Inspection of Properties), HUD added language in the definition of ''score'' in paragraph (b) that highlights that PHAs are notified of health and safety deficiencies at the time of the physical inspection and the PHA is expected to promptly address all health and safety deficiencies.

• In § 902.25 (Physical Condition Scoring and Thresholds) HUD revised paragraph (b)(3)(i) to remove reference to outdated form HUD 50072, and to provide that the certification required under this paragraph shall be in the manner prescribed by HUD.

• In § 902.25, HUD added a new paragraph (c) that provides for adjustment of the physical condition score based on certain circumstances that include: (1) Inconsistencies between local code requirements and HUD's inspection protocol, or conditions which are permitted by variance or license, or which are preexisting physical features; (2) deficiencies in the physical condition of the property, the cause of which were beyond the control of the PHA (but the PHA is responsible for correction); and (3) modernization work in progress in a dwelling unit.

• In §§ 902.25, 902.35 (Financial Condition Scoring and Thresholds) and 902.45 (Management Operations Scoring and Threshold), HUD clarified that to receive a passing score under the Physical Condition, Financial Condition and Management Operations Indicators, a PHA must achieve a score of at least 18 points or 60 percent of the available points under these indicators.

• In § 902.26 (Physical Inspection Report), HUD added new subparagraphs to paragraph (a) to provide a process for correcting exigent health and safety deficiencies identified during the physical inspection and noted on the physical inspection report before the physical inspection report becomes final.

• In § 902.33 (Financial Reporting Requirements), HUD provides an extension of time to submit the required financial information. For the following four quarters—September 30, 1999, December 31, 1999, March 31, 2000 and June 30, 2000—PHAs will receive an automatic one month extension for the submission of their required financial information. For fiscal years ending after June 30, 2000, the final rule provides PHAs with a 15-day ''grace'' period beyond the submission due date. This same automatic one month extension is provided for the information required to be submitted under PHAS Indicator #3 (Management Operations) and Indicator #4 (Resident Services and Satisfaction) (see discussion of § 902.60 below).

• In § 902.33, HUD also revised paragraph (a) to add a new paragraph (3). New paragraph (3) provides under the scoring process for the Financial Condition Indicator, no points will be deducted under the Current Ratio or Monthly Expendable Fund Balance components for a PHA that has too high liquidity or reserves if the PHA has achieved at least 90 percent of the points available under the Physical Condition Indicator, and is not required to prepare a follow-up survey plan under the Resident Service and Satisfaction Indicator. For a PHA that has too high liquidity or reserves but does not meet the qualifications described in paragraph (a)(3)(i), the PHA may appeal point deductions under the Current Ratio or Monthly Expenditure Fund Balance components based on mitigating circumstances if the PHA's physical condition score is at least 60 percent of the total available points under the Physical Condition Indicator. The appeal may be made without regard to change in designation. The appeal process is similar to that provided for adjustments of scores under the Physical Condition Indicator.

• In § 902.35 (Financial Condition Scoring and Thresholds), HUD added a new paragraph (paragraph (a)(2)) to provide that PHAs with fiscal years ending September 30, 1999, December 31, 1999, March 31, 2000, and June 30, 2000, will receive an advisory score for HUD's financial assessment of the PHA's entity-wide operations. An entity-wide assessment includes financial information on other HUD funds, such as Section 8 or Community Development Block Grant funds (received from the CDBG grantee), as well as funds from non-HUD sources.

HUD's notice published on October 21, 1999, already notified PHAs with fiscal years ending September 30, 1999 or December 31, 1999 that they would receive a financial advisory score. Although the final rule extends the entity-wide advisory score to PHAs with fiscal years ending March 31, 2000, and June 30, 2000, the rule does not exempt these latter PHAs from a PHAS financial score.

PHAs with fiscal years ending March 31, 2000, and June 30, 2000, will receive a PHAS financial score based on their public housing operating subsidies program. PHAs with fiscal years ending after June 30, 2000, will receive PHAS financial scores that are based on the PHA's entity-wide operations. HUD has extended entity-wide advisory scores to PHAs with fiscal years ending March 31, 2000, and June 30, 2000, as a result of HUD's consultation with the industry, and because of the conversion from HUD accounting to GAAP. The chart that follows provides an overview of the financial scoring process into the year 2000.

| Quarter | Financial condition | | Management | | Physical | Resident |
|---|---|---|---|---|---|---|
| | Public Housing | Entity-wide | Six Indicators | Five Indicators | | |
| 9/30/99 | Advisory | Advisory | Score | N/A | Advisory | Advisory. |
| 12/31/99 | Advisory | Advisory | Score | N/A | Advisory | Advisory. |
| 3/31/00 | Score | Advisory | N/A | Score | Score | Score. |
| 6/30/00 | Score | Advisory | N/A | Score | Score | Score. |
| 9/30/00 and beyond | N/A | Score | N/A | Score | Score | Score. |

• In § 902.35, HUD reversed the order of Net Income or Loss divided by the Expendable Fund Balance (Net Income) and Expense Management/Utility Consumption (Expense Management). Expense Management now precedes Net Income. The order was reversed to be consistent with the previously published guidance on the PHAS Financial Condition Indicator.

• In § 902.35, HUD revised the definitions of ''Number of Months Expendable Fund Balance'' and ''Occupancy Loss.''

• In § 902.43 (Management Operations Performance Standards), HUD removed Management sub-indicators #1 (Vacancy Rate and Unit Turnaround Time) and #3 (Rents Uncollected). HUD agreed with commenters that stated that these factors are assessed under the Financial Condition Indicator through the ''Occupancy Loss'' and ''Tenant Receivable Outstanding'' (formerly Days Receivable Outstanding) components, and the inclusion of these components under both the Financial Condition Indicator and Management Operations Indicator was duplicative.

HUD notes, however, that for PHAs with fiscal years ending September 30, 1999, and December 31, 1999, which are being assessed under 24 CFR part 902, subpart D (Management Operations) and only receiving PHAS advisory scores, HUD's assessment will be based on the requirements of subpart D as in effect before issuance of this final rule. This means that the management assessment will be based on all six sub-indicators of the Management Operations Indicator.

The amendment made to the sub-indicators in the Management Operations Indicator by this final rule now provides for five sub-indicators. Former sub-indicator #6—Security and Economic Self-Sufficiency—are now two separate sub-indicators. Although the rule does not reflect the points for each of the sub-indicators of the Management Operations Indicator, these are provided in the Management Operations scoring notice, the points for the six sub-indicators have been redistributed proportionally among the current five sub-indicators. As a result of this redistribution, economic self-sufficiency sub-indicator is assigned greater weight than assigned at the proposed rule stage. This redistribution of points will be reflected in the new Management Operations scoring notice.

• In § 902.43, HUD removed language from paragraph (b) that provided that a PHA in reporting under the Management Operations Indicator which was unable to submit its information electronically, should consider utilizing library or local government location to access the internet. This paragraph also provided that in the event local resources were not available, a PHA should go to the nearest HUD Public and Indian Housing program office for assistance. This language was informational only, and not appropriate for the regulatory text. If a PHA does not have internet capability, the PHA should seek assistance from local resources in submitting its information electronically to HUD, and the HUD offices are willing to assist PHAs in meeting their reporting requirements under the PHAS. This language was included in the PHAS rule issued in 1998. HUD believes that as we approach the new millennium the number of PHAs that needed this type of assistance in 1998 are dwindling quickly and it is HUD's intent, consistent with this Administration's goal, that information is provided and exchanged electronically.. [Note: HUD made this same change in § 902.50(c) and 902.51(c)].

• In § 902.50 (Resident Service and Satisfaction), HUD added language in paragraph (c) that advises that at the completion of the resident survey process, a PHA will be audited as part of the Independent Audit to ensure the resident survey process has been managed as directed by HUD. HUD also added language to clarify that (1) implementation plans are to be submitted to HUD via the internet; and (2) any follow-up plans that a PHA may be required to submit are to be submitted with the PHA's Annual Plan submission in accordance with 24 CFR part 903.

• In § 902.51 (Updating of Resident Information), HUD added language in paragraph (c) to clarify that the electronic updating of the public housing unit address list is to be done through the internet. HUD also revised paragraph (c)(3) to provide that REAC will respond to a PHA's request to update its list manually upon REAC's receipt of the PHA request.

• In § 902.52 (Distribution of Survey to Residents), HUD replaced the term ''residents'' with ''units'' in several places to emphasize that the survey selection process is random and objective; it is based on occupied units and not on particular information about the residents in those units.

• In § 902.60 (Data Collection), HUD made the same revision to paragraph (a) as HUD made to § 902.1(e).

• In § 902.60, HUD added the extensions in filing submission that it provided in § 902.33, discussed above.

• In § 902.63 (PHAS Scoring), HUD clarified in paragraph (c) when a PHA's overall PHAS score becomes its final PHAS score. HUD also reorganized the paragraphs in this section to present a more logical order. HUD also added a new paragraph (d) to provide that REAC will perform an audit review of a PHA whose audit has been found deficient.

• In § 902.67 (Score and Designation status), HUD revised the definition of ''standard performer'' in paragraph (a) to clarify that to be designated a standard performer a PHA must receive a passing score in PHAS Indicators #1 (Physical), #2 (Financial), and #3 (Management Operations).

• In § 902.67, HUD added language in paragraph (b) that notes, in accordance with new section 5A(j) of the 1937 Act (42 U.S.C. 1437c–1), that a PHA that achieves a total score of less than 70 percent but not less than 60 percent is at risk of being designated troubled. New section 5A(j) provides generally that HUD may require, for each PHA that is at risk of being designated as troubled under section 6(j)(2) of the 1937 Act, that the public housing agency plan for such PHA include any additional information that the

determines to be appropriate. The proposed rule did not clearly indicate PHAs that are at risk of being troubled.

• In § 902.67(c)(2), HUD included language that was in the previous PHAS rule issued on September 1, 1998, but inadvertently omitted in the June 22, 1999, proposed rule. This language pertains to troubled with respect to modernization and was in the previous PHAS rule at § 902.67(c). The language reinserted, however, is revised from the September 1, 1998 final rule, to reflect that the Capital Fund Program is replacing the Comprehensive Improvement Assistance Program and the Comprehensive Grant Program.

• In § 902.67, HUD provides that a PHA whose designation as a standard or high performer has been withheld or rescinded, as a result of a PHA's involvement in any of the circumstances described in § 902.67(d) (e.g., involved in litigation bearing directly upon the physical, financial or management performance of a PHA, operating under a court order) may request the Assistant Secretary for Public and Indian Housing to reinstate the designation and provide the basis for the reinstatement. HUD clarifies that a designation assigned or withheld under § 902.67, and any reinstatement determined appropriate by the Assistant Secretary, does not result in a change in the PHA's PHAS score.

• In § 902.68 (Technical Review of Results of PHAS Indicators #1 and 4), HUD revised the paragraph concerning ''unit error'' to clarify that only a PHA's public housing units are considered in the scoring.

• In § 902.69 (PHA Right of Petition and Appeal), HUD revised paragraph (c) to clarify the procedures that govern appeal of troubled designation and refusal to remove trouble designation. These procedures were present in the September 1, 1998 final rule but became merged, in some aspects inappropriately, with the procedures that govern appeal of a PHAS score. In paragraphs (d) and (e) of this section, HUD also clarified how final decisions are reached by the Board of Review. The Board of Review reaches a decision on the appeal and the PHA is notified of the final decision by the Assistant Secretary for Public and Indian Housing.

• In § 902.71 (Incentives for High Performers), a new paragraph (a)(4) is added to reference the performance reward available to high performing PHAs under the regulations of the Capital Fund Formula. (See § 905.10(j) of the proposed rule published on September 14, 1999. A performance reward factor is expected to be part of this formula and part of the final rule on the Capital Fund Formula to be published in the near future.)

• In § 902.71, HUD clarifies that the bonus points available to high performers in HUD's funding competitions, where permissible by statute and regulation, will be provided in HUD's notices of funding availability.

• In § 902.73 (Referral to an Area HUB/Program Center), HUD removed language in paragraph (b) that described the contents of the Improvement Plan because this language was duplicative of that in paragraph (d) of this section.

• In § 902.75 (Referral to a Troubled Agency Recovery Center (TARC)), HUD revised paragraph (a) to include PHAs designated troubled under the PHMAP regulations in 24 CFR part 901. Since PHAS is a fairly new system, this revision recognizes that some PHAs were designated as troubled (and remain under such designation) under the PHMAP regulations. PHAs designated troubled under PHMAP are subject to the provisions of §§ 902.75 through 902.85.

• In § 902.75(a), HUD clarifies that the referral by the TARC of a troubled PHA to a HUB/Program Center is for the purpose of having the HUB/Program Center assist with the oversight and monitoring of the PHA's planned recovery. In § 902.75, HUD is also removing the requirement of a Recovery Plan. On further consideration, HUD believes that the Memorandum of Agreement (MOA) is the only required document necessary to address the plan for recovery of a troubled PHA.

• In § 902.75, HUD also clarifies in paragraph (b)(2) that performance targets may be annual, quarterly, or monthly.

• In § 902.75(d), HUD clarifies that the PHA must improve its performance and achieve an overall PHAS score of at least 60 percent, and achieve a score of at least 60 percent of the total points available under each of PHAS Indicators #1 (Physical Condition), #2 (Financial Condition) and #3 (Management Operations).

• In § 902.75(e)(4), HUD clarifies that the Board of Commissioners will be a party to the MOA unless exempted by the TARC (not the HUB/Program Center as the rule previously provided). HUD also revised the example provided in paragraph (g) of this section to be more helpful to the reader.

• In § 902.75, HUD adds a new paragraph (h) to address the audit review of a PHA designated as troubled. This new provision is based on practice under the PHMAP regulations.

Under the PHMAP regulations, a troubled PHA with more than 100 units was required to undergo a confirmatory review by HUD before the PHA's troubled designation was removed. This review is conducted by a team appointed by the Office of Public and Indian Housing. For large troubled PHAs, the team is comprised of housing specialists and financial analysts from throughout the country (as opposed to staff from HUD's Field Office with jurisdiction over the PHA). This process provides for an accurate and objective assessment of the PHA and appropriately removes these duties from the Field Office that provides the technical assistance to the PHA.

As revised by this final rule, the PHAS will provide a similar process for PHAS, but only in relation to the PHAS Financial Indicator. REAC may, at its discretion, select an audit firm that will perform the audit of PHAs identified as troubled under PHAS, and its predecessor PHMAP, and REAC will serve as the audit committee for the audit in question. At its discretion, REAC will either select the auditor from the existing request for proposals of audit work issued by the PHA, or REAC will conduct its own request for proposals and will conduct the selection process. If REAC conduct its own request for proposals and conducts the selection process, the audit engagement may be paid from funds assigned to the PHA by HUD for such purposes, as provided by law.

In § 902.77 (Referral to the Departmental Enforcement Center), HUD clarifies that the Assistant Secretary for Public and Indian Housing makes the determination that a troubled PHA shall be declared in substantial default.

In addition to these changes, HUD has made editorial and technical changes throughout the rule for purposes of clarity.

**IV. Discussion of Public Comments**

This section presents HUD responses to the significant issues raised by the public commenters. The organization of the public comments generally follows the organization of the proposed rule. The heading ''Comment'' states the comment or comments made by the commenter or commenters, and the heading ''Response'' presents HUD's response to the issue or issues raised by the commenters. With respect to comments about the scoring processes of the PHAS Indicators, the majority of these comments are discussed in Section V of this preamble, but there may be some overlap in discussion of the processes between this Section IV and Section V.

**Subpart A—General Provisions**

*Section 902.1 Purpose and General Description*

*Comment.* The PHAS fails to consider differences related in the overall mission and goals of PHAs nationally. The PHAS assessment does not take relative size, mission, condition, geographic, and other local variances into consideration. The effect of a ''one-size-fits-all'' construct is in direct opposition to the intent of the Quality Housing and Work Responsibility Act of 1998, which promotes and encourages local flexibility. Additionally, PHAs that serve the elderly or persons with disabilities should not be compared to PHAs that predominantly serve low-income families.

*Response.* PHAS, like PHMAP, was never intended to be an all encompassing assessment tool. There are many aspects of PHA management that PHMAP did not assess and the PHAS does not assess. Instead, key indicators of performance, that are common to all PHAs, are identified for review. In determining how best to structure the PHAS, HUD's approach was to strike a balance on many issues, including those raised by this comment. HUD decided that uniform, standardized, and objective criteria among its programs are essential to effective management. A standard of decent, safe and sanitary for housing should not be dependent upon the location of a PHA's public housing or the residents that it serves. Similarly, the PHA's financial condition or the ability to manage its operations in accordance with certain standards should not be dependent upon geography, or residents served. HUD notes that where local variances should be taken into consideration, they will be, as provided in the changes made in this final rule.

With respect to flexibility, HUD regulations governing individual public housing programs provide PHAs with the needed flexibility to tailor the operation of their programs and to manage their properties in a manner that is sensible given their particular circumstances. HUD believes that the PHAS significantly improves upon the PHMAP.

*Section 902.5 Applicability*

*Comment.* Private owners or owner entities that operate mixed-income developments that contain public housing units do not appear to fit the definition of ''Alternative Management Entity'' (AME) and therefore should be addressed separately. Additionally, there are concerns about several aspects of the PHAS to AMEs. All PHAS indicators are not applicable to mixed-finance owner entities or public housing units owned and operated by such entities. PHAS Indicator #1 (Physical Condition) and some but not all of the components of PHAS Indicator #3 (Management Operations) are applicable to these entities but not PHAS Indicator #2 (Financial Condition) and not PHAS Indicator #4 (Resident Service and Satisfaction Indicator). These entities should be exempt from assessment under Indicators #2 and #4.

*Response.* Entities that manage mixed-income, and/or mixed-finance developments fall under the definition of an AME. An AME is defined as ''a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, or that is duly appointed or contracted (for example, by court order or agency action) to manage all or part of a PHA's operations'' (24 CFR 902.7). An owner entity managing a mixed-income, mixed-finance development has a contractual relationship with the PHA, usually through a Regulatory and Operating Agreement, to operate the public housing units that are covered by the PHA's Annual Contributions Contract (ACC) contract with HUD. Therefore, for the purpose of PHAS, private owners or entities operating mixed-income developments that include public housing units are treated as AMEs.

HUD disagrees with the comment that all PHAS Indicators are not applicable to entities that manage mixed-finance developments. Components of PHMAP measured the financial condition of these entities and resident services. Accordingly, HUD does not believe there is a basis for exempting these entities from the assessments performed under PHAS Indicators #2 and #4.

**Subpart B—PHAS Indicator #1: Physical Condition**

Certain comments specifically addressed to the PHAS Notice on the Physical Condition Scoring Process may be applicable to the regulations in Subpart B and vice versa. Please see Section V of this preamble.

*Section 902.23 Physical Condition Standards for Public Housing—Decent, Safe, and Sanitary Housing in Good Repair (DSS/GR)*

*Comment.* The definition for ''good repair'' is not defined in the rule. This term needs to be defined in the rule.

*Response.* The term ''good repair,'' like the terms ''decent, safe, and sanitary,'' is defined in § 902.23, and in § 5.703 of HUD's Uniform Physical Condition Standards rule, published in final on September 1, 1998 (63 FR 46566). For each of the major inspectable areas that are inspected as part of a physical condition inspection, these terms are defined through descriptions such as ''proper operating condition,'' and ''structurally sound'' of the items that make up the inspectable areas. These terms were elaborated upon in the PHAS Notice on the Physical Condition Scoring Process, and in the preamble to both the June 30, 1998, PHAS proposed rule, and the June 30, 1998, Uniform Physical Condition Standards proposed rule. As noted in both preambles, the statutory physical condition standard for public housing required by the 1937 Act was expressed in terms of ''decent, safe and sanitary.'' (However, the physical condition standard presently required under section 2 of the 1937 Act is referred to as ''decent and safe'' which HUD does not consider a substantive change to the previous statutory standard.) For FHA-related properties, the statutory standard is expressed in terms of ''good repair and condition.'' In adopting physical standards that are applicable to both public housing and FHA-related properties, HUD uses the descriptive term—''decent, safe, sanitary and in good repair.''

*Comment.* The physical condition standards are not clearly defined. The standards by which PHAs are judged must be defined.

*Response.* The preceding response addresses this issue to some extent. Additionally, HUD addressed this issue in its proposed rule on Uniform Physical Condition Standards, published on June 30, 1998. In the preamble to that proposed rule, HUD stated that the standards are intentionally broad and are defined with terms such as in ''proper operating condition,'' ''adequately functional,'' and ''free of health and safety hazards.'' Given the differences in design of HUD housing, and the different types of electrical and utility systems that will be encountered, a rule cannot define or describe proper operating condition for every type of system, or every type of element. This information is rightly placed in supplementary documents, which have been made available to PHAs directly, through HUD's website, since 1998. This information also was made available through notices published in the **Federal Register** in May 1999 and June 1999, as discussed earlier in this preamble.

*Section 902.24 Physical Inspection of PHA Properties.*

*Comment.* The majority of the commenters commended HUD for removing vacant units from the physical inspection process. Several commenters, however, stated that the rule also should exclude from inspection units that are in the process of being modernized. As an example, commenters noted that deficiency ratings should not be assigned to units or buildings to be replaced as part of HOPE VI revitalization. This information can be obtained by HUD's review of the PHA's on-going modernization projects and Physical Needs Assessment.

*Response.* HUD believes that many of the concerns raised by the commenters with respect to modernization result from advisory inspections that occurred before HUD issued its proposed rule on June 22, 1999. HUD addressed concerns regarding modernization issues in the June 22, 1999, proposed rule. The June 22, 1999, proposed rule advised that it would add to the PHAS rule (and this final rule includes this amendment), three categories of exemptions which assist PHAs by providing flexibility in scoring for reasonable unforeseen circumstances in conducting physical inspections. The exemptions consist of the following categories of units that are not under lease: (1) units undergoing vacant unit turnaround—vacant units that are in the routine process of turn over, i.e., the period between which one resident has vacated a unit and a new lease takes effect; (2) units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded; and (3) off-line units—vacant units that have repair requirements such that the units cannot be occupied in a normal period of time (considered to be between five to seven days) and which are not included under any approved rehabilitation plan.

HUD declines to exempt occupied units that are undergoing modernization from physical inspections. If a unit is occupied it must be decent, safe, sanitary and in good repair. However, the final rule provides that HUD may determine occupied dwelling units undergoing modernization work in progress require an adjustment to the physical condition score and will consider such adjustment as provided in § 902.25(c)(3) of this final rule.

*Comment.* PHAs should be given credit for items needing repair or modernization and for which repair or modernization is pending but not yet begun because of lack of funding due to Federal budget decisions. PHAs should not be penalized for circumstances (such as funding) beyond their control. Rather than a ''point in time'' physical inspection, PHAs should be given points for doing their jobs well under difficult circumstances.

*Response.* The 1937 Act and the ACC place the responsibility for maintaining public housing in the hands of the PHA. HUD understands budgetary constraints, but part of good management is maintaining housing in a decent, safe and sanitary condition even when funding sources are limited. Maintaining housing in acceptable living condition is not just a regulatory standard but also a statutory standard. HUD's Uniform Physical Condition Standards and the PHAS rule assess the extent to which PHAs are maintaining public housing in accordance with the statutory standard.

Of necessity, the inspection of the public housing inventory is an inspection at ''a point in time.'' HUD believes it would be misleading to report a condition of public housing other than the actual condition of the housing. If a PHA maintains its housing in a condition that is decent, safe, and sanitary despite limited funding, the PHA is fulfilling its statutory mandate and will receive a passing score under PHAS Indicator #1.

With respect to modernization needs, HUD notes that the final rule provides an adjustment to the physical condition score for modernization work in progress. (Please see earlier discussion on § 902.25(c)(3).)

*Comment.* The rule needs to clarify how units are selected for physical inspection. Rating a PHA only on a certain percentage of the units inspected is unfair.

*Response.* To ensure accuracy in the physical condition standards and inspection requirements, units are chosen for physical inspections by a statistically valid random sample determined by the size of the property. The sample does not distinguish between the type of property(s) (i.e., elderly or family) or units (i.e., one bedroom, two bedroom, three bedroom, etc.) that are involved. The system generated sample will evenly distribute the buildings and units to be inspected among the different types if more than one building type is contained in a particular property.

In developing the PHAS rule, HUD considered the extent to which it needed to inspect all units or some lesser number. HUD concluded that it should not inspect all units because that would be costly and PHAs are already required to inspect 100% of their units and systems under PHAS Indicator #3, Management Operations. HUD decided to use a statistically valid random sample methodology. This methodology is accepted throughout the scientific and business communities for making assessments regarding large universes.

*Comment.* PHAs should not receive deficiency ratings for items that are outside of a PHA's control, e.g., city or town sidewalks, or roads near public housing developments.

*Response.* The physical condition standards and inspection requirements under the PHAS rule do not hold PHAs accountable for site areas which are not within their control. The rule only applies to aspects of the housing that are within the ownership of the PHA. For instance, a PHA owner is not responsible for maintaining a road, sidewalk, etc., if the PHA does not own the site area; however, the PHA will be responsible for maintaining all areas which are legally part of the property. In instances involving items scored but that are not within a PHA's control, the PHA may request an adjustment in accordance with new paragraph (c) of § 902.25.

*Comment.* The final rule needs to resolve possible conflict with fair housing issues and issues of reasonable accommodation under section 504 of the Rehabilitation Act of 1973. A PHA received a deficiency rating because a unit was not painted, but the unit was not painted at the request of a tenant who claimed disability on the basis of allergic reaction. This type of situation needs to be addressed in the final rule.

*Response.* Section 902.24 (Physical Inspection of PHA Properties), introduced by the June 22, 1999 proposed rule, addresses the issue of compliance with civil rights and accessibility requirements. This section provides that HUD will review certain elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act and section 504 of the Rehabilitation Act of 1973, but a PHA will not be scored on those elements. Any indication of possible noncompliance will be referred to HUD's Office of Fair Housing and Equal Opportunity.

*Comment.* The final rule should provide for separate inspection protocols for high rise buildings and scattered site projects. The current inspection protocol apparently was designed for both high rise and townhouse developments, so its treatment of common areas is somewhat uneven and unreliable. The inspection protocol is even less accurate when

applied to scattered sites. Some scattered site ''clusters'' have communal sites and common areas, but truly scattered single family homes and duplexes do not.

*Response.* When HUD introduced its Uniform Physical Condition Standards in the proposed rule, by the same name, published on June 30, 1998, and in the first PHAS proposed rule, also published on June 30, 1998, HUD specifically advised that one of the objectives in formulating these standards and in designing a new inspection protocol was to move away from the different physical condition standards and inspection procedures that were applicable to housing administered by HUD programs. The PHAS takes into account all housing types, including high rise housing (4 stories or more) and other building types, and proportionately allocates the sample of units between those two types of buildings. The scoring system only assesses elements that are present. In cases where there are no common areas, for example, the scoring system redistributes the available points to the other inspectable areas.

*Comment.* PHAs should not receive deficiency ratings for recent tenant damage or unreported repair needs. Deficiency ratings occurred even when tenants acknowledged that they had not reported damage or need for repairs to the PHA. The inspection process should require HUD to review work order files to determine if the resident has reported the noted deficiency. The PHA should only be responsible for those items left unrepaired following proper notification.

*Response.* HUD's physical inspection system is objective and does not distinguish those defects that are the fault of the resident, nor does the system in itself recognize good faith efforts of the owner. The system is simply a tool for observing and transmitting data regarding the physical condition of the property at the time of the inspection. An owner of HUD assisted or insured housing is statutorily and contractually responsible for maintaining the physical condition of the property. HUD anticipates that such owners, like all landlords, would rely on lease provisions regarding the resident maintenance or destruction of the units, and HUD would encourage them to do so in furtherance of compliance with the physical condition standards. Good property management, which includes regular housekeeping and preventative maintenance inspections throughout the year, coupled with strict lease enforcement, will result in well-maintained housing that meets the standard.

*Comment.* The rule needs to address further the inspection notification process. The scheduling of the inspection appears to be kept a secret until the last moment. In one PHA's development, although some tenants did not want their units inspected, the inspector advised that the tenants would have to confirm that to the inspector in person. Advance notice of the inspection needs to be provided and tenant rights need to be considered and respected by the inspector.

*Response.* The rule provides the timing of the inspections. Specifically, PHAs are to be assessed annually. Physical inspections are to take place in the three months immediately preceding the end of the PHA's fiscal year. In addition, HUD's ACC does not afford tenants the right of refusal to have a unit inspected. In accordance with the ACC, PHA's are required to provide HUD or its representative with full and free access to all facilities (units and appurtenances) contained in the project in order to permit physical inspections. In the event that a PHA fails to provide access as required by HUD or its representative, the PHA will be given ''0'' points for the project(s) involved which will be reflected in the physical condition and overall PHAS score. With respect to notification of the physical inspection, HUD provides written notification to the PHA that its properties will be inspected within the next 30 to 90 days. The HUD contract inspector will schedule the inspection, providing a minimum 10 days notification, which is confirmed with the PHA in writing by the contractor. HUD's notification of inspection requires the PHAs to provide proper notification to tenants. The contractor's confirmation letter also reminds PHAs of the tenant notification requirement.

*Comment.* HUD's authority to access tenant dwelling units as provided in § 902.24(d) is questionable. Section 902.24(d) states that ''PHAs are required by the Annual Contributions Contract (ACC) to provide the government with full and free access to all facilities contained in the project.'' However, the degree of access envisioned by Section 15 of the ACC is circumscribed by the auditing function, and is not meant to authorize unbridled access to tenant dwelling units. Additionally, portions of the public housing program regulation at 24 CFR 966.4(j) do not give HUD full and free access to tenant dwelling units. The PHAS rule does not justify entry by HUD of a tenant dwelling unit without notification which specifies a date and time of inspection, or entry by the HUD without notice because a physical inspection would not be considered an ''emergency'' within the regulation.

*Response.* HUD has the requisite statutory and regulatory authority to inspect tenant dwelling units. Notification of inspection is provided to the PHA who is required to provide proper notification to tenants. However, HUD notes that § 966.4(j) of its regulations does not require a specific time or date, only reasonable advance notification, that inspections will be performed during reasonable hours.

*Comment.* The PHAS inspections establish unfunded financial burdens and constitute an unfunded mandate. Although HUD outsources the inspections, PHAs are required to accompany contractors during inspections, resulting in added maintenance and managerial costs. When coordinating inspections for scattered site public housing units, a lot of time is wasted inspecting units in one part of the city and then going to an entirely different section of the city on the same day. HUD should schedule scattered site inspections with regards to geographical considerations such as zip codes to maximize routing efficiencies and to keep the already excessive administrative costs of this process to a minimum.

*Response.* HUD has a statutory obligation to assess the performance of PHAs, including the physical condition of their properties. Additionally, the ACC has always provided that PHAs must provide HUD with full and free access to their developments. HUD has conducted on-site reviews of PHAs either through PHMAP confirmatory reviews or other management reviews for at least two decades. Therefore, Federal oversight of the physical inspection of public housing units is not new for PHAs. It is an inherent part of receiving Federal financial assistance and is customary in most, if not all Federal grant programs, regardless of the administering agency. HUD believes that there should be little or no difference in the way a physical inspection should be conducted between Federal programs. HUD believes that it is important to have a consistent standard across programs and geographical regions. In this way, all properties and property owners are treated fairly and equally.

With respect to inspection of units at scattered sites and the additional time involved, it is HUD's intent to reduce the administrative burden to the PHAs to the extent possible. HUD will examine inspection schedules and make every effort to schedule inspections that

minimize the use of resources on the part of the PHA.

*Comment.* The HUD contract inspectors are poorly organized, inadequately skilled and highly inefficient, and PHAS physical inspection quality controls are inadequate. Inspectors did not keep the inspection schedules as promised, and did not perform the inspection process as required. Inspectors did not inform PHA staff of inspection schedules as required. The rule needs to ensure consistency in inspection. Inspectors in one area may be more lenient, whereas inspectors in another area may be more stringent in interpreting inspection standards. Inspection standards should be clarified in the new rule and independent contractors should communicate their interpretation of the standards to PHAs before the inspection is conducted.

*Response.* HUD contract inspectors, contracted under the national inspection contract (NIC), successfully conducted approximately 24,000 inspections nationally during the first year. Other contract inspectors under the baseline inspection contract (BIC) will inspect approximately 16,000 properties by the end of this calendar year. These contract inspectors were trained using a new and unique protocol, and successfully scheduled and completed the required inspections. All of this required a tremendous amount of organization and logistics.

All HUD contract inspectors must meet certain basic qualifications involving knowledge, experience and/or education in the building trades or conducting inspections. In addition, these inspectors completed a 5 day training course in the new inspection software and were required to pass proficiency tests in the use of the software. Since these inspections started for the first time in October 1, 1998, the initial start-up involved some refining as one would expect given the size and magnitude of this effort. In certain cases, problems were encountered and HUD responded to those problems. HUD believes that the process, overall, is running smoothly. HUD is striving to constantly improve and refine the process and will continue to do so in the future. In this regard, HUD also provides for required periodic retraining of the inspectors, to ensure that the inspectors are up-to-date and familiar with any changes made to the PHAS regulation, physical condition protocols and the physical condition inspection software.

HUD acknowledges that even with qualification and training requirements imposed on inspectors, some inspectors, as is the case in any profession, perform better than others. For this reason, HUD has developed a four tiered quality control/assurance process.

First, each contractor is required to have a quality control program to ensure that the HUD protocol is being followed. Second, REAC has its own quality assurance staff, who are employees of the Federal government. Their sole job is to review the performance of the contract inspectors to ensure that the inspection protocol is being followed. Third, REAC also has a Technical Assistance Center and a toll free telephone number (1–888–245–4860) for program participants to call when experiencing problems like the inspector failing to show up for scheduled inspections. In many cases, failure to show up for inspections is the result of unexpected delays (*e.g.,* weather, more difficult and complex inspections than anticipated, etc.). Fourth, HUD has provided a technical review procedure to address material errors in an inspection. This review procedure was first announced in a notice published in the **Federal Register** on May 13, 1999, and was part of the PHAS proposed rule published on June 22, 1999.

*Comment.* The sheer volume of inspectable items makes the inspection even more vulnerable to differences in interpretation and error.

*Response.* HUD does not believe that the number of inspectable items is either excessive or makes the inspection vulnerable to different interpretations. The number of inspectable items is similar to those contained in the Section 8 Housing Quality Standards (HQS) inspection. While there is a considerable number of deficiency definitions, all elements of the inspection protocol, including the definitions, are contained in the inspection software and are easily retrievable by the inspector, and are designed to preclude subjective interpretations on the part of the contract inspectors. The more experience that the contract inspectors have with the protocol the easier the inspection process becomes. HUD does not believe that the inspection protocol is beyond the capabilities of the inspection profession.

With respect to deficiency definitions, HUD has revised a considerable number of definitions for purposes of clarity and simplification. The revised Dictionary or Deficiency Definitions is currently available for review on HUD's website.

*Comments.* The rule should allow for PHAs to correct minor deficiencies while an inspector is on site, to avoid potential problems related to the inspection.

*Response.* New paragraph (b) in § 902.26 allows for PHAs to correct deficiencies before HUD issues its final physical inspection report to the PHA.

*Comment.* Certain elements of the inspection are equivalent to an appearance-oriented inspection that is like a military ''white glove'' test and is beyond determining whether the property is decent, safe, sanitary and good repair, or the property components work and function properly. The PHAS physical inspection should not be an assessment of the tenant's housekeeping.

*Response.* HUD disagrees that elements of the inspection go beyond the statutory mandate regarding the physical condition of the property. The PHAS physical inspection is not an appearance-oriented assessment or an assessment of a resident's housekeeping. The focus of the inspection is whether the housing is in a condition of decent, safe, sanitary and in good repair. The inspection assesses the condition of the PHA's property, including occupied units. HUD has revised the physical inspection report and the revised report is more user friendly and clarifies for the PHA the exact nature of the deficiency.

*Comment.* HUD inspectors should skip the relatively few units with ''problem'' tenants, such as those who are mentally ill and hostile, or currently bringing legal actions against the PHA.

*Response.* HUD understands the challenges that PHAs face. HUD, however, has a statutory obligation to determine the condition of the PHA's property. Resident evictions and related actions are a normal part of residential management. Given HUD's statutory obligation, HUD cannot forgo inspection of occupied units because certain tenants are considered ''problem'' tenants.

*Comment.* Tenant-owned appliances and smoke detectors should not be scored in the physical inspection of a property. One PHAS inspector cited a defunct battery operated smoke detector which a tenant had installed, even though the PHA-provided hard-wired smoke detector that worked. PHAs should not receive deductions for items that are not the property of the PHA.

*Response.* Any deductions that may be made for resident-owned property such as that described in the comment can be accommodated by a PHA's request for an adjustment in accordance with new paragraph (c) of § 902.25.

*Comment.* There should be no deficiency ratings for elements or items of the public housing development that

pass local code requirements, and no deductions should be made for items that are not present and are not required by national codes or HUD mandates. PHAs should be protected from negative consequences for meeting local code requirements. Additionally, while objectivity is a sound principle for inspection, under the PHAS advisory inspection process, it all too often translated into rigidity.

*Response.* As noted earlier in Section III of this preamble, HUD has added a new paragraph (c) to § 902.25 that takes into consideration local code requirements that may be inconsistent with HUD's physical inspection protocols, or other conditions, including preexisting physical features of a building, that are permitted by local variance or license.

*Comment.* The PHAS standard for lead-based paint ''owner certification'' is not clear. Different PHAS inspectors interpret this standard different ways. This factor should be treated like smoke detectors, with a separate code appended to the numerical score to indicate the possible presence of lead-based paint in units, or the absence of certifications that all units are lead-free.

*Response.* The certification section, which includes the lead-based paint certification, is not scored; the certification is only recorded as submitted. Accordingly, the Lead-Based Paint certification is currently being treated like smoke detectors, only a separate identifier is not used.

*Comment.* Smoke detectors should not be required in unfinished basements which are not living areas. This is the standard for some local codes. The PHAS physical inspection protocol is not clear on this issue.

*Response.* The PHAS regulation requires smoke detectors on ''each level of the dwelling unit.'' The basement, whether or not it is a living area, must have a smoke detector if it is part of the dwelling unit.

*Section 902.25 Physical Condition Scoring and Thresholds*

*Comment.* This section provides that the PHA may claim an adjustment on its physical property score due to age and neighborhood environment by certifying to the adjustment on form HUD–50072. The form, as is currently available on HUD's website, is still the PHMAP certification form. The section of the form pertaining to this adjustment does not permit the PHA to specify which developments are qualified to receive the adjustment.

*Response.* The new Management Operations Certification Form is now available on REAC's website, as well as an instruction guidebook for completing the form. The certification for the physical condition and/or neighborhood environment includes project number, project name, and the three areas where the adjustment applies. The PHA is to indicate for each project which area(s) apply.

*Section 902.26 Physical Inspection Report*

*Comment.* The physical inspection reports are difficult to understand. The report lacks the necessary detail for staff to understand the nature of the deficiency so that the PHA may take the appropriate corrective action required.

*Response.* HUD appreciates the comment and as noted earlier in this preamble, HUD has revised the physical inspection report so that PHAs may better understand the nature and location of deficiencies cited for their properties.

*Comment.* The final physical inspection report should be supplied to PHAs within 15 to 30 days after the inspection is completed.

*Response.* As provided in the rule, the PHA's property representative will receive the list of every observed exigent/fire safety, health and safety deficiency that calls for immediate attention or remedy before the inspector leaves the site. HUD will endeavor to provide complete inspection results as soon as possible after inspections are completed. HUD will provide inspection results on its website as soon as all inspections are completed, rather than waiting until all data needed to issue a PHAS score is received.

*Comment.* There should be an exit conference with the inspector to review the inspection for accuracy in what was inspected. Additionally, no information about PHAS should be released without the approval of the PHA. Response. This issue was raised in response to HUD's June 30, 1998, proposed rule on the PHAS (the first PHAS proposed rule). For the same reasons stated in the preamble to the PHAS final rule (published September 1, 1998) that addressed this issue, HUD declines to adopt the suggestion. PHAs are required to designate a representative to accompany the inspector during the entire inspection. As a result, the PHA representative will be aware of the inspection and be able to provide any clarifications that may be required during the inspection. (See **Federal Register** of September 1, 1998, at 63 FR 46603.) Additionally, as noted in the preceding comment, PHAs will be notified of every exigent/fire safety, health and safety deficiency on the same day of the inspection, before the inspector leaves the site. Further, HUD has added a new paragraph to § 902.26 that allows PHAs to correct deficiencies identified during the inspection process, and noted on the report, before the final physical inspection report is issued.

With respect to the confidentiality of PHAS scores, HUD notes that release of official documents are subject to certain statutes such as the Freedom of Information Act, the Privacy Act., etc.) HUD is therefore further examining this issue in an effort to maintain the confidentiality of the PHAS scores until these scores become final and are required to be posted by the PHA in an appropriate location and published by HUD in the **Federal Register** in accordance with the PHAS regulations. As noted earlier in this preamble, § 902.63 has been revised to clarify when a PHA's PHAS score becomes the PHA's final PHAS score (*e.g.,* any adjustments that needed to be made have been made, and any technical review or appeal issues have been decided).

**Subpart C—PHAS Indicator #2: Financial Condition**

Certain comments specifically addressed to the PHAS Notice on the Financial Condition Scoring Process may be applicable to the regulations in Subpart C and vice versa. Please see Section V of this preamble.

*Section 902.30 Financial Condition Assessment*

*Comment.* HUD should reconsider its plan to measure the financial condition of a PHA on an entity-wide basis by comparing a housing authority to other housing authorities administering a similar number of units. Additionally, comparison should be limited to public housing funds only (Operating Fund, Capital Fund, DEG, EDSS, etc.). The inclusion of other funds (Section 8, CDBG, local development, etc.) simply distorts any meaningful comparison. The comparison becomes more distorted if one housing authority administers CDBG and HOME funds.

*Response.* HUD has considered whether PHAs should be financially assessed on an entity-wide basis, and has decided that they should. As discussed in Section III of this preamble, HUD has, however, provided additional time for PHAs to adjust to financial assessment on an entity-wide basis. The final rule provides that PHAs with fiscal years ending September 30, 1999, December 31, 1999, March 31, 2000, and June 30, 2000, will receive an advisory score for HUD's assessment of the PHA's entity-wide operations. Again, PHAs with fiscal years ending

September 30, 1999, and December 31, 1999, were already notified through HUD's notice published on October 21, 1999, that their financial scores would be advisory. Although PHAs with fiscal years ending March 31, 2000, and June 30, 2000, will receive advisory scores on the financial assessment of their entity-wide operations, they are not exempt under the rule from a PHAS financial score. PHAs with fiscal years ending March 31, 2000, and June 30, 2000, will receive a PHAS financial score based on their public housing operating subsidies program. PHAs with fiscal years ending after June 30, 2000, will receive PHAS financial scores that are based on the PHA's entity-wide operations.

HUD believes that there is a valid basis for conducting the assessment on a PHA's entity-wide operations. In addition to overseeing its individual grant and subsidy programs, HUD is concerned with the overall financial condition of entities managing public housing without regard to additional sources of funding. The focus of the PHAS Financial Condition Indicator is on the long term viability and financial performance of PHAs.

In addition, HUD has the authority to assess any factors it determines appropriate as provided by section 6(j)(1)(K) of the 1937 Act, and the Single Audit Act and OMB Circular A–133 require entity-wide audits of the financial statements of PHAs receiving federal funds. To the extent that PHAs enter into non-Federal activities that contribute to their financial health, these PHAs should receive higher scores than those PHAs that have entered into arrangements that negatively affect the financial health of the PHA (e.g. commitments, contingencies). Generally Accepted Accounting Principles (GASB 14) requires that an entity include in its financial statement all operations for which it is financially accountable. The issuance of entity-wide financial advisory scores for the first four quarters of PHAS scoring is an accommodation HUD was willing to make based on consultation with the industry and HUD's recognition of the newness of the GAAP conversion process for some PHAs.

*Comment.* Peer groups should not be based on unit counts alone.

*Response.* With respect to financial assessment, HUD has and continues to research the possibility of establishing peer groups based on other common PHA characteristics such as tenant composition (elderly vs. family), building type (high rise vs. garden style) and location. Tenant composition and building type have not been incorporated into the scoring process at this time because PHAs have different mixes of tenants and building types and such data is not as accurately tracked as unit count. HUD's research to date shows no clear statistical differences in PHA financial performance based on the type of tenant or building. This may change in the future as additional data becomes available.

Peer groupings based on location, on the other hand, have been established to evaluate expenses in addition to unit count because information on PHA location is readily available and accurate. As additional data becomes available and statistical analysis demonstrates that peer groupings based on additional factors will improve the accuracy of scoring, these factors will be taken into consideration.

*Comment.* The peer group sizes are insufficient for measurement of financial condition. The PHAS final rule should provide for two additional PHA size categories: one size category for those PHAs administering 1,250 to 5,000 units; and a second size category for extra large PHAs defined as those PHAs administering more than 10,000 units.

*Response.* HUD has addressed some of these concerns by adding an extra-large size category of PHAs. The extra-large size category includes those PHAs administering more than 10,000 units based on statistical analyses demonstrating that there is a statistical difference between those PHAs administering between 1,250 and 9,999 units. The addition of an extra-large size category is reflected in the PHAS Notice on the Financial Condition Scoring Process, which will be updated and published in the near future. At this time, the PHAS financial scoring process leaves the other five peer groupings unchanged. In the future, the PHAS scoring process for the Financial Condition Indicator may be revised to include additional peer group sizes should a statistical validity be proven.

*Section 902.33 Financial Reporting Requirements*

*Comment.* The requirement for electronic transmission of data using GAAP principles is of concern because experience in general with data transmitted to and from HUD has resulted in problems. The experience has been one of difficulty in getting into HUD systems both in terms of timeliness and access. *Response.* HUD continues to improve its ability to receive and process the electronic submission of data. With any new system, there is a learning period that must take place. The electronic submission system has been in development for over a year and has undergone a series of tests both internally and externally at selected PHA locations. HUD's Financial Assessment Subsystem (FASS) Release 3.01 has been streamlined to improve performance and will be tested at over 12 pilot locations nationwide. To the extent PHAs have trouble submitting data as a result of HUD servers or communication problems, PHAs can enter the reason for late submissions on the FASS template and REAC will have the ability to waive late submission penalties. Further guidance will be provided in an upcoming Notice. Additionally, although the FASS does not allow anyone other than the PHA to enter and/or change data in the PHA's financial submission, the system provides a PHA with the ability to review its financial information after the information has been submitted to HUD if the PHA wishes to verify the accuracy of the submission.

*Comment.* The requirement to submit financial reports electronically via the Financial Data Schedule (FDS) within two months of the PHA's fiscal year end is unrealistic for the first year of submission. The conversion to GAAP is complex, particularly for large PHAs administering many programs, and thus, PHAs need more time to make certain that all GAAP conversion items are properly recorded in the initial FDS submission.

*Response.* HUD understands that conversion to GAAP may not be easy for some PHAs and may take some time, which is why HUD allowed a year for PHAs to make the conversion to GAAP. PHAs were informed of the conversion to GAAP with the issuance of the first PHAs proposed rule on June 30, 1998, and the PHAs final rule published on September 1, 1998. With respect to submission of financial reports, as discussed in the preambles to both of those earlier rules, PHAs were already obligated to submit, under other program requirements, similar financial information to HUD within 45 days after the PHA's fiscal year end. Under PHAs, PHAs are required to submit their financial information within two months after the PHA's fiscal year end. However, since this is the first year reporting under GAAP, HUD has provided for an automatic 30 day extension for PHAs to submit their year-end financial information. This automatic extension is for the first year of reporting only.

*Comment.* REAC should assign a reporting model (Enterprise vs. Government) for HUD-based programs, and issue guidebooks.

*Response.* HUD no longer sets accounting standards and thus cannot prescribe which accounting model to use. The National Council on Government Accounting, Statement 1 (NCGA1) entitled ''Governmental Accounting Reporting Principles'' provides guidance as to which method best represents the reporting entity business. GAAP Flyer #1, which is available on REAC's financial website (http://www.hud.gov/reac/reafin.html), indicates that HUD prefers the Enterprise method for most PHAs based on our interpretation of NCGA1. In addition, Government Accounting Standards Board (GASB) Statement #34 provides that all government entities will be required to report entity wide operations using full accrual accounting. This reinforces HUD's interpretation that PHAs should use the enterprise model to report operations.

*Section 902.35 Financial Condition Scoring and Thresholds*

*Comment.* The PHAS rule measures operating budget and expenditure performance through such indicators as net income/loss, number of days expendable balance, and expense management which is not necessarily appropriate. PHAs budget and manage funds for a host of programs, both federal and non-federal, which are not reflected in these indicators. A more clear measurement is whether a PHA has a sound cost allocation plan and is adhering to it.

*Response.* The PHAS measures the overall financial condition of PHAs without regard to the source of funding. This is referred to as an entity-wide assessment. See HUD's response to the first comment under § 902.30 of this preamble. In addition, cost allocation coverage is obtained through audit procedures in accordance with OMB Circular A–133 (Audits of States, Local Governments and Non-Profit Organizations).

*Comment.* The PHAS Financial Condition Indicator inappropriately compares a PHA's management responsibilities to those of private real estate entities. Without taking into account the unique operating and related service requirements of the PHA, the comparison to private sector management is difficult to make on an individual or group basis for PHAs.

*Response.* The assessment provided under the PHAS Financial Condition Indicator does not compare PHA management to management in the private real estate market. Instead, the PHAS performs a financial assessment of PHAs based on a peer comparison within the public housing industry. The private real estate market has capital reserve requirements for the long-term upkeep of its properties and operates for-profit. On the other hand, the private real estate market does not provide the extensive services provided by PHAs to its residents.

The PHAS uses appropriate financial benchmarks used by many industries to assess the financial condition of their operations. For example, Current Ratio, Net Income, and Expense Management are indicators widely used in many industries. Two other indicators, Occupancy Loss and Tenant Receivable Outstanding, are revised versions of the previous PHMAP Management indicators modified to better assess financial condition (and as noted earlier in this preamble, they have been dropped from the Management Operations Indicator; they are now only part of the Financial Condition Indicator).

*Comment.* The PHAS Occupancy Loss component includes vacancy days that (1) result from units being taken off-line or held for demolition or major redevelopment, and (2) are counted as income loss if part of the PHA's Unit Months Available (UMA). Given the capital funding process for PHAs and the requirements for demolition and disposition, HUD's inclusion of these types of units in an income loss calculation is inappropriate and further, is not a fair or rational basis for comparison to private real estate providers.

*Response.* During the advisory score process, all units were counted in the UMA calculation. However, after consultation with several housing authority representatives and HUD program staff, HUD has revised its UMA calculation to exclude units approved for demolition/disposition, including units approved for mandatory conversions, since these units are also excluded from the Performance Funding System (PFS) calculations and can be verified through form HUD–52723. In addition, vacant units approved by HUD to be taken off-line for on-going modernization or conversion will be excluded from the calculation.

*Comment.* The PHAS Financial Condition Indicator relies too heavily on Occupancy Loss, Net Income/Loss, Expense Management, etc., and does not rely sufficiently on sound financial management. While the PHAS rule indicates that it will include points for certain items relating to financial management, these items are secondary. The issue of an unqualified audit opinion, no material internal control weaknesses and no material adjusting entries seems to be the most appropriate basis for measuring financial management coupled with maintaining adequate working capital which is easily measured by the expendable fund balance and a sound and adhered to cost allocation plan.

*Response.* The components of the PHAS Financial Condition Indicator measure the financial condition of PHAs and are reflective of sound financial management practices. A PHA can have a clean audit opinion and good internal controls yet be in poor financial condition due to many circumstances including unsound management decisions. The rule states that points will be subtracted, not added, as a result of audit findings.

*Comment.* The Expense Management component of the PHAS Financial Condition Indicator includes utility expenses. HUD needs to examine and take into consideration regional differences in utility costs. Regional utility costs will materially impact on comparisons between PHAs. Therefore, adjustments need to be made if PHAs are to be compared fairly.

*Response.* These comments were addressed by adding regional peer groupings to the Expense Management component to take into account the impact on PHA expenses because of regional differences. These changes to the Expense Management component are reflected in the PHAS Notice on the Financial Condition Scoring Process, which will be updated and published in the near future.

*Comment.* Days Receivable Outstanding is also included in the Management Operations Indicator. This component should be included in just one PHAS indicator.

*Response.* HUD agrees with the commenters and this component (identified in the final rule as Tenant Receivable Outstanding) is now only part of the Financial Condition Indicator.

*Comment.* Is occupancy loss expressed in terms of dollars lost?

*Response.* This measure is not expressed in dollars. Because different amounts of rent are paid for like units, the financial indicator measures occupancy loss as a percentage of total units.

*Comment.* The use of a two year average of accounts when calculating Days Receivable Outstanding (DRO) will prevent PHAs from immediately seeing an increase in score if the management has made some significant improvements.

*Response.* In calculating non-GAAP advisory scores a two year average of accounts receivable was used to calculate Tenant Receivable

Outstanding (formerly titled DRO) because, if a PHA is experiencing an unusually difficult year in collecting outstanding receivables, the PHA would be penalized. This method of calculating this component while preventing some PHAs from immediately seeing a decrease in score also prevents PHAs from seeing a dramatic increase in score as a result of significant management improvements such as enforcing evictions. For purposes of reporting under GAAP, Tenant Receivable Outstanding is calculated using the accounts receivable balance at a PHA's fiscal year end.

*Comment.* HUD should take into consideration differences between PHAs in tenant-paid utilities versus nontenant-paid utilities when making the calculation under the Expense Management component.

*Response.* Differences in PHA costs for those with tenant-paid utilities versus nontenant-paid utilities have not been incorporated into the Expense Management component because no accurate data is available as to an individual PHA's composition of tenant-paid versus nontenant-paid utilities. As a result, of the six expense categories that comprises the Expense Management component, the utilities expense category is worth 3 percent of the overall 1.5 points available under Expense Management. In short, 95 percent of all PHAs will pass the utility expense category under the Expense Management component with only outliers failing.

**Subpart D—PHAS Indicator #3: Management Operations**

Certain comments specifically addressed to the PHAS Notice on the Management Operations Scoring Process may be applicable to the regulations in Subpart D and vice versa. Please see Section V of this preamble.

*Section 902.43 Management Operations Performance Standards*

*Comment.* The rule is not clear concerning the extent to which the old PHMAP regulation will survive and the extent to which the management indicators have been modified by the new PHAS rule. The method of assigning PHMAP letter grades, with their associated numerical formula value, is not clearly defined in the amendments. This is critical and substantive information that belongs in the rule.

*Response.* HUD's PHMAP regulation in 24 CFR part 901 is being removed by this rule, effective March 31, 2000. Those sections of the PHMAP regulation that HUD needs to retain have become part of the Management Operations Scoring Notice. The PHAS Notice on the Management Operations Scoring Process is referenced in § 902.45 of the PHAS rule.

*Comment.* PHAs should not be required to report to the local law enforcement agency every activity which is investigated by the PHA's Security Department.

*Response.* The PHAS does not require PHAs to report every activity which is investigated by the PHA Security Department to the local law enforcement agency. The PHAS management sub-indicator #6, which relates to Security and Economic Self-Sufficiency, recognizes policies adopted by the PHA Board and the procedures implemented by the PHA which assist a PHA in accomplishing the following: track crime and crime-related problems in at least 90 percent of the PHA's developments; have a cooperative system for tracking and reporting incidents of crime to local police authorities; and coordinates with local government officials and residents to implement anticrime strategies. HUD's expectation is that PHAs will follow their own policies and procedures for tracking and reporting crime related activities. HUD respects all good-faith efforts of PHAs to partner with local authorities to address these important issues.

*Comment.* PHAs should not be held accountable for rent uncollected after a resident vacates the unit if the PHA can document activity to collect the outstanding charges. Such activity can include notifying the resident by letter at the resident's last known address; detailing the amount of resident owes and demanding payment; contacting the credit bureau for slow or no payment; attaching a lien on the resident's property (if State law allows; and securing the services of a third party collection agency).

*Response.* This component is no longer part of the assessment conducted under the Management Operations Indicator. Rents uncollected component is now addressed only under ''Tenant Receivable Outstanding'' under the Financial Condition Indicator.

**Subpart E—PHAS Indicator #4: Resident Service and Satisfaction Assessment**

Certain comments specifically addressed to the PHAS Notice on the Resident Service and Satisfaction Survey Scoring Process may be applicable to the regulations in Subpart E and vice versa. Please see Section V of this preamble.

*Section 902.50 Resident Service and Satisfaction Assessment*

*Comment.* The survey is a tool that residents will use to get back at managers who enforce regulations and housing standards. As a result, managers will be less effective in being objective in managing their properties. There are other ways of measuring the effectiveness of property management instead of asking residents, who may be subjective based on their impressions of the manager instead of the facts. HUD should retain the measurements utilized under PHMAP to assess resident services and satisfaction.

*Response.* Based on the results of the pilot test of the resident service and satisfaction assessment, HUD has been presented no evidence to support this claim. In developing its resident survey, HUD adhered to sound principles of survey development in order to minimize responses that may simply be retaliatory on the part of residents as suggested by the comment. These survey principles also include that if the majority of those surveyed identify the same problem, the problem is assumed to be true, unless found to be otherwise. The PHAS makes clear that the PHAS score issued to a PHA is not based solely on the residents assessment of the PHA. The PHAS score represents a compilation of scores for all four PHAS indicators. HUD strongly believes, however, that the opinions of residents are important and that the survey is an effective tool to gauge these opinions. Similar surveys are recognized in the commercial property sector as effective management tools. Furthermore, answers to some questions will be used for informational purposes only and not calculated into the score for the PHA. Only questions with a statutory and/or regulatory basis (*e.g.,* questions that address services which a PHA is legally responsible to provide) will be ''scored.'' HUD believes that its survey process is a more effective measurement than the measurements utilized in PHMAP.

*Comment.* This indicator appears to be the subject of greater substantive change from the September 1, 1998, final rule than any of the other indicators. The PHA is removed from the survey process itself. Surveys will be distributed by ''a third party organization designated by HUD'' to a ''statistically valid number of residents'' chosen randomly by the third-party organization to participate in the survey. Aggregate results will be transmitted by the third party organization to HUD for ''analysis and scoring.'' The scores will be reported to PHAs as single scores for

five ''survey sections.'' Because the survey results will not be broken down by development either to HUD or to the PHA, there will be no ability to attribute particular survey results to any development operated by a mixed-finance owner entity (or by an RMC or an AME such as a private management contractor) as distinguished from the PHA itself, or for that matter to any particular PHA-managed project as opposed to another. While this process presumably will preclude attribution of any particular grade to a mixed-finance project, it also appears to put in question the ability of the PHA to develop any reasonably targeted ''Survey Follow-Up Plan.''

It also appears that scoring under this indicator will not be based on resident satisfaction. Review of the survey form does not reveal readily which questions can be regarded as ''directly related to compliance with the regulations or statutes applicable to the management of public housing.'' An anonymous and unverifiable survey form appears a dubious basis for compliance assessment in any event.

The pre-survey implementation process and the survey itself are ill-suited, if not destructive, to a mixed finance project. Separate treatment or classification of the public housing residents vs. the non-public housing residents in a mixed-finance project should be avoided. It is destructive of the cohesiveness of the mixed-income community.

*Response.* HUD disagrees that the PHA is removed from the survey process. The PHA will have an instrumental role in the survey process by providing unit addresses and marketing the survey to residents using promotional materials provided by HUD. PHAs also will develop a follow-up plan, if appropriate, to address any issues surfaced by aggregated survey results. The third party organization will not select the sample of residents. Rather, HUD selects the sample and sends it to the third party organization.

At this time, HUD will not provide responses at the development level in an effort to protect respondent confidentiality. HUD, however, will provide survey section scores at the PHA level. HUD does not agree that this will prevent PHAs from developing a follow-up plan. At this initial implementation of PHAS, the survey is not intended to identify individual problems, but rather to identify those at the PHA level. HUD intends, however, that in the future the survey will provide for responses at the developmental level, and HUD is proceeding to work toward that goal. HUD recognizes the benefits that can be achieved by surveys conducted at the developmental level.

The survey results will account for five out of the ten possible points for this indicator. Only those survey questions that are based on statutory and/or regulatory requirements will be ''scored.'' A copy of the survey instrument and the associated weights for the ''scored'' questions are attached as an appendix to the PHAS Notice on the Resident Service and Satisfaction Survey Scoring Process, which will be updated and published in the near future.

HUD also disagrees that the survey process is ill-suited to a mixed finance project. HUD believes that it is important to assess the services provided to the residents' satisfaction with these services for all residents in public housing, including those in public housing units in mixed-income developments. Therefore, public housing units in mixed finance projects will not be excluded from the survey. Residents are selected at random to participate, so no one income group would be singled out in any given year.

*Section 902.51 Updating of Resident Information*

*Comment.* The updating of resident information can be a time consuming process. Under the pilot testing, a PHA received notification to appoint a staff person to access the Resident Satisfaction and Services Assessment System (RASS), review list of addresses from HUD which are supposed to represent all of a PHA's property and unit addresses, edit and enter correct information. Staff expended long hours to correct address information.

*Response.* HUD recognizes that as a new system, there is some additional time involved at the outset by both HUD and a PHA to compile the information and data necessary to perform the assessments required by the PHAS. Once this information is compiled, however, any revisions necessary should be considerably less time consuming. For the first year of implementation, HUD intends to enhance direct communication with all PHAs to assist PHAs with the updating of resident information. Also, HUD will assist on an individual basis those PHAs that are experiencing technical problems or need assistance with entering a large volume of unit address data in RASS.

*Comment.* Reliance on the form HUD–50058 for the requisite updating of units and addresses may pose a problem for PHAs. Industry groups have met with HUD to discuss ways to improve MTCS reporting, but little has been accomplished to make reporting easier and accurate. There is a concern that PHAs will receive incomplete files from HUD and will require more than 30 days to update and clean their data files. This process has not been tested under the advisory period and there is no way of knowing where the problems may lie. PHAs should have 60 days to update the files. HUD should be more realistic about the limited role MTCS should play in all its programs—it is not ready to be universally adopted by all programs.

*Response.* HUD is aware that the MTCS reporting process needs improvement. Therefore, for the first year of implementation, HUD intends to assist on an individual basis those PHAs that are experiencing technical problems or need assistance with entering a large volume of unit address data in RASS. Due to limited data reported in MTCS, HUD must rely on PHAs to validate unit addresses to ensure survey mailing accuracy. PHAs should make additions, deletions and/or corrections to unit addresses under their jurisdiction. Any incorrect or obsolete address information will impact the survey results if the unit address information is incorrect or incomplete. REAC will be unable to select a statistically valid number of residents to participate in the survey. Under those conditions, a survey cannot be conducted at the PHA site and the PHA would not receive any points for PHAS Indicator #4. At this time, PHAs have a two month period to complete unit address certification.

*Comment.* PHAs were advised to register for IDs to verify unit addresses via the RASS but given very little time to register. Because this process of permitting PHAs to verify unit addresses for purposes of the resident satisfaction survey is crucial for the RASS and physical inspection, it is essential that HUD improves its communication with the industry and provide ample lead-time to implement the RASS. HUD should increase its server capacity for agencies to adequately transmit data to RASS.

*Response.* HUD agrees that it is HUD's responsibility to ensure that PHAs have adequate notice and sufficient time to take the steps and complete the processes required by this Indicator. To improve communications between PHAs and HUD on this Indicator, HUD intends to have regular meetings with industry representatives to discuss the survey process and continue providing technical assistance to PHA personnel. HUD is also working to improve its

server capacity for easier transmission of data to RASS.

*Section 902.52 Distribution of Survey to Residents*

*Comment.* A PHA must spend a considerable amount of staff time to market the survey. The time period set for this process does not appear to allow adequate time to respond or provide meaningful follow-up.

*Response.* HUD has allotted 30 days for PHAs at the beginning of the survey process to market the survey. At the conclusion of the survey period, the survey results will be posted and the PHA will have 30 days to access the results via the Resident Assessment Subsystem. Based on the survey results, PHAs will be required to develop a follow-up plan to address and resolve performance weaknesses. The follow-up plan must be available as a supporting document for the PHA's Annual Plan in accordance with 24 CFR 903.23(d).

*Comment.* The draft resident survey should have been published as part of the proposed rule. Publishing the document separately was not helpful.

*Response.* In retrospect, HUD recognizes that it would have been helpful to have published the survey at the time of publication of the June 22, 1999, proposed rule. HUD, however, had posted the survey, both in draft and final form on the HUD REAC website for an extensive period of time, and at this website, the PHAS Notice on the Resident Service and Satisfaction Survey Scoring Process is also posted. The survey was also widely distributed to PHAs beginning in February 1999. HUD has included the survey as an appendix to the PHAS Notice on the Resident Service and Satisfaction Survey Scoring Process.

*Comment.* HUD must ensure that the language regarding media outreach, posting flyers, and using newsletters to notify tenants about the resident survey on the RASS website is corrected so that it is consistent with the PHAS Scoring Notice on the Resident Service and Satisfaction Indicator which does not mandate the use of newsletters.

*Response.* HUD's website on the RASS and the PHAS Scoring Notice on the RASS have been made consistent.

**Subpart F—PHAS Scoring**

*Section 902.60 Data Collection*

*Comment.* The rules pertaining to which certifications are needed and where they must be located should be reasonable and in conformance with standard industry practice and HUD regulations. These requirements then must be communicated to PHAs before physical inspections are conducted and performance judgments made.

*Response.* HUD has provided copies of the HUD physical inspection training manuals on REAC's website at www.hud.gov/reac since 1998. The training manuals, along with the software, which is also on REAC's website, provides the procedures used by the HUD inspectors including the need for certifications and where they must be located. These are available to PHAs at no cost and may be accessed directly from HUD's website.

*Section 902.67 Score and Designation Status*

*Comment.* One commenter praised HUD for adding to the designation of ''troubled,'' the subdesignation of ''substandard.'' The commenter advised that this subdesignation helped to distinguish among those PHAs troubled in a particular area (and identify which area a PHA was experiencing problems) and PHAs that are troubled overall. Two other commenters, however, stated that the proposed rule added a new classification, ''sub-standard,'' without explanation of its meaning or justification for its use. HUD should clearly define the term and explain its value.

*Response.* The preamble to the June 22, 1999, proposed rule explained HUD's addition of term ''substandard'' to the PHAS regulation. Section II.D. of the preamble (64 FR 33350) stated that the purpose of introducing the term ''substandard'' in connection with troubled PHAs was to identify the particular area in which a PHA received a below passing or standard rating in the three major PHAS Indicators—Physical Condition, Financial Condition, and Management Operations—and to distinguish PHAs with a single problem area from those that have widespread issues. For example, if a PHA received less than 60 percent of the available points for the Physical Condition Indicator, but above 60 percent of the available points for the Financial Condition and Management Operations Indicators, the PHA is designated troubled (the PHA is troubled in one area), but for purposes of clarifying how the PHA is troubled, the PHA is categorized as substandard because it is substandard with respect to the physical condition of its properties.

HUD believes that the introduction of the term ''substandard'' to the PHAS regulation is consistent with Congressional directive in the Public Housing Reform Act. In amending section 6(j) of the 1937 Act (42 U.S.C. 1437d(j)), the Congress directed HUD to establish procedures for designating troubled PHAs and the procedures are to include identification of serious and substantial failure to perform as measured by the performance indicators specified under paragraph (1) of section 6(j) and such other factors as HUD may determine appropriate. The substandard categorization helps to identify the area in which the PHA is troubled, and to distinguish a PHA that is troubled in one area from a PHA that is overall troubled (that is, troubled in more than one area or with an overall PHAS score of less than 60 percent).

*Comment.* HUD should temporarily abandon the thresholds to determine troubled designation for the first two years of implementation of the PHAS.

*Response.* It would be a breach of the public's trust in HUD, and a breach of HUD's statutory obligation, to abandon the thresholds, and in essence abandon the designation of troubled for PHAs that are substandard (and therefore troubled) physically, financially, or with respect to their management operations. HUD determined that 60% (or 18 points) was the passing mark for the Physical Condition, Financial Condition and Management Operations Indicators. This was part of the first PHAS proposed rule published on June 30, 1998, and on which HUD solicited public comment. HUD will not disregard these thresholds even for a temporary period. HUD believes that the recent amendments made to section 6(j) of the 1937 Act support that there should be no halt to HUD's assessment of PHAs.

*Section 902.68 Technical Review of Results of PHAS Indicators #1 or #4*

*Comments.* Fifteen (15) days to request a technical review and 30 days to request an appeal are not enough time for a small PHA with limited staff resources. The rule provides no limit on the amount of time REAC has to respond to a request for a technical review or appeal. The rule should provide for REAC to respond within 30 days of receipt of the appeal. The 30 day appeal process should follow not only the issuance of the PHAS score but also any final determination of a request for a technical review. Another comment suggests that the period to request a technical review should be extended from 15 days to 60 days.

*Response.* HUD believes that 15 days, or approximately two weeks, is sufficient time to review the physical inspection report and request a technical review, and in the case of an appeal, 30 days is sufficient. HUD notes that the final rule now provides PHAs with the opportunity to review the physical inspection report, correct

exigent health and safety deficiencies identified in the report and request a reinspection before the physical inspection report is to be final (see § 902.26(b) of the final rule).

With respect to the physical inspection of properties, the PHA is present on a site during the inspection, and as a result is aware of the parameters of the inspection. Further, on the day of inspection, the PHA's property representative receives a list of every health and safety deficiency before the inspector leaves the site.

In order to give appropriate consideration to requests for appeals and technical reviews, HUD is not going to set a time limit but will make every effort to respond to the request within a 30 day time period. HUD notes that until it responds to the technical review request or appeal, the PHAS score is not considered final.

Additionally, HUD notes that under PHMAP, the time for appeal was 15 days. The 30-day period for appeals under the PHAS represents a substantial increase in time over the PHMAP appeal, and the technical review was not a procedure provided by PHMAP.

*Comment.* Technical review should be expanded to include the erroneous financial scoring results that easily occur in the transmission of information to HUD over the internet. Another comment suggests that all four PHAS indicators should be afforded the technical review process, at least in the first 2 to 4 years of PHAS implementation. The technical review process is burdensome and the proposed rule acknowledges this burden by limiting appeals to a narrow category of areas eligible for technical review. Given the investment of time and resources being made by the PHA, and given that PHAs must provide photos and other objective evidence to support a review, it is difficult to understand why HUD will not revisit the severity of the deficiency as part of the technical review.

*Response.* HUD disagrees with these recommendations. While HUD has acknowledged that the technical review process is a burden on HUD if it was permitted for all PHAS Indicators, it is a burden HUD would readily assume if there was a substantial benefit to this process for PHAs for all four PHAS Indicators. The technical review process was established as a mechanism to correct unintentional errors caused by a third party. There is no third party involved in the reporting of financial information or in the PHA's provision of the management indicator information as there is in the physical inspection process and the resident survey. While the technical review process is not available for the reporting of financial information or in the reporting of management operations information, this final rule, as already discussed in this preamble, provides procedures by which PHAs can notify HUD of errors and seek correction or adjustments to the score without regard to designation status.

*Comment.* HUD should permit a technical review where there has been an inspection of a unit which, as a result of the proposed PHAS amendments, is now exempt from inspection. Additionally, a technical review should be permitted where the inspector has failed to adhere to REAC instructions regarding the conduct of inspections.

*Response.* Several commenters expressed concern about inspection of vacant units that are now exempt under the new PHAS regulation. The inspection of vacant units conducted before issuance of this final rule were advisory in nature, and will not affect a PHA's PHAS designation. HUD has exempted vacant units from the physical inspection process for fiscal years ending September 30, 1999, and thereafter. No official physical inspection score will be based on an inspection of any unit, not under lease, that meets one of the three categories of units exempt from physical inspection as provided in this final rule.

If the HUD contractor fails to adhere to REAC instructions, the PHA should notify REAC. As noted earlier in this preamble, REAC has its own quality assurance staff, who are employees of the Federal government. Their sole job is to review the performance of the contract inspectors to ensure that the inspection protocol is being followed. REAC also has a Technical Assistance Center and a toll free telephone number (1–888–245–4860) and program participants are encouraged to call REAC if they experience problems with the inspectors. If a contractor's failure to adhere to REAC requirements results in the type of error, the technical review process is designed to address, then this process is available to the PHA.

*Comment.* HUD also should clarify its intent to permit appeals where a PHA has been declared ''substandard'' in one major indicator (per § 902.67(c)(2)), and has been denied ''high-performer'' status due to withdrawal of designation (per § 902.67(d)), or has been denied such status pursuant to 902.67(a), due to deficient grade on the Resident Service and Satisfaction indicator.

*Response.* ''Substandard'' is a subdesignation under the designation of ''troubled'' and therefore, appealable. The PHAS rule provides that a PHA may appeal any of its individual PHAS scores as a result of an error which the PHA believes, if corrected, would result in a significant change in the PHA's PHAS score and its designation. A PHA whose high performer or standard designation has been withheld or rescinded under the provisions of § 902.67 may request that the Assistant Secretary of Public and Indian Housing reinstate the designation as provided in § 902.67(d)(3).

*Comment.* The rule provides that technical review will not be granted for challenges to the inspector's findings, or disagreement with the inspector's obligations. Knowing full well human error will affect some authorities, PHAs should be allowed to challenge error.

*Response.* The purpose of this statement is to avoid challenges that are simply based on a PHA's disagreement with the inspectors findings. For example, the inspector cites a deficiency as major, but the PHA believes it is minor. In performing the inspection, the inspector is guided by HUD's physical inspection software which is to eliminate subjective findings on the part of inspectors. The purpose of the inspection protocol is to promote consistency and fairness in the inspection process. Therefore, a PHA's statement that a deficiency cited by an inspector as major is really minor is not a sufficient basis to request a technical review.

*Section 902.69 PHA Right of Petition and Appeal*

*Comment.* The present abbreviated appeal process provided by the rule does not allow for review of the scoring process itself, nor does it allow for discussion or explanation of items beyond the control of the local housing authority. A better appeal system would be one that allows for local, or at least regional, review of PHAS scores and processing. Additionally, the appeal process should not be limited to status changes and the appeal process should be extended from 30 to 60 days.

*Response.* The appeal of a PHAS score, as provided in § 902.69, necessarily involves the review of the scoring process. The appeal process is coordinated by REAC because scores are issued by REAC, and not by HUD's local or regional offices. Additionally, the appeal process provided in § 902.69 is not an abbreviated process, but rather requires considerable time and effort. For this reason, the appeal process is not appropriate for errors that do not result in a significant change in a PHA's PHAS score and its designation. (HUD, however, has introduced several procedures in this final rule that address

errors of the types raised by the commenters. Please see Section III of the preamble.)

Through the PHAS appeal process, a PHA may request an appeal of its PHAS score in writing to the Director of the Real Estate Assessment Center (REAC) within 30 calendar days following the issuance of the PHAS score. The appeal must be accompanied by the PHA's reasonable evidence that an objectively verifiable and material error has occurred, which if corrected, will result in a significant change in the PHA's PHAS score. Those errors may be the result of items beyond the control of the PHA, and the PHA should submit this evidence with its appeal.

Upon receipt of the appeal, REAC will convene a Board of Review to evaluate the appeal and its merits for the purpose of determining whether a reassessment of the PHA is warranted. The Board of Review will include representation from REAC, the Office of Public and Indian Housing, and such other office or representative as the Secretary may designate. HUD will make a final decision on appeals within 30 days of receipt of an appeal, and may extend this period an additional 30 days if further inquiry is necessary.

HUD addressed earlier in this preamble the appeal period of 30 days. HUD believes that 30 days is sufficient, and again, notes that it is an increase in the amount of time provided for the PHMAP appeal process.

*Comment.* The Board of Review should be eliminated and the Office of Public and Indian Housing (PIH) should act on all appeals.

*Response.* HUD disagrees with this comment. HUD believes that the Board composition, as provided in the rule (a representative from REAC, PIH, and other office as the Secretary may designate, excluding the TARC) ensures fairness and equity in the appeal process.

*Comment.* A representative of public housing agencies should be included as a member of the Board of Review discussed in § 902.69(b)(3).

*Response.* HUD declines to make this change at the final rule stage, but is taking this recommendation under advisement.

**Subpart G—PHAS Incentives and Remedies**

*Section 902.71 Incentives for High Performers*

*Comment.* The incentives for becoming a high performer under § 902.71 are ambiguous. The section does not list what specific HUD requirements a high performer would be relieved from, as well as how bonus points for HUD funding competitions would be utilized.

*Response.* This regulatory section describes the incentives for high performers broadly to allow HUD the flexibility to create incentives for high performers as HUD reviews the statutory framework and regulatory requirements of new and existing programs and initiatives and identifies appropriate and permissible incentives. For example, HUD's proposed rule on the ''Allocation of Funds under the Capital Fund; Capital Fund Formula,'' published on September 14, 1999 (64 FR 49924) provides for a performance reward for high performers in § 905.10(j) (see 64 FR at 49929). HUD is reviewing aspects of other programs to determine appropriate and permissible incentives to reward high performers, and is considering various incentive alternatives. HUD will notify PHAs of additional incentives when they have been determined.

With respect to relief from requirements, § 902.71 provides a few examples of the requirements that high performers would receive relief from. The rule does not list all requirements because the requirements from which PHAs may be granted relief may change from time to time. Bonus points for high performing PHAs may be provided under future HUD NOFAs.

*Comment.* The rule should provide as an added incentive for high performers relief from reporting on financial indicator requirements such as operating budgets, supporting schedules to include, all position salaries, and non-routine expenditures and administrative expense other than salaries. An additional incentive to include in the rule would be to provide an automatic extension for submission of year-end financial statements and audit reports, as well as streamlined budget submissions and year-end financial reports.

*Response.* There is no longer a requirement for submitting information of this type, unless a PHA is designated as troubled. Therefore, to adopt this recommendation would not provide any added incentive for high performers. PHAS offers other incentive for high performance, such as public recognition for achievement and bonus points in funding competitions, where such bonus points are not restricted by statute or regulation. If by this comment, the recommendation is to exempt a PHA from submission of the year-end financial information required under PHAS, HUD will not adopt this recommendation. The timely submission of year-end financial statements and audit reports is a principle of good management and, therefore not an appropriate incentive.

*Comments.* As incentive for good performance, HUD should reduce physical inspection to every 3 years for PHAs that score 80% on the PHAS physical condition assessment. Another comment suggest that high performers be rewarded with physical inspection reduced to every 3 years.

*Response.* For the initial implementation of PHAS, HUD believes that a physical inspection every two years of a property that scored at least 90 percent on the PHAS Physical Condition Indicator is an appropriate incentive. As official and full implementation of PHAS gets underway, HUD will continue its review of all aspects of PHAS, all aspects of its public housing programs, and determine whether the incentives provided in this final rule should be revised.

*Section 902.73 Referral to an Area HUB/Program Center*

*Comment.* The scoring function of the PHAS under § 902.73 does not provide guidelines to determine when HUD may request ''other standard performers'' to submit an Improvement Plan to HUD. Requiring Improvement Plans for PHAs with scores between 60 and 70 seems clear. However, for standard performers scoring above 70, the reasons are not clear. Without guidelines, HUD could require the submission of an Improvement Plan from a PHA with the highest level (89) of a standard performer. The rule's discretion to HUD to require Improvement Plans of PHAs scoring above 70 should be removed.

*Response.* Public Housing HUBs are required to monitor the PHAs within their jurisdiction. If a PHA has deficiencies in its performance regardless of its PHAS score, the PHA must correct those deficiencies. An Improvement Plan is both a strategic device and a monitoring tool. The Improvement Plan provides goals and direction to the PHA to correct its deficiencies. Additionally, the Improvement Plan allows the Public Housing HUB to ensure that progress is being made in the correction of the deficiencies.

*Comment.* The rule needs to clarify the relationship of a troubled designation to the requirement for submission of Improvement Plans to the HUB/Program Center and the TARC.

*Response.* If the confusion arises because of reference in § 902.75 (Referral to a Troubled Agency Recovery Center (TARC)) to the HUB/Program Center, this reference is included because there may be cases in which the

TARC will refer a troubled PHA to a HUB/Program Center for assistance in oversight and monitoring. A troubled PHA, however, is not required to submit both an Improvement Plan and enter into an MOA, nor is a troubled PHA subject to the provisions of § 902.73 and § 902.75. PHAs that are categorized as troubled in one area do not submit Improvement Plans to either the HUB/Program Center or the TARC. PHAs that are categorized as troubled in one area are required to enter into a Memorandum of Agreement (MOA), as statutorily required of all troubled PHAs in accordance with the provisions of § 902.75. A PHA designated as troubled and that is referred to the HUB/Program Center will be subject to the actions provided in § 902.75, the same as those PHAs that remain under the jurisdiction of the TARC. For certain troubled PHAs, the TARC may determine that the HUB/Program Center is better suited to work with and monitor the troubled PHA. In an effort to clarify an ambiguity, HUD has added language to § 902.75 that states that the referral to the HUB/Program Center is for purposes of oversight and monitoring.

*Section 902.75 Referral to a Troubled Agency Recovery Center (TARC)*

*Comment.* HUD must ensure that the Department has the capacity to provide constructive technical assistance to PHAs that are classified as troubled or substandard performer for individual components or the overall PHAS assessment.

*Response.* HUD, by adding TARCs to its organizational structure, made provisions to ensure that it has the requisite capacity.

**V. PHAS Scoring Notices**

*1. Physical Condition Scoring Notice*

*Comment.* The physical condition rating process needs to be refined. PHAs receive the same deficiency rating whether there are two missing shingles on a roof or 20, or if there is 1 inch of paint peel or 1 foot of paint peel. No discretion appears to be built into the process to determine whether the deficiency is large or small. The same rating for this type of discrepancy needs to be addressed.

*Response.* In developing the PHAS, one of the objectives was to establish, to the extent possible and permissible under law, a uniform and objective means of assessing the physical condition of properties. Hence, the physical condition standard defines the inspectable areas and inspectable items that are required to be examined. The physical inspection protocol further defines the deficiencies to be identified and the severity levels that distinguish between the varying levels of deficiencies for the same item. The levels of severity are level 1 (minor), level 2 (major) and level 3 (severe). This achieves the objective of the comment to distinguish between large/small deficiencies of the same nature. It is important to define these differences to remove subjective judgements in favor of objective assessments. The inspection protocol only records deficiencies based on the specific inspectable areas, inspectable items and severity definitions. It does not record a defect if a defect is not present. As noted above, however, the protocol does differentiate between the severity levels for a given deficiency. This differentiation is important in order to provide scalable scores which represent the overall condition of the property. HUD, however, is constantly reviewing and refining the deficiency definitions, and HUD will take this comment under advisement.

*Comment.* The physical condition scoring process is overly complicated. Although the scoring notices detail the item weights and criticality levels for each inspectable area, it is difficult to determine the effect of individual deficiencies on the overall score. The issue is important to PHAs because they will not be granted a technical review unless it is determined that contractor error resulted in a significant change in the property score and the PHAS designation assigned to the PHA. HUD should revise the system to indicate that an appeal will be considered on the basis of errors in other areas, including the inspector's judgment of the severity of deficiencies, and to permit appeals regardless of any change in the performance designation.

*Response.* HUD has made considerable effort to simplify and make more understandable the physical inspection scoring process, and believes that the Notice on the PHAS Physical Condition Scoring Process reflects HUD's success in this effort. With respect to appeals, the final rule provides for additional ways for PHAs to appeal or request review items in the assessment process that they believe are in error or inaccurate.

*Comment.* The PHAS inspection process inspects too many elements. HQS and local codes should be the standards by which PHA properties are physically assessed. HUD should revisit the physical inspection protocols. PHAs are being unfairly penalized in the physical condition inspection process for items that meet local building codes but do not meet HUD's physical condition standards.

*Response.* Before development of HUD's Uniform Physical Condition Standards and physical inspection protocols, HUD has had a number of inspections systems in its various programs. Part of HUD's 2020 Management Reform Plan was to develop standardized, uniform and objective protocols, and HUD sought and obtained industry input in the development of its standards and inspection protocol. The product of this effort is HUD's Uniform Physical Condition Standards, which was the subject of a final rule issued on September 1, 1998, and also was part of the PHAS final rule published on September 1, 1998. These standards are also applicable to HUD's multifamily insured, Section 8 project based, Section 202, and multifamily properties with HUD held mortgages in addition to public housing owned properties. HUD believes that this consistency is crucial to the effective management of the properties that receive assistance from the Federal government. PHAs are still required to meet any applicable local codes or ordinances. HUD's Uniform Physical Condition Standards notes that the standards do not supersede or preempt State and local building and maintenance codes to which HUD program participants must comply (see 24 CFR 5.703(g) and 24 CFR 902.20(d).) Complying with local and Federal standards is not new. This is the case in developing new public housing, modernizing public housing as well as maintaining public housing. In any case where there is conflict, the general rule is that the more stringent standard is applicable. Accordingly, HUD will maintain the uniform physical condition standards. In cases where the HUD standard conflicts with local code, this final rule provides for an adjustment under the procedures described in § 902.25(c).

*Comment.* The PHAS physical inspection scoring process allows for multiple deductions for the existence of only one deficiency. A single item with a cited deficiency can be included in two inspectable areas. The scoring system does not include adjustments based on physical condition of the site, common areas, and building exterior for properties over 10 years old. The impact of cosmetic deficiencies should be reduced by exclusion or adjustment in item weight, criticality or severity values. Restrict the assessment to only the standards relevant to ''adequately functional and free of health and safety standards.'' The scoring process is inconsistent within properties and the

objective of determining whether a PHA is meeting the standard of decent, safe, sanitary and in good repair.

*Response.* One of the unique features of the new uniform physical condition standard inspection is that it produces a scalable score to enable PHAs and HUD to better manage the properties. HUD believes that this is a significant improvement over inspections that produce only a pass or fail rating. Oftentimes the pass or fail rating is based only on a single element. This does not give HUD or the PHA an accurate picture of the overall condition of the property.

In developing a scalable score, HUD believes it is prudent to distinguish in the scoring between more important elements such as the heating system and less important elements such as lawns and plantings. HUD has provided PHAs with an itemized list of each inspectable item and its criticality level (from 1 to 5, with 5 being the most critical). This list is found on REAC website at www.hud.gov/reac. Similarly, it is also important when developing a scalable score to differentiate between the severity levels of individual deficiencies. It is also important to note that the scoring process does not deduct for cosmetic deficiencies. As discussed earlier in this preamble, the physical condition protocol is concerned with physical condition deficiencies not cosmetic appearance, but HUD recognizes that several commenters expressed concern about deductions for cosmetic appearance. Following consultation with industry, HUD re-examined the Dictionary of Deficiency Definitions, to assure that cosmetic deficiencies are not included. The revised Dictionary of Deficiency Definitions is posted on HUD's website.

*Comment.* No deductions should be applied to items that were not present in the design, construction and/or rehabilitation of projects when they have been maintained substantially the same as at the time of their acceptance. No deductions also should be made for items that are not present and that are not required by National Codes or HUD mandates.

*Response.* HUD has received comments similar to this one on the earlier PHAS rulemaking in 1998. While HUD believes that good design practice calls for the provision of window screens, gutters and down spouts, HUD recognizes that not all properties were built with these elements. Similarly, HUD believes that residents should be afforded privacy in bedrooms and bathrooms through the use of door locks, but again recognizes that not all properties were built with these features. Based on these concerns, HUD has modified its protocol to only assess elements that are present at the time of the inspection.

*Comment.* The PHAS physical condition scoring process should be corrected so that excessive point deduction for relatively few deficiencies do not occur. The system must return reasonable score results in order to be a valid measure of the physical condition found.

*Response.* If the deficiencies are severe, then even if they are a few deficiencies the point deduction will appropriately represent the severity of the deficiencies. HUD disagrees that the PHAS physical inspection scoring methodology results in excessive point deduction for an important element in the scoring system is the concept that not all inspectable items are of equal importance. Some elements like roofs, heating systems, etc., are more important than other elements such as lawns or plantings. Because of that, if a few high criticality level deficiencies are assessed as severe, and also have relatively high item weights, the score will be significantly reduced. Given the high item weights, criticality level and severity, however, the deductions are appropriate. The weights and levels assigned to the deficiencies are appropriate given their relative importance in terms of maintaining a condition that is decent, safe, sanitary and in good repair.

*Comment.* The contract inspector should share each observed deficiency noted with the PHA representative accompanying the inspector so the PHA will have a better understanding of the observed deficiency location and can ask questions and seek clarification where needed.

*Response.* HUD has developed an electronic system of capturing and providing inspection results. HUD believes that it is appropriate to review the results before conveying them the PHA. Again, however, HUD points out that the inspector shares the health and safety deficiencies with the PHA's representative on the day of inspection before the inspector leaves the site, and HUD, at this final rule stage, provides for the PHA to review and comment on the physical inspection report before it is issued in final. Additionally, as noted earlier, HUD has revised the physical inspection report to make it easier to identify the deficiencies noted.

*Comments.* HUD should consider a mechanism for making allowances for unavoidable downtime conditions resulting from scheduled repairs or unanticipated equipment problems. Such allowances should reflect a PHA's actions to minimize inconveniences to building residents. Another comment suggests that vacant or occupied buildings and units with substandard conditions that HUD has approved for mandatory conversion, HOPE VI redevelopment, demolition or disposition, or a comprehensive modernization plan should be exempt from the PHAS physical inspection.

*Response.* This final rule amends the inspection protocol to exempt vacant units from the physical inspection requirement. This accounts for repairs that are ongoing while the units are not occupied. Occupied units, however, are subject to inspection (although occupied units undergoing modernization may be eligible for scoring adjustment, as provided in § 902.25) HUD must ensure that residents are living in housing that is decent, safe, sanitary, and in good repair.

*Comment.* Deductions for ponding should be restricted where it is evident that standing water is causing visible damage to the roof surface or underlying materials. HUD should consider accepting ponding as a natural consequence of flat roof design while it is raining, and that flat roofs are an acceptable design standard for high-rise buildings.

*Response.* Any ponding or standing water on a roof can compromise the structural integrity if left too long. It is impossible to tell at the time of the inspection how long or to what extent damage may have been caused. For these reasons, HUD declines to adopt the suggestion, but HUD also recognizes the complexity of this issue, and HUD's inspection protocols now provide that if a measurable precipitation event has occurred within the previous 48 hours, consideration will be given to the impact on the extent of ponding.

*Comment.* Mold and mildew can be a serious problem, but often is not a result of a PHA's performance. The physical condition scoring process must allow for judgment to be exercised by the inspector to determine if the presence of mold/mildew is a result of resident behavior or poor property management.

*Response.* While HUD appreciates that not all conditions are the result of the PHA's performance, the PHA is ultimately responsible for the condition of the properties. The protocol is designed to determine the condition of the property, for which the PHA is responsible.

*Comment.* HUD should explain why maintenance areas are considered common areas when residents are not allowed in maintenance work area, boiler rooms, and elevator equipment rooms.

*Response.* The physical condition standards of decent, safe, sanitary and in good repair applies to the total property, not just areas where residents are allowed. These areas may not permit tenant access, but there is access to PHA maintenance staff.

In developing the Uniform Physical Condition Standards, HUD identified the major components of a property (i.e., site, building exterior, building systems and units). In attempting to not overly complicate the structure of the standard, HUD classified the remaining elements under common areas. This is not unlike the system used by HUD public housing Field Office staff under Handbook 7460.1 REV–1, the public housing ''Project Engineering Survey'' (Form HUD–52414)—''Other Items.'' Similarly, the Section 8 Housing Quality Standards Inspection form (Form HUD–52580), deals with these items under All Secondary Rooms Not Used for Living. HUD believes that its classification is reasonable.

*Comment.* HUD advised that algorithms, which would provide a methodology to compare vastly different types of housing across the country, would be included in the Physical Condition Scoring Notice, but they were not. If the algorithms are not to be used, the Assistant Secretary for PIH should therefore make a determination of a reasonable basis for scoring these properties, to take in the differences across the country.

*Response.* As HUD has stated frequently, the objective of its Uniform Physical Condition Standards and its uniform physical condition inspection protocols is to provide basic standards that are applicable to all types of housing, located in all types of areas. To the extent that adjustments to the physical condition inspection and score may be needed because of unique local building codes, or physical features of a housing that are unique to a geographic area and not contemplated by HUD's standards and inspection protocols, the final rule provides the flexibility to make such adjustments.

*Comment.* HUD should reconsider the current weights in the PHAS. In some areas, for example, the common area, which is only 15% of the entire building score, includes so many items, such as laundry rooms, lobbies, offices, community space that the deficiencies add up to over 70% of all the deficiencies in the entire inspection.

*Response.* As noted in this preamble, the weighting system for physical inspection scoring was the subject of industry and professional consultations. HUD believes that the current weights represent reasonable values to attribute to those property components. Regardless of the number of inspectable items in an inspectable area, the maximum value of the area is limited to the relative value of the area.

*Comment.* Properties should not be downgraded for penetrating vegetation that are attractive vines on fences and walls. HUD should not penalize PHAs for features which are considered amenities in the private market. In some cases, a neighbor would be justifiably upset if the PHA removed a vine owned by this neighbor from the PHA's fence.

*Response.* Penetrating vegetation can affect the livability and structural integrity of the property. HUD believes that the deficiency is justified.

*Comment.* The PHAS is still not clear how health and safety deficiencies affect a PHA's numerical score. The version of this notice accompanying the final rule needs to provide explicit examples of how these deficiencies figure into the numerical grade.

*Response.* Health and safety deductions are treated like all other deductions in the scoring algorithm, and take into account the assigned item weights and criticality values. The PHAS physical inspection protocol emphasizes health and safety because of its crucial importance to the well-being of residents. All health and safety deductions are therefore categorized as level 3 (severe).

*2. Financial Condition Scoring Notice*

*Comment.* There are contradictory explanations of the scoring of Expense Management and Net Income under the Financial Condition Indicator. In Appendix 1 of the PHAS Notice on the Financial Condition Scoring Process, HUD states that these would be scored based on deviations from a statistical mean. Those either above or below the allowable deviation would score 0 and all others would score 1.5. In Appendix 2 of this Notice, HUD states that these components would be scored only in one direction. HUD needs to state which of the two methods will be used.

*Response.* As specified in Appendix 1 to the PHAS Notice on the Financial Condition Scoring Process, the deviation from a statistical mean only applies to the first two indicators: Current Ratio and Months Expendable Fund Balance. For the remaining indicators the methodology is clearly delineated. Appendix 2 of this Notice is simply a set of tables providing the threshold values for each indicator by PHA size category consistent with the methodology described in Appendix 1.

*Comment.* Four categories within the expense management indicator: administrative, utilities, ordinary maintenance, and general expense are too detailed and unnecessary. Moreover, the cost categories are more detailed than high performing PHAs are currently required to report on their budget and subsidy requests. The Financial Condition Indicator should confine its review to overall routine costs and permit the PHA to have the discretion of distributing their expenses across those categories according to its needs and the goals and mandate of the Public Housing Reform Act.

*Response.* Six categories are measured under the Expense Management indicator: administrative, general, tenant service, protective service, maintenance and operation, and utilities expense. The six expense categories were modeled after the Statement of Operating Receipts and Expenditures form (HUD–52599). HUD already has requested this information annually from PHAs that are using this form. HUD believes that a review of overall routine costs is insufficient because a PHA's allocation of its resources has a significant impact on the quality of housing and services provided to its residents. Thus, in addition to the above described changes to the Expense Management Indicator to account for regional differences among PHAs, REAC has revised the calculation for the expense management component to assign weights to the six expense categories mentioned above. Weights have been assigned to non-tenant related expense categories to encourage PHAs to allocate resources to tenant-related activities.

*Comment.* PHAs should not be scored on the Expense Management indicator if they are performing well on other indicators.

*Response.* HUD believes that a PHA's allocation of resources is a valuable measure of efficiency and thus, all PHAs should be assessed on this measure. A PHA whose circumstances show a reasonable business reason will be able to appeal this indicator.

*Comment.* Under the scoring process for the Quick Ratio and Months Expendable Funds Balance, HUD proposes to utilize statistical distributions as the basis for its scoring. Specifically, HUD proposes to award the maximum number of points to PHA's with liquidity and operating values falling between the 30th and 80th percentiles. HUD, however, will give incrementally fewer points to PHAs with liquidity and operating reserves, values above the upper level of this range. In other words, PHAs with very high short term liquidity and very high operating reserves will be penalized through the loss of points. In effect, too

high of reserves and liquidity has now become a bad practice. This type of scoring does not make sense. PHAs with high liquidity or reserve values which place them above the 80th percentile range should be given the full number of points when these PHAs also score high under the PHAS management practices and physical inspection indicators.

*Response.* HUD believes that its scoring methodology with respect to reserves is appropriate but has made accommodations to recognize circumstances unique to a PHA.

Scoring Methodology. The scoring methodology for indicators 1 and 2 (Current Ratio and Months Expendable Fund Balance) take into account the difference between for-profit and not-for-profit entities. The focus of for-profit entities is profit maximization (*i.e.,* high-retained earnings and liquidity), whereas the focus of not-for-profit entities, such as PHAs, is to maximize the use of scarce resources to the benefit of their residents. Thus, HUD believes that PHAs with too high liquidity or reserves could be better utilizing their resources to improve the quality of housing or services to their residents.

HUD recognizes there is a much higher risk to HUD associated with PHAs exhibiting substandard levels of reserves as reflected in a score that reaches zero for those indicators. Those PHAs with too high reserves and liquidity, on the other hand, only stand to lose a maximum of 1.5 points out of 9 possible points for each of the two indicators.

Recognition of Unique Circumstances. The Notice on the PHAS Financial Condition Scoring Process that will be published in the **Federal Register** will provide that a PHA will not lose points under current ratio or monthly expenditure fund balance if the PHA has too high liquidity or reserves if the PHA has achieved at least 90 percent of the points available under the Physical Condition Indicator and is not required to prepare a follow-up plan under the PHAS Indicator #4 (Resident Service and Satisfaction). Additionally, this final rule provides that a PHA may appeal on the basis of mitigating circumstances any point deduction on the basis of too high liquidity or reserves, without regard to change of designation if the PHA receives a score of at least 60 percent in the Physical Condition Indicator.

*Comment.* The use of percentile scoring in the financial condition scoring process and the fact that the standards are not fixed are of concern to PHAs. The use of the Bell Curve for scoring PHAs appears to be inequitable. The use of relational scoring should be discontinued for all components.

*Response.* The concern that there is not an absolute value or standard toward which PHAs may strive is a valid one that has been and continues to be raised. Based on extensive economic and financial analysis, it has been concluded that it would be unfair to PHAs for HUD to identify a single value as the optimum performance measure among PHAs. Such number or standard would be debatable as it is really impossible to have a basis for selecting a single value as the optimum measure for a PHA of a certain size or location. Even PHAs that bear similar characteristics such as size and location operate differently due to a number of unique circumstances. It would be difficult to justify to PHAs that a certain amount of administrative expense or utility cost is the number to which they should strive because no two PHAs are the same.

The peer assessment approach is an equitable means of measuring financial performance because it rewards PHAs in the middle to upper range of performance with the highest number of points. For example, PHAs who have a current ratio in the 30th to 80th percentile receive all of the 9 points allocated to this indicator. Another example is expense management where only the PHAs in the top 95th percentile do not receive the full 1.5 points.

*Comment.* The PHAS financial scoring process may penalize PHAs under the current ratio component, for making capital improvements with local operating reserve funds. The PHAS also appears to include a penalty under the Physical Condition Indicator if PHAs do not make the capital improvements.

*Response.* The Current Ratio indicator measures the cash liquidity of a PHA compared to its peers by dividing current assets by current liabilities. This is done irrespective of the PHA's operating reserves. The numerator includes all cash and current assets of the PHA whether or not reserved for capital activities. The denominator includes all current liabilities of the PHA. PHAs are not penalized for either capital or operating expenses under the Current Ratio indicator. This indicator simply predicts whether or not the PHA can meet its current obligations as compared to the rest of the PHAs of the same size.

*Comment.* HUD should remove Payment In Lieu of Taxes (PILOT) when computing a PHA's General Expenses component. PILOT is a computation which involves utility costs and thus is subject to regional costs differences. PILOT's computation also involves input of a local property tax rate. Additionally, a significant number of PHAs no longer make PILOT payments, thus their expense level will be significantly lower when compared to those PHAs making PILOT payments.

*Response.* HUD's research of over 10,000 Statement of Operating Receipts and Expenditures forms (HUD–52599) shows over 87 percent of all PHAs pay PILOT expenses. The Expense Management indicator has been changed to assign weights to each individual expense management category. PILOT payments would affect the General Expenses category, which is weighted at 34 percent of the total 1.5 points, awarded. Furthermore, the Expense Management indicator awards full points to PHAs that fall within the 95th percentile of their group. The fact that the commenter's PILOT payment comprises only 22 percent of its total General Expense category does not represent a substantial difference between PHAs that pay PILOT and PHAs that do not.

*Comment.* The method for scoring Current Ratio and Months Expendable Fund Balance contain numbers that in the long run do not affect the overall scoring of the component. These include project loan notes, the interest payable-development notes, book value of conveyed projects, cumulative HUD grants, cumulative HUD annual contributions and various other surplus accounts. Several numbers used for scoring these two components will change substantially during the changeover to GAAP. The GAAP conversion can substantially change the Land Structures and Equipment, the permanent note account and other accounts. This system should be tested with the GAAP conversion before putting the scoring system in place.

*Response.* These concerns are currently being addressed. Analyses have been conducted to compare the line items in both the HUD–52595—*Balance Sheet for Section 8 and Public Housing* and HUD–52599—*Statement of Operating Receipts and Expenditures* with the FDS—*Financial Data Schedule* to identify the impact of GAAP adjustments on account balances. Other analyses have focused on comparisons between the indicator values and scores calculated using the respective thresholds for Non-GAAP and GAAP. The results of HUD's analyses show that PHAs that perform well in Non-GAAP performed well in GAAP. The assessment will remain peer-based, as such all PHAs will be affected the same way. The GAAP thresholds that were established based on limited data have been compared to the Non-GAAP

thresholds using various statistical measures. Though the GAAP thresholds are not expected to be similar to the Non-GAAP because of the differences in account balances and the large sample of Non-GAAP data, the statistical comparisons again showed that performance was relatively constant. The GAAP thresholds will be closely monitored once PHAS is implemented and PHAs begin to submit GAAP basis financial statements. After the first year of submissions they will be re-evaluated and proposed adjustments will be communicated in future notices.

*Comment.* HUD's Uniform Reporting Requirements will also affect the final scoring for the Financial Condition of PHAs. Until HUD has tested the scoring system for the overall financial condition of housing authorities and not just the public housing operating condition, the upcoming year's score should be based only on the public housing financials. HUD should review the composite numbers for future scoring purposes.

*Response.* HUD has tested the scoring system for several hundred PHAs currently reporting under GAAP. The testing was conducted for the entire PHA operations not just public housing programs. In addition, extensive statistical analysis has been conducted to compare the non-GAAP to GAAP scores in order to arrive at its scoring methodology. As discussed earlier in this preamble, HUD is not foregoing financial assessment of a PHA's entity-wide operations. HUD has, however, deferred issuance of a PHAS financial score based on a PHA's entity-wide operations to those PHAs with fiscal years ending after June 30, 2000. (Please see Section III of the preamble for a more detailed discussion of this issue.)

*Comment.* PHAs have no control over several accounts that HUD calculates and PHAs should not be penalized for the balances of these accounts.

*Response.* Because scoring is based on peer comparison PHAs are treated equitably. Although PHAs do not have control over all amounts in their financial statements, these figures impact the financial health and viability of PHAs and therefore cannot be ignored. Most decisions made by HUD and Congress generally treat all PHAs in the same manner.

*Comment.* HUD's scoring sheet is not user friendly. The scoring sheets do not have enough spaces to include all of the digits in longer numbers and therefore, it is difficult to follow HUD calculations.

*Response.* HUD assumes by the term ''scoring sheet'' that the commenter is referring to the electronic Financial Data Schedule (FDS) in Excel. PHAs wanting to use this spreadsheet can adjust the width of the columns. Additionally, HUD has reviewed this scoring sheet and has made other adjustments to make this form more user friendly.

*Comment.* HUD should consider making exceptions for mitigating circumstances.

*Response.* As noted in a response to an earlier comment, this final rule takes into consideration mitigating circumstances with respect to too high liquidity, high reserves and expense management. It would be impossible for HUD, however, to incorporate every mitigating circumstance that may arise into the scoring process because many of the circumstances would be specific to only one PHA.

*Comment.* HUD must revisit the graphs and tables that accompany the PHAS Notice on the Financial Condition Scoring Process. They are largely incomprehensible to those who are not trained in statistics. HUD has embraced the use of plain language in its rulemaking. These graphs and tables fall short of the plain language goal.

*Response.* HUD will update its PHAS Notice on the Financial Condition Scoring Process, will strive to make this notice more comprehensible and will attempt to simplify the graphs and charts.

*Comment.* The PHAS Notice on the Financial Condition Scoring Process states that the scoring of certain components follows generally recognized business principles. The explanation continues to discuss certain absolute thresholds that are indicated by these principles. There is concern about HUD's lack of a definition for sound business principles. The impression is that GAAP already takes into consideration sound business principles.

*Response.* The term ''sound business principles'' in the context of this paragraph pertains to the setting of thresholds for PHAS scoring purposes. For example, a PHA with a Current Ratio of less than 1 (*i.e.* where current liabilities is greater than current assets) may receive some points depending on its current ratio compared to other PHAs of the same size. However, sound business principles would dictate that a PHA with a Current Ratio of less than 1 would still pose a financial risk because it may be unable to cover its current obligations and thus should merit a score of zero for the Current Ratio indicator.

*Comment.* The Financial Condition scoring process does not adequately take into consideration decisions by HUD or Congress that impact PHA resources. This year, HUD funded the PFS at 92.5% of eligibility and did not allow PHAs to request year-end adjustments or to retain entrepreneurial income. These decisions will have a direct impact on a PHA's financial condition. The scoring of this indicator should have an adjustment for factors beyond a PHA's control.

*Response.* HUD is sympathetic to PHA concerns about meeting management responsibilities during times of budgetary setbacks. While Congressional decisions may impact a PHA's financial resources, the purpose of the PHAS is to assess a PHA's management of its financial resources, even when resources are not at the levels desired by PHAs or HUD. In addition, since the scores are based on a peer comparison and all PHAs are proportionally affected by partial PFS funding, HUD is taking into consideration decisions made by Congress that impact PHA resources. Every organization, whether private or non-profit, governmental or non-governmental, is expected to fulfill its responsibilities and carry out it functions within the budget provided.

*3. Management Operations Scoring Notice*

*Comment.* The Management Operations Scoring Process Notice states that one of the graded components of the Security/Economic Self-sufficiency subindicator is entitled ''grant program goals.'' Presumably, this incorporates the standard for a PHA's economic self-sufficiency program in 42 U.S.C 1437u(b), as amended by section 509 of the Public Housing Reform Act, and would also incorporate PHA activities to promote self-sufficiency in accordance with the statute. HUD should explain, either in preamble to the final rule or in the final version of the Management Operations Scoring Notice, how it will weigh PHA activities under the separate statutory provisions in the grading process.

*Response.* PHAs will be graded on the combination of grant program goals for both drug prevention activities and self-sufficiency activities met in the appropriate percentage of its developments. As discussed in more detail under section VI of this preamble, HUD is continuing to work on this component to strengthen HUD's assessment of PHA's activities to promote self-sufficiency.

*4. Resident Service and Satisfaction Scoring Notice*

*Comment.* Will each of the five components of the survey be worth one point? This should be made clear in the

scoring section. Also, since there is more than one question per section, will some questions count while others will not, or will each question be scored separately?

*Response.* HUD agrees that the scoring section should be clarified for this indicator. Each of the five survey sections (*i.e.,* maintenance and repair, communication, safety, services, and neighborhood appearance) will be worth one point. Answers to some questions on the survey will be used for informational purposes only and will not be calculated into the overall score. Weights will be associated only with ''scoreable'' questions in each survey section. Scores for each survey section will be calculated in the following manner: (1) Each section will be given a score between zero and one; and (2) the total survey score will be the sum of the five survey section scores, presented in a numeric format with one decimal place (*i.e.,* 4.3).

*Comment.* The last section of the survey is called ''neighborhood appearance.'' PHAs were led to believe that aspects not under the PHAs control would not be scored. Is this ''development appearance?''

*Response.* HUD recognizes these concerns. The PHAS rule stipulates that this section of the survey should be titled ''neighborhood appearance.'' Nevertheless, the only questions that will be included in the score for this section will be questions that can be directly associated with regulations or statutes applicable to the management of public housing. PHAs will not be held accountable for aspects of neighborhood appearance for which they are not responsible.

*Comment.* PHAs have diverse populations with language requirements. The survey must be translated into these languages for participation of all residents.

*Response.* The survey is now available in Spanish, as well as English. During the first year of operation, RASS asks each PHA to input information relative to alternative languages needed by more than 20 percent of their residents. Full assessment of other translation needs will be made prior to the second year of the survey process.

*Comment.* HUD has stated that not all questions would be scored but has not stated which specific questions will be scored and what the questions are worth. HUD should publish the survey and indicate the scoring weights of individual questions.

*Response.* The attachment to the PHAS Notice on the Resident Service and Satisfaction Survey Scoring Process, which will be published in the near future, provides a copy of the survey instrument and the associated weights for the ''scored'' questions.

## VI. Comments on Specific Issues Raised by HUD

In addition to requesting public comment on the June 22, 1999, proposed rule, and the four PHAS scoring notices, HUD specifically requested comment on the following issues. Comments received on these issues are noted below, and HUD's responses to these comments, where appropriate, are provided.

*1. PHA Efforts to Keep Units Occupied*

The June 22, 1999, rule proposed to inspect only occupied units. HUD noted its concern that PHAs make appropriate efforts to have as many units on line and occupied as possible. For example, PHAs should be keeping units unoccupied for modernization or unit turnover for the minimum possible time. The rule addresses this concern to an extent in the PHAS finance and management indicators. HUD requested comments whether this concern should be addressed further, and sought suggestions and recommendations on ways to do address this matter in the PHAS rule or elsewhere (*e.g.,* other regulations). Comments and recommendations were as follows:

*Comment—Vacancy is Already Addressed by Two Indicators.* Since occupancy is already measured by both the Financial and Management Indicators, there is no need for HUD to address occupancy an additional time in PHAS or other regulations. The assessment indicators for vacant units and vacancy loss are duplicative and more than adequate for stressing the importance of keeping units on-line to provide affordable housing to the maximum extent possible.

*Comment—No Need to Further Address This Issue; It's In the Interest of PHAs to Keep Units Occupied.* It is not necessary to address the matter of keeping units on-line and occupied to any greater extent in PHAS. It is in the best financial interests of public housing authorities to keep units off-line and unoccupied for a minimal amount of time.

*Comment-No Additional Constraints or Time Limits Are Necessary.* HUD asked whether the final rule should contain additional time constraints upon the exemption of unoccupied units from the PHAS inspection process. The three listed categories of exempt unit are subject to an inherent time limit and there is no need to superimpose any further time constraints.

*Response.* HUD agrees with the comments that no further assessment is necessary under the PHAS with respect to a PHA's efforts to keeping units occupied, and as noted earlier, this component is now found under only one PHAS Indicator (Indicator #2). PHAs are in the business of providing housing assistance and HUD recognizes that PHAs are aware that it is in their best interest, the interest of public housing residents and taxpayers to keep units occupied and on-line.

*2. Missing or Inoperable Smoke Detectors*

The June 22, 1999, rule did not propose to penalize PHAs in the PHAS score for missing or inoperable smoke detectors because of the extent to which this may not be within a PHA's control. HUD, however, noted its concern about this issue in view of the critical importance of fire prevention. Because of the safety risk presented by missing or inoperable smoke detectors, HUD advised that it considered whether the final rule should provide some consequence to PHAs for missing or inoperable smoke detectors (particularly if the number is high), including possibly a reduction in a PHA's physical inspection score. HUD requested comments on this option, and solicited suggestions as to the availability of working smoke detectors can be encouraged further, either in the PHAS rule or elsewhere.

*Comment—PHA Should Certify to Certain Actions.* PHAs should not be penalized for missing or inoperable smoke detectors because they truly are not within the control of PHAs. PHAs should take reasonable measures to assure that smoke detectors are operable and take appropriate action when they are found inoperable. These measures could include certifying that all detectors are tested annually; that they are immediately (within 24 hours) replaced or defective detectors are repaired; they are in compliance with Federal, State and local laws regarding smoke detectors; and PHAs follow an enforcement process when they find that tenants have tampered with smoke detectors.

*Comment—Reflect Missing & Inoperable Smoke Detectors in Physical Condition Score.* The maintenance of operable smoke detectors is a critical factor in the physical condition of housing. If smoke detectors are missing or inoperable, this should be reflected in the physical condition numerical scoring.

*Comment—PHAs Should Not Be Held Accountable for Resident Removal or Tampering with Smoke Detectors.* We

remain adamant that PHAs should not be held responsible when residents remove batteries or tamper with safety equipment. Even when PHAs have gone to great expense to hardwire smoke detectors, some residents have disconnected them. In short, if a PHA can demonstrate that it has smoke detectors, or it has a system in place that provided smoke detectors, it should not be held accountable for the removal of batteries or the removal system of components.

*Comment—No Penalty if PHA Records Reflect Appropriate Measures Taken by PHAs.* A PHA should not be penalized for a defective or missing detector in a dwelling unit if the PHA's records reflect either of the following: (a) At the most recent PHA inspection, the PHA found that the dwelling had an operable smoke-detector; (b) inspection revealed that the detector was missing or inoperable, and the PHA made the needed replacement or repair; or (c) subsequent to the most recent inspection, the PHA responded to a work order for repair or replacement of the detector. In regard to smoke-detectors in common areas, a PHA should not be penalized if records reflect that the missing or inoperable detector is scheduled to be replaced or repaired within 24 hours.

*Comment—Smoke Detector Maintenance Program.* PHAs should not be penalized for missing or inoperable smoke detectors. PHAs should be responsible for maintaining a smoke detector maintenance program by which PHAs could be assessed under the appropriate sub-indicator.

*Response.* HUD appreciates all the comments on this issue, and at this time, declines to penalize PHAs for missing or inoperable smoke detectors. HUD notes, as it has previously in this preamble, that missing or inoperable smoke detectors constitute health and safety deficiencies, and health and safety deficiencies are presented to the PHA before the HUD inspector leaves the site, and health and safety deficiencies are to be immediately addressed by the PHA. HUD, however, remains concerned about this issue and is going to continue to examine this issue and work with PHAs on how to best to promote fire prevention. HUD is exploring new technology in the area of tamper-proof smoke detectors. If HUD determines that this is a chronic problem with PHAs, HUD may take action through rule or other means, as appropriate, to ensure that this problem is resolved. Such action may include the imposition of penalties on PHAs or residents, or both.

*3. More Effective Implementation of the Economic Self-Sufficiency Indicator*

HUD requested comments on ways of improving the economic self-sufficiency sub-indicator so that it may be implemented more effectively, and specifically sought comments on whether the sub-indicator is properly weighted and appropriately placed in the rule as part of management sub-indicator #6 (see § 902.43(a)(6)).

*Comment—HUD's Treatment of New Indicators Is Inadequate.* The economic self-sufficiency indicator correctly belongs under the Management Operations Indicator. While the relative weight to be assigned to a PHAS indicator is undoubtedly a complex judgement, to attribute less than one point to a PHA's economic self-sufficiency efforts sends the message that HUD attributes minimal importance to such efforts. HUD's response to this statutory provision is entirely inadequate. There are several ways that HUD could provide appropriate weight to this indicator. HUD could reduce one or more of the management sub-indicators that are substantially duplicative of sub-indicators within the Physical Condition or Financial Condition Indicators, without adverse results. HUD could measure a PHA's degree of compliance with mandatory HUD programs designed to promote economic self-sufficiency, including the Family Self-Sufficiency program and section 3 (section of the Housing and Urban Development Act of 1968). HUD could include an outcome-base measure that evaluates the progress PHAs have made in increasing the extent of employment and earnings among public housing families while they reside in public housing.

*Response.* HUD appreciates the suggestions for strengthening the measurement of the economic self-sufficiency assessment. HUD acknowledges that the June 22, 1999, proposed rule did not reflect HUD's ultimate goal for this new subindicator, which is to effectively measure the extent to which the PHA coordinates, promotes or provides effective programs and activities to promote the economic self-sufficiency of public housing residents. This final rule provides for greater weight than that provided in the June 22, 1999, proposed rule (please see the preamble discussion of the changes made to this sub-indicator in § 902.43), and on this basis, is an improvement over the proposed rule. HUD recognizes, however, that this final rule does not fully provide for the measurement of performance under this sub-indicator that HUD desires. HUD is continuing to work on this sub-indicator to better incorporate an appropriate measurement of a PHA's activities to promote economic self-sufficiency.

*4. Withholding Designation*

HUD sought comments on the consequences to PHAs of withholding designation as provided in new paragraph (d)(2) of § 902.67.

*Comment—Designation Should Not Be Withheld.* Exceptional circumstances is too subjective a term, and leaves room for considerable discretion. This is an administratively meddlesome provision which is tantamount to double jeopardy.

*Comment—Withholding of Designation Manifestly Unfair.* Withholding designation because a PHA is involved in litigation that bears directly upon the physical, financial, or management performance of a PHA, or is operating under a court order is manifestly unfair and constitutionally suspect. If HUD is going to permit withholding of designation, HUD should reinstate the PHMAP procedure that permits a PHA to directly appeal a Field Office's denial of designation to the Assistant Secretary for Public and Indian Housing.

*Response.* The regulatory provision concerning withholding of a PHA's high performer or standard designation is not unfamiliar to PHAs. This provision was part of the PHMAP regulation at 24 CFR § 901.115(k). In egregious situations (as described in the regulation), HUD has an obligation to protect the Federal investment in a public housing property as well as the rights of residents. The PHAS was never intended to be, nor can it be, the only criteria for assessing the performance of PHAs in all areas, especially in the areas of civil rights, nondiscrimination and fair housing laws and regulations. HUD has added a provision to this section of the rule concerning withholding or rescission of designation that allows for the PHA to request from the Assistant Secretary for Public and Indian Housing reinstatement of its designation and provide the basis for its request for reinstatement.

*5. Assessing PHA Responsibility to Submit Accurate and Timely Occupancy Data to MTCS*

HUD also requested comments on how PHAs should be assessed with respect to their responsibility to submit occupancy data to the Multifamily Tenant Characteristics System (MTCS) in an accurate, complete and timely manner.

*Comment—Assist PHAs in Becoming Automated and Phase-In Electronic Submission Requirement.* With the

increased requirements imposed by HUD for electronic submission, PHAs need technical resources to become fully automated to meet these requirements. Additionally, PHAs should not be responsible for submission of up to 85% of its occupancy data for transmission problems beyond the control of the PHA. Electronic submission requirements should be phased in.

*Comment—Problems with Accurate Submission of Occupancy Data is Often Beyond Control of PHAs.* The difficulty that PHAs have experienced with respect to MTCS transmission is frequently a problem beyond their control. In some cases the software utilized by PHAs does not have the capability to interface with MTCS. Numerous communications with MTCS, HUD and the software manufacturer to address the problems with occupancy report transmissions have not resolved the problems. Also, it appears that MTCS has the same mailbox number for both Section 8 and conventional housing. As a result, MTCS cannot distinguish between what reports are coming from conventional housing. For these reasons, HUD should take no punitive measures against PHAs for their performance with respect to the submission of occupancy data to MTCS. HUD should assess PHA by their efforts to meet the MTCS reporting requirement.

*Comment—HUD Must Correct MTCS Transmission Problems.* It is essential that HUD expand the capacity of the server for the HUD REAC website in an effort to correct the continuous transmission problems associated with the PHAS and MTCS electronic reporting system.

*Response.* HUD appreciates the comments but advises that MTCS is a fully functional system. It is HUD's primary data system for information on public housing and Section 8 family characteristics and occupancy events. PHAs are required to submit Forms HUD–50058 for every public housing and Section 8 tenant-based assistance family. HUD issued Notice PIH 99–2 on January 28, 1999, to clarify the minimum reporting requirements and to establish a system of monitoring and technical assistance, semi-annual assessment, and formal review and sanctions. Under the Notice, HUD may impose sanctions on PHAs that do not meet the minimum 85 percent reporting level, which is determined at the semi-annual assessments (following the June and December MTCS Delinquency reports). PHAs may request forbearance from sanctions in writing. The request must include an explanation of why the PHA has not attained the minimum reporting level, steps that it plans to take to improve reporting, and monthly milestones. PHAs that do not meet the minimum reporting level and do not obtain forbearance are subject to sanction.

HUD will take into consideration the transmission problems that can be fully documented are beyond the PHAs control in approving these forbearance plans. There has and will continue to be industry consultation on changes required in MTCS to accommodate statutory changes. As of the June 1999 semi-annual reporting period, public housing reporting for MTCS has increased to 81% nationally. HUD has and will continue to work with PHAs to help them meet the minimum reporting rate.

**VII. General Comments**

*Comment—Delay PHAS Implementation.* HUD should consider delaying the official implementation of PHAS until October 1, 2000. Concern was expressed by commenters that some PHAs have not provided advisory scores from REAC, and in order for the PHAS to be an effective and meaningful system, PHAS should have a full year to understand advisory scores and prepare for actual implementation. Several issues still need to be resolved with the PHAS. The advisory score process should be extended until these issues are resolved.

*Response.* As discussed earlier in this preamble, HUD does not believe that a delay in implementation of PHAS until October 1, 2000 is warranted. HUD has revised the implementation schedule of PHAS to begin with PHAs with fiscal years ending after December 31, 1999, and even under that revised schedule, HUD is providing PHAs with fiscal years ending March 31, 2000, and June 30, 2000, to receive PHAS financial scores based only on an assessment of their public housing operating subsidies program. These latter two groups of PHAs will receive advisory scores on their entity-wide operations.

With respect to advisory scores, PHAs are notified of the availability of their completed PHAS advisory score by mail, and if they have access to the Internet, by e-mail. The PHAS scores are posted to REAC's website on a weekly basis. If a PHA requires assistance in accessing its advisory score, the PHA is encouraged to contact the REAC Technical Assistance Center at 1–888–245–4860.

Current reports out of REAC indicate that as of August 10, 1999, 93 percent of all PHAS advisory scores have been posted on REAC website. This includes over 99 percent posting of scores for PHAs with fiscal years ending September 30, 1998 and December 31, 1998; 90 percent posting of scores for PHAs with fiscal years ending March 31, 1999; and 86 percent posting for PHAs with fiscal years ending June 30, 1999. The majority of the delays in posting advisory scores are generally the result of PHAs' late filing of their financial or management reports (under requirements to date, financial reports are due 45 days after fiscal year end).

*Comment—Assessment of PHA Deconcentration Efforts.* The rule should provide for the assessment of the deconcentration efforts of PHAs. Standards of what constitutes good faith efforts should be included in the rule as a basis of measurement. For HUD not to penalize PHAs who fail to deconcentrate undercuts those PHAs who deconcentrate or make good faith efforts to deconcentrate.

*Response.* HUD agrees with the commenter about the importance of deconcentration efforts. The first PHAS proposed rule, published on June 30, 1998, and the PHAS final rule published on September 1, 1998, each noted in the ''scope'' provision of the rule (§ 901.3) that the PHAS does not evaluate a PHA's compliance with or response to every departmentwide or program specific requirement or objective. PHAs remain responsible for complying with such requirements as fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973, and requirements of programs under which the PHA is receiving assistance. The rule states that a PHA's adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's ACC. The same is true for deconcentration.

*Comment—Assessment of a PHA's Section 3 Compliance.* HUD should amend the PHAS rule to include compliance with Section 3 obligations as a tool for the assessment of the performance of PHAs (section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u). Section 3 requires that economic opportunities generated by certain Federal financial assistance, including public housing, shall be given, to the greatest extent feasible, to low and very low income persons.

*Response.* HUD's response to this comment is similar to its response to the comment concerning assessment of a PHA's deconcentration efforts. Assessment of Section 3 compliance is addressed by other HUD regulations. A PHA's responsibilities with respect to the Section 3 program are specifically

addressed in HUD's regulations at 24 CFR part 135.

*Comment—Availability of Hand-Held Computers with HUD Software Inspection.* REAC should provide a list to PHAs on the HUD website of all known manufacturers of hand-held computers, including all versions HUD reviewed for its inspection purposes. HUD should also release its specification requirements for running inspection protocol software on the hand-held computers so that PHAs may purchase and use the PHAS physical inspection software for annual inspection purposes to be consistent with the condition standards and protocol used by HUD REAC inspectors.

*Response.* Hand held computers, like other business machines, have many producers which enter and leave the market on a regular basis. With the extensive information available on the internet, there should be a number of websites by consumer associations that list these products, prices, and make recommendations, and there is no need for HUD to duplicate information available through other sources. Additionally, the Federal government must avoid even the appearance of endorsing products on the open market. Producing such a list would give the appearance that the Federal government favored those particular brands. Accordingly, HUD will not maintain a list of hand held computer manufacturers. HUD agrees, however, that it would be appropriate to put the minimum hardware specifications for the hand held computer on its website, and will do so.

## VIII. Findings and Certifications

*Paperwork Reduction Act Statement*

The information collection requirements for the PHAS regulation at 24 CFR part 902 were approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2535–0106. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

*Regulatory Planning and Review*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this rule is a ''significant regulatory action'' as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule will not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

*Environmental Review*

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding remains available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule is not anticipated to have a significant economic impact on a substantial number of small entities. This rule revises HUD's existing regulations for the assessment of public housing at 24 CFR part 902, PHAS, to provide additional information on the PHAS scoring process and to revise certain procedures and establish others in accordance with recently enacted statutory requirements. The additional information and the revision of certain procedures impose no significant economic impact on a substantial number of small entities.

*Federalism*

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance numbers for Public Housing is 14.850.

**List of Subjects in 24 CFR Part 902**

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

Accordingly, HUD revises 24 CFR part 902 to read as follows:

## PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

### Subpart A—General Provisions

Sec.
902.1 Purpose and general description.
902.3 Scope.
902.5 Applicability.
902.7 Definitions.

### Subpart B—PHAS Indicator #1: Physical Condition

902.20 Physical condition assessment.
902.23 Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR).
902.24 Physical inspection of PHA properties.
902.25 Physical condition scoring and thresholds.
902.26 Physical Inspection Report.
902.27 Physical condition portion of total PHAS points.

### Subpart C—PHAS Indicator #2: Financial Condition

902.30 Financial condition assessment.
902.33 Financial reporting requirements.
902.35 Financial condition scoring and thresholds.
902.37 Financial condition portion of total PHAS points.

### Subpart D—PHAS Indicator #3: Management Operations

902.40 Management operations assessment.
902.43 Management operations performance standards.
902.45 Management operations scoring and thresholds.
902.47 Management operations portion of total PHAS points.

### Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

902.50 Resident service and satisfaction assessment.
902.51 Updating of public housing unit address information.
902.52 Distribution of survey to residents.
902.53 Resident service and satisfaction scoring and thresholds.
902.55 Resident service and satisfaction portion of total PHAS points.

**Subpart F—PHAS Scoring**

902.60 Data collection.
902.63 PHAS scoring.
902.67 Score and designation status.
902.68 Technical review of results of PHAS Indicators #1 or #4.
902.69 PHA right of petition and appeal.

**Subpart G—PHAS Incentives and Remedies**

902.71 Incentives for high performers.
902.73 Referral to an Area HUB/Program Center.
902.75 Referral to a Troubled Agency Recovery Center (TARC).
902.77 Referral to the Departmental Enforcement Center (DEC).
902.79 Substantial default.
902.83 Interventions.
902.85 Resident petitions for remedial action.

**Authority:** 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d).

## Subpart A—General Provisions

### § 902.1 Purpose and general description.

(a) *Purpose.* The purpose of the Public Housing Assessment System (PHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among public housing agencies (PHAs), public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations, including rewards for high performers and consequences for poor performers.

(b) *Responsible office for PHAS assessments.* The Real Estate Assessment Center (REAC) is responsible for assessing and scoring the performance of PHAs.

(c) *PHAS indicators of a PHA's performance.* REAC will assess and score a PHA's performance based on the following four indicators:

(1) PHAS Indicator #1—the physical condition of a PHA's properties (addressed in subpart B of this part);

(2) PHAS Indicator #2—the financial condition of a PHA (addressed in subpart C of this part);

(3) PHAS Indicator #3—the management operations of a PHA (addressed in subpart D of this part); and

(4) PHAS Indicator #4—the resident service and satisfaction feedback on a PHA's operations (addressed in subpart E of this part).

(d) *Assessment tools.* REAC will make use of uniform and objective protocols for the physical inspection of properties and the financial assessment of the PHA, and will gather relevant data from the PHA and the PHA's public housing residents to assess management operations and resident services and satisfaction, respectively. On the basis of this data, REAC will assess and score the results, advise PHAs of their scores and identify low scoring and failing PHAs so that these PHAs will receive the appropriate attention and assistance.

(e) *Limitation of change of PHA's fiscal year.* To allow for a period of consistent assessment of the PHAS indicators, a PHA is not permitted to change its fiscal year for the first three full fiscal years following October 1, 1998, unless such change is approved by HUD.

### § 902.3 Scope.

The PHAS is a strategic measure of a PHA's essential housing operations. The PHAS, however, does not evaluate a PHA's compliance with or response to every Department-wide or program specific requirement or objective. Although not specifically referenced in this part, PHAs remain responsible for complying with such requirements as fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and requirements of programs under which the PHA is receiving assistance. A PHA's adherence to these requirements will be monitored in accordance with the applicable program regulations and the PHA's Annual Contributions Contract (ACC).

### § 902.5 Applicability.

(a) *PHAs, RMCs, AMEs.* (1) *Scoring of RMCs and AMEs.* This part applies to PHAs, Resident Management Corporations (RMCs) and Alternate Management Entities (AMEs), as described in this section. As described in this section, this part is also applicable to RMCs that receive direct funding from HUD in accordance with section 20 of the 1937 Act (DF–RMCs).

(i) RMCs and DF–RMCs will be assessed and issued their own numeric scores under the PHAS based on the public housing developments or portions of public housing developments that they manage and the responsibilities they assume which can be scored under PHAS. References in this part to PHAs include RMCs and this part is applicable to RMCs unless stated otherwise. References in this part to RMCs include DF–RMCs and this part is applicable to DF–RMCs unless otherwise stated.

(ii) AMEs are not issued PHAS scores. The performance of the AME contributes to the PHAS score of the PHA or PHAs for which they assumed management responsibilities.

(2) *PHA ultimate responsible entity under ACC, except where DF–RMC assumes management operations.* (i) Because the PHA and not the RMC/AME is ultimately responsible to HUD under the ACC, the PHAS score of a PHA will be based on all of the developments covered by the ACC, including those with management operations assumed by an RMC or AME (including a court ordered receivership agreement, if applicable).

(ii) A PHA's PHAS score will not be based on developments managed by a DF–RMC.

(b) *Implementation of PHAS.* The regulations in this part are applicable to PHAs with fiscal years ending on and after September 30, 1999.

(1) *PHAs with fiscal years ending September 30, 1999 or December 31, 1999.* For PHAs with fiscal years ending September 30, 1999, or December 31, 1999, HUD will not issue PHAS scores for the fiscal years ending on these dates. For these PHAs, in lieu of a PHAS score, HUD will issue the following:

(i) *PHAS Advisory Score.* A PHA with a fiscal year ending September 30, 1999, or December 31, 1999, will be issued a PHAS advisory score for PHAS Indicators #1 (Physical), #2 (Financial), and #4 (Resident Service and Satisfaction). The PHA must comply with the requirements of this part so that HUD may issue the advisory score. Physical inspections will be conducted using HUD uniform physical inspection protocol

(ii) *Management Assessment Score.* A PHA with a fiscal year ending September 30, 1999, or December 31, 1999, will receive an assessment score on the basis of HUD's assessment of the PHA's management operations in accordance with subpart D of this part.

(2) *PHAs with fiscal years ending after December 31, 1999.* PHAs with fiscal years ending after December 31, 1999, will be issued PHAS scores.

(c) *Chart on PHAS Advisory Score and PHAS Score Schedule.* The following chart illustrates when advisory scores will be issued and when PHAS scores will be issued and for which PHAS indicators.

| Quarter | Financial condition | | Management | | Physical | Resident |
|---|---|---|---|---|---|---|
| | Public housing | Entity-wide | Six indicators | Five indicators | | |
| 9/30/99 | Advisory | Advisory | Score | N/A | Advisory | Advisory. |
| 12/31/99 | Advisory | Advisory | Score | N/A | Advisory | Advisory. |
| 3/31/00 | Score | Advisory | N/A | Score | Score | Score. |
| 6/30/00 | Score | Advisory | N/A | Score | Score | Score. |
| 9/30/00 and beyond | N/A | Score | N/A | Score | Score | Score. |

**§ 902.7 Definitions.**

As used in this part:

*Act* means the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

*Adjustment for physical condition (development age) and neighborhood environment* is a total of three additional points added to PHAS Indicator #1 (Physical Condition). The three additional points, however, shall not result in a total point value exceeding the total points available for PHAS Indicator #1 (established in subpart B of this part).

*Alternative management entity (AME)* is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, under a Regulatory and Operating Agreement with a PHA, or that is otherwise duly appointed or contracted (for example, by court order or agency action), to manage all or part of a PHA's operations.

*Assessed fiscal year* is the PHA fiscal year that has been assessed under the PHAS.

*Average number of days nonemergency work orders were active* is calculated:

(1) By dividing the total of—

(i) The number of days in the assessed fiscal year it takes to close active nonemergency work orders carried over from the previous fiscal year;

(ii) The number of days it takes to complete nonemergency work orders issued and closed during the assessed fiscal year; and

(iii) The number of days all active nonemergency work orders are open in the assessed fiscal year, but not completed;

(2) By the total number of nonemergency work orders used in the calculation of paragraphs (1)(i), (ii) and (iii) of this definition.

*Days* in this part, unless otherwise specified, refer to calendar days.

*Deficiency* means any PHAS score below 60 percent of the available points in any indicator, sub-indicator or component. (In the context of physical condition and physical inspection, deficiency refers to a physical condition and is defined for purposes of subpart B of this part in § 902.24)

*Improvement plan* is a document developed by a PHA, specifying the actions to be taken, including timetables, that shall be required to correct deficiencies identified under any of the sub-indicators and components within the indicator(s), identified as a result of the PHAS assessment when a Memorandum of Agreement (MOA) is not required.

*Occupancy loss* is the sum of the number one (1) minus the unit months leased divided by unit months available (or Occupancy loss = 1 − (unit months leased/unit months available).

*Property* is a project/development with a separate identifying project number.

*Reduced actual vacancy rate within the previous three years* is a comparison of the vacancy rate in the PHAS assessed fiscal year (the immediate past fiscal year) to the vacancy rate of that fiscal year two years prior to the assessed fiscal year. It is calculated by subtracting the vacancy rate in the assessed fiscal year from the vacancy rate in the earlier year. If a PHA elects to certify to the reduction of the vacancy rate within the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review. Reduced actual vacancy rate within the previous three years only applies to PHAs with fiscal years ending September 30, 1999, and December 31, 1999.

*Reduced average time nonemergency work orders were active during the previous three years* is a comparison of the average time nonemergency work orders were active in the PHAS assessment year (the immediate past fiscal year) to the average time nonemergency work orders were active in that fiscal year two years prior to the assessment year. It is calculated by subtracting the average time nonemergency work orders were active in the PHAS assessment year from the average time nonemergency work orders were active in the earlier year. If a PHA elects to certify to the reduction of the average time nonemergency work orders were active during the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

*Tenant Receivable Outstanding* is defined in § 902.35(b)(3).

*Unit months available* is the total number of units managed by a PHA multiplied by 12 (adjusted by new units entering a PHA's public housing stock during the fiscal year) exclusive of unit months vacant due to: demolition; conversion; ongoing modernization; and units approved for non-dwelling purposes.

*Unit months leased* is the actual number of months each unit was rented during the fiscal year based on the PHA's tenant rent rolls or Housing Assistance Payments records.

*Work order deferred to the Capital Fund Program* is any work order that is combined with similar work items and completed within the current PHAS assessment year, or will be completed in the following year when there are less than three months remaining before the end of the PHA fiscal year from the time the work order was generated, under the PHA's Capital Fund Program or other PHA capital improvements program.

## Subpart B—PHAS Indicator #1: Physical Condition

**§ 902.20 Physical condition assessment.**

(a) *Objective.* The objective of the Physical Condition Indicator is to determine whether a PHA is meeting the standard of decent, safe, sanitary, and in good repair (DSS/GR), as this standard is defined in § 902.23 (a standard that provides acceptable basic housing conditions) and the level to which the PHA is maintaining its public housing in accordance with this standard.

(b) *Physical inspection under PHAS Indicator #1.* (1) To achieve the objective of paragraph (a) of this section, REAC will provide for an independent physical inspection of a PHA's property or properties that includes, at minimum, a statistically valid sample of the units in the PHA's public housing portfolio to determine the extent of compliance with the DSS/GR standard.

(2) Only occupied units will be inspected as dwelling units (except units approved by HUD for non-dwelling purposes, *e.g.,* daycare or meetings, which are inspected as common areas). Vacant units that are not under lease at the time of the

physical inspection will not be inspected, but vacant units are assessed under the Financial Condition Indicator #2 (§ 902.35(b)(4)) and the Management Operations Indicator #3 (§ 902.43(a)(1)). The categories of vacant units not under lease that are exempted from physical inspection are as follows:

(i) Units undergoing vacant unit turnaround—vacant units that are in the routine process of turn over; *i.e.,* the period between which one resident has vacated a unit and a new lease takes effect;

(ii) Units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded;

(iii) Off-line units—vacant units that have repair requirements such that the units cannot be occupied in a normal period of time (considered to be between 5 and 7 days) and which are not included under an approved rehabilitation plan;

(c) *PHA physical inspection requirement.* The HUD-conducted physical inspections required by this part do not relieve the PHA of the responsibility to inspect public housing units as provided in section 6(j)(1) of the Act (42 U.S.C. 1437d(j)(1)), and § 902.43(a)(5).

(d) *Compliance with State and local codes.* The physical condition standards in this subpart do not supersede or preempt State and local building and maintenance codes with which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

**§ 902.23 Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR).**

(a) *General.* Public housing must be maintained in a manner that meets the physical condition standards set forth in this part in order to be considered decent, safe, sanitary and in good repair (standards that constitute acceptable basic housing conditions). These standards address the major physical areas of public housing: site; building exterior; building systems; dwelling units; and common areas (see paragraph (b) of this section). These standards also identify health and safety considerations (see paragraph (c) of this section). These standards address acceptable basic housing conditions, not the adornment, decor or other cosmetic appearance of the housing.

(b) *Major inspectable areas.* The five major inspectable areas of public housing are the following:

(1) *Site.* The site includes components, such as fencing and retaining walls, grounds, lighting, mailboxes, signs (such as those identifying the development or areas of the development), parking lots/driveways, play areas and equipment, refuse disposal, roads, storm drainage and walkways. The site must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank back-ups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(2) *Building exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. The building's exterior components such as doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(3) *Building systems.* The building's systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system. Each building's systems must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(4) *Dwelling units.* (i) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water.

(iii) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(iv) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(5) *Common areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The common areas include components such as basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable. The common areas must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

(c) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (*e.g.,* propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all regulations and requirements related to the ownership of pets, and the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

**§ 902.24 Physical inspection of PHA properties.**

(a) *The inspection, generally.* The score for PHAS Indicator #1 is based upon an independent physical inspection of a PHA's properties provided by REAC and using HUD's uniform physical inspection protocols.

(1) During the physical inspection of a property, an inspector looks for deficiencies for each inspectable item within the inspectable areas, such as holes (deficiencies) in the walls (item) of a dwelling unit (area). The dwelling units inspected in a property are a randomly selected, statistically valid sample of the units in the property, excluding vacant units not under lease at the time of the physical inspection, as provided in § 902.20(b)(2).

(2) To ensure prompt correction of health and safety deficiencies before leaving the site, the inspector gives the property representative the list of every observed exigent/fire safety health and safety deficiency that calls for immediate attention or remedy. The

property representative acknowledges receipt of the deficiency report by signature.

(3) After the inspection is completed, the inspector transmits the results to REAC where the results are verified for accuracy and then scored in accordance with the procedures in this subpart.

(b) *Definitions.* The following definitions apply to the physical condition scoring process in this subpart:

*Criticality* means one of five levels that reflect the relative importance of the deficiencies for an inspectable item.

(1) Based on the importance of the deficiency, reflected in its criticality value, points are deducted from the score for an inspectable area.

| Criticality | Level |
|---|---|
| Critical | 5 |
| Very important | 4 |
| Important | 3 |
| Contributes | 2 |
| Slight contribution | 1 |

(2) The Item Weights and Criticality Levels document lists all deficiencies with their designated levels, which vary from 1 to 5, with 5 as the most critical, and the point values assigned to them.

*Deficiencies* means the specific problems, comparable to problems noted under Housing Quality Standards (HQS), such as a hole in a wall or a damaged refrigerator in the kitchen, that can be recorded for inspectable items.

*Dictionary of Deficiency Definitions* refers to the Dictionary of Deficiency Definitions document which is included as an appendix to the PHAS Notice on the Physical Condition Scoring Process and contains specific definitions of each severity level for deficiencies under this subpart. HUD will publish for comment any significant proposed amendments to this document. After comments have been considered HUD will publish a notice adopting the final Dictionary of Deficiency Definitions document or the amendments to the document. The Dictionary of Deficiency Definitions that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

*Inspectable areas* (or area) means any of the five major components of the property that are inspected, which are: site; building exteriors; building systems; dwelling units; and common areas.

*Inspectable item* means the individual parts, such as walls, kitchens, bathrooms, and other things, to be inspected in an inspectable area. The number of inspectable items varies for each area. Weights are assigned to each item as shown in the Item Weights and Criticality Levels document.

*Item Weights and Criticality Levels Document* refers to the Item Weights and Criticality Levels document which is included as an appendix to the PHAS Notice on the Physical Condition Scoring Process and contains a listing of the inspectable items, item weights, observable deficiencies, criticality levels and values, and severity levels and values that apply to this subpart. HUD will publish for comment any significant proposed amendments to this document. After comments have been considered HUD will publish a notice adopting the final Item Weights and Criticality Levels document or the amendments to the document. The Item Weights and Criticality Levels document that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

*Normalized weights* mean weights adjusted to reflect the inspectable items or areas that are present to be inspected.

*Score* means a number on a scale of 0 to 100 that reflects the physical condition of a property, inspectable area, or sub-area. To record a health or safety deficiency, a specific designation (such as a letter—a, b, or c) is added to the property score that highlights that a health or safety deficiency (or deficiencies) exists. If smoke detectors are noted as inoperable or missing, another designation (such as an asterisk (*)) is added to the property score. Although inoperable or missing smoke detectors do not reduce the score, they are included in the health and safety deficiencies list that the inspector gives the PHA's property representative. The PHA is expected to promptly address all health and safety deficiencies.

*Severity* means one of three levels, level 1 (minor), level 2 (major), and level 3 (severe), that reflect the extent of the damage or problem associated with each deficiency. The Item Weights and Criticality Levels document shows the severity levels for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated as the product of the item weight and the values for criticality and severity. For specific definitions of each severity level, see REAC's ''Dictionary of Deficiency Definitions''.

*Sub-area* means an inspectable area for one building. For example, if a property has more than one building, each inspectable area for each building in the property is treated as a sub-area.

(c) *Compliance with civil rights/nondiscrimination requirements.* HUD will review certain elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601–19) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). A PHA will not be scored on those elements. Any indication of possible noncompliance will be referred to HUD's Office of Fair Housing and Equal Opportunity.

(d) *HUD access to PHA properties.* PHAs are required by the ACC to provide the Government with full and free access to all facilities contained in the development. PHAs are required to provide HUD or its representative with access to the development, all units and appurtenances thereto in order to permit physical inspections under this part. Access to the units must be provided whether or not the resident is home or has installed additional locks for which the PHA did not obtain keys. In the event that the PHA fails to provide access as required by HUD or its representative, the PHA will be given ''0'' points for the development or developments involved which will be reflected in the physical condition and overall PHAS score.

### § 902.25 Physical condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #1, REAC will calculate a score for the overall condition of a PHA's public housing portfolio following the procedures described in the PHAS Notice on the Physical Condition Scoring Process (PHAS PASS Notice 3), which will be published in the **Federal Register**. HUD may revise this notice in the future, but HUD will publish for comment any significant proposed amendments to this notice. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS Notice on the Physical Condition Scoring Process that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

(b) *Adjustment for physical condition (property age) and neighborhood environment.* In accordance with section 6(j)(1)(I)(2) of the Act (42 U.S.C. 1437d(j)(1)(I)(2)), the overall physical score for a property will be adjusted upward to the extent that negative conditions are caused by situations outside the control of the PHA. These

situations are related to the poor physical condition of the property or the overall depressed condition of the immediately surrounding neighborhood. The intent of this adjustment is to avoid penalizing the PHA through appropriate application of the adjustment. (See paragraph (c) of this section which provides for further adjustments of physical condition score under certain circumstances.)

(1) *Adjustments in three areas.* Adjustments to the PHA physical condition score will be made in three factually observed and assessed areas (inspectable areas):

(i) Physical condition of the site;

(ii) Physical condition of the common areas on the property; and

(iii) Physical condition of the building exteriors.

(2) *Definitions.* Definitions and application of physical condition and neighborhood environment factors are:

(i) Physical condition applies to properties over 10 years old and that have not received substantial rehabilitation in the last 10 years.

(ii) Neighborhood environment applies to properties located where the immediate surrounding neighborhood (that is a majority of the population that resides in the census tracts or census block groups on all sides of the development) has at least 51 percent of families with incomes below the poverty rate as documented by the latest census data.

(3) *Adjustment for physical condition (property age) and neighborhood environment.* HUD will adjust the physical score of a PHA's property subject to both the physical condition (property age) and neighborhood environment conditions. The adjustments will be made to the scores assigned to the applicable inspectable areas so as to reflect the difficulty in managing. In each instance where the actual physical condition of the inspectable area (site, common areas, building exterior) is rated below the maximum score for that area, 1 point will be added, but not to exceed the maximum number of points available to that inspectable area.

(i) These extra points will be added to the score of the specific inspectable area, by property, to which these conditions may apply. A PHA is required to certify in the manner prescribed by HUD, the extent to which the conditions apply, and to which inspectable area the extra scoring point should be added.

(ii) A PHA that receives the maximum potential weighted points on the inspectable areas may not claim any additional adjustments for physical condition and/or neighborhood environments for the respective inspectable area(s). In no circumstance shall a property's score for the inspectable area, after any adjustment(s) for physical condition and/or neighborhood environments, exceed the maximum potential weighted points assigned to the respective property's inspectable area(s).

(4) *Scattered site properties.* The Date of Full Availability (DOFA) shall apply to scattered site properties, where the age of units and buildings vary, to determine whether the properties have received substantial rehabilitation within the past 10 years and are eligible for an adjusted score for the Physical Condition Indicator.

(5) *Maintenance of supporting documentation.* PHAs shall maintain supporting documentation to show how they arrived at the determination that the property's score is subject to adjustment under this section.

(i) If the basis was neighborhood environments, the PHA shall have on file the appropriate maps showing the census block groups surrounding the development(s) in question with supporting census data showing the level of poverty. Properties that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(ii) For the Physical Condition Indicator, a PHA would have to maintain documentation showing the age and condition of the properties and the record of capital improvements, evidencing that these particular properties have not received capital funds.

(iii) PHAs shall also document that in all cases, properties that were exempted for other reasons were not included in the calculation.

(c) *Database adjustment.* (1) *Adjustments for factors not reflected or inappropriately reflected in physical condition score.* Under certain circumstances, HUD may determine it is appropriate to review the results of a PHA's physical inspection which are unusual or incorrect due to facts and circumstances affecting the PHA's property which are not reflected in the inspection or which are reflected inappropriately in the inspection.

(i) These circumstances are not those that may addressed by the technical review process described in § 902.68. The circumstances addressed by this paragraph (c)(1) may include inconsistencies between local code requirements and the HUD physical inspection protocol; conditions which are permitted by local variance or license or which are preexisting physical features that do not conform to, or are inconsistent with, HUD's physical condition protocol; or the PHA has been scored for elements (*e.g.,* roads, sidewalks, mail boxes, resident-owned appliances, etc.) that it does not own and is not responsible for maintaining, and the PHA has notified the proper authorities regarding the deficient structure.

(ii) An adjustment due to these circumstances may be initiated by a PHA's notification to the applicable HUD HUB/Program Center and such notification shall include appropriate proof of the reasons for the unusual or incorrect result. A PHA may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request must be made within 15 days of issuance of the physical condition score. Based on the recommendation of the applicable HUD HUB/Program Center following its review of the PHA's evidence or documentation, HUD may determine that a reinspection and/or re-scoring of the PHA's property is necessary. HUD shall define, by notice, the procedures to be followed to address circumstances described in paragraph (c) of this section. The notice will be applicable to both public housing and multifamily housing properties covered by 24 CFR part 5, subpart G.

(2) *Adjustments for adverse conditions beyond the PHA's control.* Under certain circumstances, HUD may determine that certain deficiencies that adversely and significantly affect the physical condition score of the PHA were caused by circumstances beyond the control of the PHA. The correction of these conditions, however, remains the responsibility of the PHA.

(i) The circumstances addressed by this paragraph (c)(2) may include, but are not limited to, damage caused by third parties (such as a private entity or public entity undertaking work near a public housing development that results in damage to the development) or natural disasters. (The circumstances addressed in paragraph (c)(2) of this section are not those addressed by the technical review process in § 902.68.)

(ii) To adjust a physical condition score based on circumstances addressed in paragraph (c)(2) of this section, the PHA must submit a request to the applicable HUD HUB/Program Center requesting a reinspection of the PHA's properties. The request must be submitted within 15 days of the issuance of the physical condition score

to the PHA and must be accompanied by a certification that all deficiencies identified in the original report have been corrected. Based on the recommendation of the applicable HUD HUB/Program Center following its review of the PHA's evidence or documentation, HUD may determine that a reinspection and/or re-scoring of the PHA's property is necessary.

(3) *Adjustments for modernization work in progress.* HUD may determine that occupied dwelling units undergoing modernization work in progress require an adjustment to the physical condition score.

(i) An occupied dwelling unit undergoing modernization is subject to physical inspection, and all elements of the unit that are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to HUD's physical inspection protocol without adjustment. For those elements of the unit that are undergoing modernization, deficiencies will be noted in accordance with HUD's physical inspection protocol, but the PHA may request adjustment of the physical condition score as a result of modernization work in progress.

(ii) An adjustment due to modernization work in progress may be initiated by a PHA's notification to the applicable HUD HUB/Program Center and the notification shall include supporting documentation of the modernization work underway at the time of the physical inspection. A PHA may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request must be made within 15 days of issuance of the physical condition score. Based on the recommendation of the applicable HUD HUB/Program Center, HUD may determine that a reinspection and/or re-scoring of the PHA's property is necessary.

(d) *Overall PHA Physical Condition Indicator score.* The overall Physical Condition Indicator score for a PHA is the weighted average of the PHA's individual property physical inspection scores, where the weights are the number of units in each property divided by the total number of units in all properties of the PHA.

(e) *Thresholds.* (1) The physical condition score is reduced to a 30 point basis for the PHAS Physical Condition Indicator.

(2) In order to receive a passing score under the Physical Condition Indicator, the PHA must achieve a score of at least 18 points, or 60 percent of the available points under this indicator. If the PHA fails to receive a passing score on the Physical Condition Indicator, the PHA shall be categorized as a substandard physical agency.

### § 902.26 Physical Inspection Report.

(a) Following the physical inspection and computation of the score under this subpart, each PHA receives a Physical Inspection Report. The Physical Inspection Report allows the PHA to see the magnitude of the points lost by inspectable area, and the impact on the score of the health and safety (H&S) deficiencies.

(1) If exigent health and safety items are identified in the report, the PHA will have the opportunity to correct all exigent health and safety deficiencies noted on the report and request a reinspection.

(2) The correction of exigent health and safety deficiencies and the request for reinspection must be made within 15 days of the PHA's receipt of the Physical Inspection Report. The request for reinspection must be accompanied by the PHA's identification of the exigent health and safety deficiencies that have been corrected, and the PHA's certification that all such deficiencies identified in the report have been corrected.

(3) If HUD determines that a reinspection is appropriate, REAC will arrange for a complete reinspection of the development(s) in question, not just the deficiencies previously identified. The reinspection will constitute the final physical inspection for the development, and REAC will issue a new inspection report (the final inspection report).

(4) If any of the previously identified exigent health and safety deficiencies that the PHA certified were corrected are found during the reinspection to be not corrected, the score in the final inspection report will reflect a point deduction of triple the value of the original deduction, up to the maximum possible points for the unit or area, and the PHA must reimburse HUD for the cost of the reinspection.

(5) If a request for reinspection is not made within 15 days, the physical inspection report issued to the PHA will be the final physical inspection report.

(b) The Physical Inspection Report includes the following items:

(1) Normalized weights as the ''possible points'' by area;

(2) The area scores, taking into account the points deducted for observed deficiencies;

(3) The H&S deductions for each of the five inspectable areas; a listing of all observed smoke detector deficiencies; and a projection of the total number of H&S problems that the inspector potentially would see in an inspection of all buildings and all units; and

(4) The overall property score.

### § 902.27 Physical condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Physical Condition Indicator.

## Subpart C—PHAS Indicator #2: Financial Condition

### § 902.30 Financial condition assessment.

(a) *Objective.* The objective of the Financial Condition Indicator is to measure the financial condition of a PHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary and in good repair.

(b) *Financial reporting standards.* A PHA's financial condition will be assessed under this indicator by measuring the PHA's entity-wide performance in each of the components listed in § 902.35, on the basis of the annual financial report provided in accordance with § 902.33.

### § 902.33 Financial reporting requirements.

(a) *Annual financial reports.* PHAs must submit their unaudited and audited financial data to HUD on an annual basis. The financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles (GAAP) as further defined by HUD in supplementary guidance; and

(2) Submitted electronically in the format prescribed by HUD using the Financial Data Schedule (FDS).

(b) *Annual financial report filing dates.* The unaudited financial information to be submitted to HUD in accordance with paragraph (a) of this section, must be submitted to HUD annually, no later than two months after the end of the PHA's fiscal year end, with no penalty applying until the 16th day of the third month after the PHA's fiscal year end in accordance with Uniform Financial Reporting Standards (see 24 CFR part 5, subpart H). An automatic one month extension will be granted for PHAs with fiscal years ending September 30, 1999 through June 30, 2000.

(c) *Reporting compliance dates.* The requirement for compliance with the financial reporting requirements of this section begins with PHAs with fiscal years ending on and after September 30,

1999. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133 (see 24 CFR 84.26).

**§ 902.35 Financial condition scoring and thresholds.**

(a) *Scoring.* Under PHAS Indicator #2, REAC will calculate a score based on the values of financial condition components, as well as audit and internal control flags. Each financial condition component has several levels of performance, with different point values for each level. A PHA's score for a financial condition component depends upon both the level of the PHA's performance under a component, and the PHA's size, based on the number of public housing and section 8 units and other units the PHA operates.

(1) Under PHAS Indicator #2, REAC will calculate a score following the procedures described in the PHAS Notice on the Financial Condition Scoring Process (PHAS FASS Notice 3), which will be published in the **Federal Register**. HUD may revise this notice in the future, but HUD will publish for comment any significant proposed amendments to this notice. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS Notice on the Financial Condition Scoring Process that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

(2) PHAs with fiscal years ending on or before June 30, 2000, will receive an advisory score based on the PHA's entity-wide operations. PHAs with fiscal years ending March 31, 2000, and June 30, 2000, will also receive a score under this subpart C. These PHAs will receive a PHAS financial condition score on the basis of their public housing operating subsidies program. PHAs with fiscal years ending after June 30, 2000, will receive PHAS financial condition scores on the basis of their entity-wide operations.

(3) *High liquidity or reserves.* (i) Under the scoring process for the Financial Condition Indicator, no points will be deducted under the Current Ratio or Monthly Expenditure Fund Balance components for a PHA that has too high liquidity or reserves if the PHA has achieved at least 90 percent of the points available under the Physical Condition Indicator, and is not required to prepare a follow-up survey plan under the Resident Service and Satisfaction Indicator.

(ii) A PHA that has too high liquidity or reserves but does not meet the qualifications described in paragraph (a)(3)(i) of this section may appeal point deductions under the Current Ratio or Monthly Expenditure Fund Balance components based on mitigating circumstances if the PHA's physical condition score is at least 60 percent of the total available points under the Physical Condition Indicator.

(A) The appeal may be made without regard to change in designation.

(B) To adjust a financial condition score based on mitigating circumstances, the PHA must submit a request to the applicable HUD HUB/Program Center within 15 days of the issuance of the financial condition score to the PHA and must be accompanied by a description of the mitigating circumstances. Based on the recommendation of the applicable HUD HUB/Program Center following its review of the PHA's evidence or documentation, HUD may determine that a point adjustment for the financial condition score is acceptable.

(b) *Components of PHAS Indicator* #2. The components of PHAS Indicator #2 are:

(1) *Current Ratio* is current assets divided by current liabilities.

(2) *Number of Months Expendable Fund Balance* is expendable fund balance (Expendable Fund Balance) divided by monthly operating expenses. The Expendable Fund Balance is the portion of the fund balance representing expendable available financial resources, that is, the unreserved and undesignated fund balance.

(3) *Tenant Receivable Outstanding* is the average number of days tenant receivables are outstanding calculated by the gross amount of tenant receivables divided by 365.

(4) *Occupancy Loss* is one minus unit months leased divided by unit months available.

(5) *Expense Management/Utility Consumption* is the expense per unit for key expenses, including utility consumption, and other expenses such as maintenance and security.

(6) *Net Income or Loss divided by the Expendable Fund Balance* measures how the year's operations have affected the PHA's viability.

(c) *Thresholds.* In order to receive a passing score under the Financial Condition Indicator, the PHA must achieve a score of at least 18 points, or 60 percent of the available points under this indicator. If the PHA fails to receive a passing score on the Financial Condition Indicator, the PHA shall be categorized as a substandard financial agency.

**§ 902.37 Financial condition portion of total PHAS points.**

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Financial Condition Indicator.

## Subpart D—PHAS Indicator #3: Management Operations

**§ 902.40 Management operations assessment.**

(a) *Objective.* The objective of the Management Operations Indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.

(b) *Management assessment.* PHAS Indicator #3 pertaining to Management Operations incorporates the majority of the statutory indicators of section 6(j) of the Act, as provided in § 902.43. (The remaining statutory indicators are addressed under the other PHAS Indicators.)

**§ 902.43 Management operations performance standards.**

(a) *Management operations sub-indicators.* The following sub-indicators listed in this section will be used to assess a PHA's management operations. The components and grades for each sub-indicator are the same as those provided in Appendix 1 to the PHAS Notice on the Management Operations Scoring Process, except as may be otherwise noted in this subpart.

(1) *Management sub-indicator #1—Capital Fund.* This management sub-indicator examines the amount and percentage of funds provided to the PHA from the Capital Fund under section 9(d) of the Act, which remain unobligated by the PHA after three years, the timeliness of fund obligation, the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. For funding under the HOPE VI Program, only components #3, #4, and #5 of this sub-indicator are applicable. This management sub-indicator is automatically excluded if the PHA does not have section 9(d) capital funding.

(2) *Management sub-indicator #2—work orders.* This management sub-indicator examines the time it takes to complete or abate emergency work orders, the average number of days nonemergency work orders were active, and any progress a PHA has made during the preceding three years to reduce the period of time nonemergency maintenance work orders were active.

Implicit in this management sub-indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders.

(3) *Management sub-indicator #3—PHA annual inspection of units and systems.* This management sub-indicator examines the percentage of units and systems that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term Capital Fund needs. This management sub-indicator requires a PHA's inspection to utilize the HUD uniform physical condition standards set forth in subpart B of this part. All occupied units are required to be inspected.

(4) *Management sub-indicator #4—Security.* (i) This management sub-indicator evaluates the PHA's performance in tracking crime related problems in their developments; reporting incidence of crime to local law enforcement agencies; the adoption and implementation, consistent with section 6(j)(1)(I) (42 U.S.C. 1437d(j)(1)(I)), of applicant screening and resident eviction policies and procedures, and other anticrime strategies; coordination with local government officials and residents in the development on implementation of such strategies; and as applicable, PHA performance under any HUD drug prevention/crime reduction grants.

(ii) Paragraph (a) of this section provides that the components and grades for each sub-indicator are the same as those for the corresponding indicator provided in Appendix 1 to the PHAS Notice on the Management Operations Scoring Process, except as may be otherwise noted. For Component #1, Tracking and Reporting Crime Related Problems, the following will be used to describe a Grade of A: The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it:

(A) Tracks crime and crime-related problems in at least 90 percent of its developments;

(B) Has a cooperative system for tracking and reporting incidents of crime to local police authorities to improve law enforcement and crime prevention; and

(C) Coordinates with local government officials and its residents on the implementation of anticrime strategies.

(5) *Management sub-indicator #5—Economic Self-Sufficiency.* The economic self-sufficiency sub-indicator measures the PHA's efforts to coordinate, promote or provide effective programs and activities to promote the economic self-sufficiency of residents. For this sub-indicator, PHAs will be assessed for all the programs that the PHA has HUD funding to implement. Also, PHAs will receive credit for implementation of programs through partnerships with non-PHA providers, even if the programs are not funded by HUD or the PHA.

(b) *Reporting on performance under the Management Operations Indicator.* (1) A PHA is required to submit electronically a certification of its performance under each of the management operations sub-indicators in accordance with § 902.69(d).

(2) If circumstances preclude a PHA from reporting electronically, HUD will consider granting short-term approval to allow a PHA to submit its management operations certification manually. A PHA that seeks approval to submit its certification manually must ensure that REAC receives a request for manual submission in writing two months prior to the submission due date of its Management Operations certification. The written request must include the reasons why the PHA cannot submit its certification electronically. REAC will respond to such a request and will manually forward its determination in writing to the PHA.

### § 902.45 Management operations scoring and thresholds.

(a) *Scoring.* The Management Operations Indicator score provides an assessment of each PHA's management effectiveness. Under PHAS Indicator #3, REAC will calculate a score of the overall management operations of a PHA that reflects weights based on the relative importance of the individual management sub-indicators. Under PHAS Indicator #3, REAC will calculate a score following the procedures described in the PHAS Notice on the Management Operations Scoring Process (PHAS MASS Notice 3), which will be published in the **Federal Register**. HUD may revise this notice in the future, but HUD will publish for comment any significant proposed amendments to this notice. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS Notice on the Management Operations Scoring Process that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

(b) *Thresholds.* In order to receive a passing score under the Management Operations Indicator, the PHA must achieve a score of at least 18 points or 60 percent of the available points under this PHAS Indicator #3. If the PHA fails to receive a passing score on the Management Operations Indicator, the PHA shall be categorized as a substandard management agency.

### § 902.47 Management operations portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Management Operations Indicator.

## Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

### § 902.50 Resident service and satisfaction assessment.

(a) *Objective.* The objective of the Resident Service and Satisfaction Indicator is to measure the level of resident satisfaction with living conditions at the PHA.

(b) *Method of assessment, generally.* The assessment required under PHAS Indicator #4 will be performed through the use of a resident service and satisfaction survey. The survey process will be managed by the PHA in accordance with a methodology prescribed by HUD. The PHA will be responsible for completing implementation plan activities and developing a follow-up plan, if applicable, to address issues resulting from the survey, subject to independent audit.

(c) *PHA certification of completion of resident survey process.* (1) At the completion of the resident survey process as described in this subpart, a PHA will be audited as part of the Independent Audit to ensure that the resident survey process has been managed as directed by HUD. PHAs are required to submit and certify their implementation plans electronically via the internet prior to the fiscal year end in accordance with § 902.60(d). Follow-up plans, if applicable, must be made available for review and inspection at the principal office of the PHA during normal business hours as a supporting document to the PHA's Annual Plan in accordance with § 903.23(d) of this title. The PHA must certify electronically that it will develop a follow-up plan, if applicable.

(2) If circumstances preclude the PHA from reporting electronically, HUD will consider granting short-term approval to allow a PHA to submit its resident service and satisfaction certification manually. A PHA that seeks approval to submit the certification manually must ensure that REAC receives the PHA's written request for manual submission

two months before the submission due date of its resident service and satisfaction certification. The written request must include the reasons why the PHA cannot submit the certification electronically. REAC will respond to the PHA's request and will manually forward its determination in writing to the PHA.

**§ 902.51 Updating of public housing unit address information.**

(a) *Electronic updating.* The survey process for the Resident Service and Satisfaction Indicator is dependent upon electronic updating, submission and certification of resident address and unit information by PHAs.

(b) *Unit address update and verification.* The survey process for PHAS Indicator #4 begins with ensuring accurate information about the public housing unit addresses.

(1) PHAs will be required to electronically update unit address information initially obtained by REAC from the recently revised form HUD–50058, Family Report. REAC will supply a list of current units (listed by development) to PHAs via the internet. PHAs will be asked to make additions, deletions and corrections to their unit address list.

(2) After updating the list, PHAs must verify that the list of unit addresses under their jurisdiction is complete. Any incorrect or obsolete address information will have a detrimental impact on the survey results. A statistically valid number of residents cannot be selected to participate in the survey if the unit addresses are incorrect or obsolete. If a PHA does not verify the address information within two months of submission of the list of current units to the PHA by REAC, and the address information is not valid, REAC will not be able to conduct the survey at that PHA. Under those conditions, the PHA will not receive any points for the PHAS Resident Service and Satisfaction Indicator.

(c) *Electronic updating of the address list.* (1) The preferred method for updating a unit address list is electronic updating via the internet.

(2) If circumstances preclude a PHA from updating and submitting its unit address list electronically, HUD will consider granting short-term approval to allow a PHA to submit the updated unit address list information manually. A PHA that seeks approval to update its unit address list manually must ensure that REAC receives the PHA's written request for manual submission one month before the submission due date. The written request must include the reasons why the PHA cannot update the list electronically. REAC will respond to the PHA's request upon receipt of the request.

**§ 902.52 Distribution of survey to residents.**

(a) *Sampling.* A statistically valid number of units will be chosen to receive the Resident Service and Satisfaction Survey. These units will be randomly selected based on the total number of occupied and vacant units of the PHA. The Resident Service and Satisfaction assessment takes into account the different properties managed by a PHA by organizing the unit sampling based on the unit representation of each development in relation to the size of the entire PHA.

(b) *Survey distribution by third party organization.* The Resident Service and Satisfaction survey will be distributed to the randomly selected sample of units of each PHA by a third party organization designated by HUD. The third party organization will also be responsible for:

(1) Collecting, scanning and aggregating results of the survey;

(2) Transmitting the survey results to HUD for analysis and scoring; and

(3) Keeping individual responses to the survey confidential.

**§ 902.53 Resident service and satisfaction scoring and thresholds.**

(a) *Scoring.* (1) Under the PHAS Indicator #4, REAC will calculate a score based upon two components that receive points and a third component that is a threshold requirement.

(i) One component will be the point score of the survey results. The survey content will focus on resident evaluation of the overall living conditions, to include basic constructs such as:

(A) Maintenance and repair (*i.e.,* work order response);

(B) Communications (*i.e.,* perceived effectiveness);

(C) Safety (*i.e.,* perception of personal security);

(D) Services; and

(E) Neighborhood appearance.

(ii) The second component will be a point score based on the level of implementation and follow-up or corrective actions based on the results of the survey.

(iii) The final component, which is not scored for points, but which is a threshold requirement, is verification that the survey process was managed in a manner consistent with guidance provided by HUD.

(2) Under PHAS Indicator #4, REAC will calculate a score following the procedures described in the PHAS Notice on the Resident Service and Satisfaction Survey Scoring Process (PHAS RASS Notice 3), which will be published in the **Federal Register**. HUD may revise this notice in the future, but HUD will publish for comment any significant proposed amendments to this notice. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS Notice on the Resident Service and Satisfaction Survey Process that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

(b) *Thresholds.* A PHA will not receive any points under PHAS Indicator #4 if the survey process is not managed as directed by HUD, the survey results are determined to be altered, or the public housing unit addresses are not updated as referenced in § 902.51 of this document. A PHA will receive a passing score on the Resident Service and Satisfaction Indicator if the PHA receives at least 6 points, or 60 percent of the available points under this PHAS Indicator #4.

**§ 902.55 Resident service and satisfaction portion of total PHAS points.**

Of the total 100 points available for a PHAS score, a PHA may receive up to 10 points based on the Resident Service and Satisfaction Indicator.

## Subpart F—PHAS Scoring

**§ 902.60 Data collection.**

(a) *Fiscal Year reporting period—limitation on changes after PHAS effectiveness.* An assessed fiscal year for purposes of the PHAS corresponds to a PHA's fiscal year. To allow for a period of consistent assessments to refine and make necessary adjustments to the PHAS, a PHA is not permitted to change its fiscal year for the first three full fiscal years following October 1, 1998, unless such change is approved by HUD (see § 902.1(e)).

(b) *Physical condition information.* Information necessary to conduct the physical condition assessment under subpart B of this part will be obtained from HUD inspectors during the fiscal year being scored through electronic transmission of the data.

(c) *Financial condition information.* Year-end financial information to conduct the assessment under subpart C, Financial Condition, of this part will be submitted by a PHA through electronic transmission of the data to HUD not later than two months after the end of the PHA's fiscal year. An audited report of the year-end financial

information is due not later than 9 months after the end of the PHA's fiscal year.

(d) *Management operations and resident service and satisfaction information.* A PHA shall provide certification to HUD as to data required under subpart D, Management Operations, of this part and subpart E, Resident Service and Satisfaction, of this part not later than two months after the end of the PHA's fiscal year, with no penalty applying, however, until the 16th day of the third month after the PHA's fiscal year end. An automatic one month extension will be granted for PHAs with fiscal years ending September 30, 1999 through June 30, 2000.

(1) The Management Operations certification shall be approved by PHA Board resolution, and signed and attested to by the Executive Director.

(2) PHAs shall maintain documentation for three years verifying all certified indicators for HUD on-site review.

(e) *Failure to submit data by due date.* (1) If a PHA without a finding of good cause by HUD does not submit its certifications or year-end financial information, required by this part, or submits its certifications or year-end financial information more than 15 days past the due date, appropriate sanctions may be imposed, including a reduction of 1 point in the total PHAS score for each 15-day period past the due date.

(2) If all certifications or year-end financial information are not received within three months past the due date, the PHA will receive a presumptive rating of failure in all of the PHAS indicators, sub-indicators and components required to be certified to, which shall result in a troubled designation or identification as troubled with respect to the program for assistance from the Capital Fund under section 9(d) of the Act.

(f) *Verification of information submitted.* (1) A PHA's certifications, year-end financial information and any supporting documentation are subject to verification by HUD at any time, including review by an independent auditor as authorized by section 6(j)(6) of the Act (42 U.S.C. 1437(d)(j)(6)). Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories, the loss of high performer designation, a lower score under individual PHAS indicators and a lower overall PHAS score.

(2) A PHA that cannot provide justifying documentation to REAC, or to the PHA's independent auditor for the assessment under any indicator(s), sub-indicator(s) and/or component(s) shall receive a score of 0 for the relevant indicator(s), sub-indicator(s) and/or component(s), and its overall PHAS score shall be lowered.

(g) *Management operations assumed by an RMC (including DF–RMC).* For those developments of a PHA where management operations have been assumed by an RMC, the PHA's certification shall identify the development and the management functions assumed by the RMC.

(1) For an RMC, that is not a DF–RMC, the PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. Following verification of the RMC's certification, the PHA shall submit the RMC's certified questionnaire along with its own. The RMC's certification shall be approved by its Executive Director or Chief Executive Officer or responsible party.

(2) For a DF–RMC, the DF–RMC must submit directly to HUD its certified statement concerning the management functions that it has undertaken. The DF–RMC's certification shall be approved by its Executive Director or Chief Executive Officer or responsible party.

### § 902.63 PHAS scoring.

(a) *Computing the PHAS score.* Each of the four PHAS indicators in this part will be scored individually, and then will be used to determine an overall score for the PHA. Components within each of the four PHAS indicators will be scored individually, and the scores for the components will be used to determine a single score for each of the PHAS indicators.

(b) *Adjustments to the PHAS score.* (1) Adjustments to the score may be made after a PHA's audit report for the year being assessed is transmitted to HUD. If significant differences (as defined in GAAP guidance materials provided to PHAs) are noted between unaudited and audited results, a PHA's PHAS score will be adjusted (*e.g.,* reduction in points) in accordance with the audited results.

(2) A PHA's PHAS score under individual indicators, sub-indicators or components, or its overall PHAS score, may be changed by HUD in accordance with data included in the independent audit report, or obtained through such sources as HUD on-site review, investigations by HUD's Office of Fair Housing and Equal Opportunity, or reinspection by REAC, as applicable.

(c) *Issuance of score by HUD.* An overall PHAS score will be issued by REAC for each PHA after the later of one month after the submission due date for financial data and certifications, or one month after submission by the PHA of its financial data and certifications. The overall PHAS score becomes the PHA's final PHAS score after any adjustments requested by the PHA and determined necessary under the processes provided in §§ 902.25(c), 902.35(a)(3) and/or 902.68; any adjustments requested by the PHA and determined necessary under the appeal process provided in § 902.69; and/or any adjustments determined necessary as a result of the independent public accountant (IPA) audit, as provided in paragraph (b) of this section.

(d) *Review of audit.* For a PHA whose audit has been found deficient as a result of a quality control review of the IPA workpapers, a quality control review that is conducted by REAC as part of REAC's on-going quality assurance process, REAC may, at its discretion, select the audit firm that will perform the audit of the PHA and may serve as the audit committee for the audit in question. This review is important to determine the accuracy of the scoring under the Financial Condition Indicator.

(e) *Posting and publication of PHAS scores.* Each PHA (or RMC as the case may be) shall post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status. In addition, HUD will publish every PHA's score and status in the **Federal Register** and on HUD's internet site.

### § 902.67 Score and designation status.

A PHA will receive a status designation corresponding to its final PHAS score as follows:

(a) *High performer.* (1) A PHA that achieves a score of at least 60 percent of the points available under each of the four PHAS Indicators (addressed in subparts B through E of this part) and achieves an overall PHAS score of 90 percent or greater of the total available points under PHAS shall be designated a high performer.

(2) A PHA shall not be designated a high performer if it scores below the threshold established for any indicator.

(3) High performers will be afforded incentives that include relief from reporting and other requirements, as described in § 902.71.

(b) *Standard performer.* (1) A PHA that is not a high performer shall be designated a standard performer if:

(i) The PHA achieves a total PHAS score of not less than 60 percent of the total available points under PHAS; and

(ii) The PHA does not achieve less than 60 percent of the total points available

under one of the following indicators, PHAS Indicators #1, #2, or #3

(2) All standard performers must correct reported deficiencies.

(3) A PHA that achieves a total PHAS score of less than 70 percent, but not less that 60 percent, is required by the HUB/Program Center to submit an Improvement Plan to correct identified deficiencies.

(4) A PHA that achieves a total PHAS score of less than 70 percent but not less than 60 percent is at risk of being designated troubled.

(c) *Troubled performer.* A PHA that is designated as troubled may be:

(1) *Overall troubled.* A PHA that achieves an overall PHAS score of less than 60 percent or achieves less than 60 percent of the total points available under *more than one* of the following indicators, PHAS Indicators #1, #2, or #3, shall be designated as troubled (overall), and referred to the TARC as described in § 902.75.

(2) *Troubled in one area.* (i) A PHA that achieves less than 60 percent of the total points available under *only* one of the following indicators, PHAS Indicators #1, #2, or #3, shall be considered a substandard physical, substandard financial, or substandard management performer, and referred to the TARC as described in § 902.75.

(ii) In accordance with section 6(j)(2) of the Act, a PHA that receives less than 60 percent of the maximum calculation for the Capital Fund subindicator under PHAS Indicator #3 (Management Operations, subpart D of this part; see § 902.43(a)(2)) will be subject to the sanctions, provided in section 6(j)(4), as appropriate.

(d) *Withholding designation.* (1) In *exceptional circumstances,* even though a PHA has satisfied all of the PHAS Indicators for high performer or standard performer designation, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives or high performer designation or standard performer designation, in the case of a PHA that:

(i) Is operating under a special agreement with HUD;

(ii) Is involved in litigation that bears directly upon the physical, financial or management performance of a PHA;

(iii) Is operating under a court order;

(iv) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications, submitted in accordance with this part, are not supported by the facts, as evidenced by such sources as a HUD review, routine reports, an Office of Inspector General investigation/audit, an independent auditor's audit or an investigation by any appropriate legal authority; or

(v) Demonstrates substantial noncompliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under the PHAS. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair housing laws and regulations, or the Annual Contributions Contract. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing developments and operate them consistent with Federal laws and regulations.

(2) If high performer designation is denied or rescinded, the PHA shall be designated either a standard performer or troubled performer depending on the nature and seriousness of the matter or matters constituting the basis for HUD's action. If standard performer designation is denied or rescinded, the PHA shall be designated troubled.

(3) The denial or rescission of a designation of high performer or standard performer does not affect the PHA's numerical PHAS score.

(4) A PHA that disagrees with the basis for denial or rescission of the designation may make a written request for reinstatement of the designation to the Assistant Secretary for Public and Indian Housing which request shall include reasons for the reinstatement.

### § 902.68 Technical review of results of PHAS Indicators #1 or #4.

(a) *Request for technical reviews.* This section describes the process for requesting and granting technical reviews of physical inspection results and resident survey results.

(1) For both reviews, the burden of proof is on the PHA to show that an error occurred.

(2) For both reviews, a request for technical review must be submitted in writing to the Director of the Real Estate Assessment Center and must be received by REAC no later than 15 days following the issuance of the applicable results to the PHA (either the physical inspection results or the resident survey results). The request must be accompanied by the PHA's reasonable evidence that an error occurred.

(b) *Technical review of physical inspection results.* (1) For each property inspected, REAC will provide the results of the physical inspection and a score for that property to the PHA. If the PHA believes that an objectively verifiable and material error (or errors) occurred in the inspection of an individual property, the PHA may request a technical review of the inspection results for that property.

(2) For a technical review of physical inspection results, the PHA's request must be accompanied by the PHA's evidence that an objectively verifiable and material error has occurred. The documentation submitted by the PHA may be photographic evidence, written material from an objective source, such as a local fire marshal or building code official, or other similar evidence. The evidence must be more than a disagreement with the inspector's observations, or the inspector's finding regarding the severity of the deficiency.

(3) A technical review of a property's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will REAC consider a request for a technical review that is based on a challenge to the inspector's findings as to the severity of the deficiency (*i.e.,* minor, major or severe).

(4) Upon receipt of a PHA's request for technical review of a property's inspection results, REAC will review the PHA's file and any objectively verifiable evidence produced by the PHA. If REAC's review determines that an objectively verifiable and material error (or errors) has been documented, then REAC may take one or a combination of the following actions:

(i) Undertake a new inspection;

(ii) Correct the physical inspection report;

(iii) Issue a corrected physical condition score;

(iv) Issue a corrected PHAS score.

(5) In determining whether a new inspection of the property is warranted and a new PHAS score must be issued, REAC will review the PHA's file and evidence submitted to determine whether the evidence supports that there may have been a significant contractor error in the inspection which results in a significant change from the property's original physical condition score and the PHAS designation assigned to the PHA (*i.e.,* high performer, standard performer, or troubled performer). If REAC determines that a new inspection is warranted, and the new inspection results in a significant change from the original physical condition score, and the PHA's PHAS score and PHAS designation, REAC shall issue a new PHAS score to the PHA.

(6) Material errors are the only grounds for technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific

thresholds. The three types of material errors are:

(i) *Building data error.* A building data error occurs if the inspection includes the wrong building or a building that was not owned by the PHA, including common or site areas that were not a part of the property. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is of great interest to HUD and will be corrected upon notice to REAC.

(ii) *Unit count error.* A unit count error occurs if the total number of public housing units considered in scoring is incorrect. Since scoring uses total public housing units, REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *Non-existent deficiency error.* A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

(7) A PHA's subsequent correction of deficiencies identified as a result of a property's physical inspection cannot serve as the basis for an appeal of the PHA's physical condition score.

(c) *Technical review of resident survey results.* REAC will consider conducting a technical review of a PHA's resident survey results in cases where the contracted third party organization can be shown by the PHA to be in error.

(1) The burden of proof rests with the PHA to provide objectively verifiable evidence that a technical error occurred. Examples include, but are not limited to, incorrect material being mailed to residents; or the PHA's units addresses were incorrect due to the third party organization's error, such as unit numbers being omitted from the addresses. A PHA that does not update its unit address list as described, above, will not be eligible for a technical review based on incorrect addresses.

(2) Upon receipt of a PHA's request for technical review of resident survey results, REAC will review the PHA's file and evidence submitted by the PHA. If REAC's review determines that an error has been documented, REAC may take one or a combination of the following actions:

(i) Undertake a new survey;

(ii) Correct the resident survey results report;

(iii) Issue a corrected resident services and satisfaction score;

(iv) Issue a corrected PHAS score.

### § 902.69 PHA right of petition and appeal.

(a) *Appeal of troubled designation and petition for removal troubled designation.* A PHA may:

(1) Appeal its troubled designation (including designation as troubled with respect to its performance under the Capital Fund subindicator as provided in § 902.67(c)(2)); and

(2) Petition for removal of troubled designation.

(b) *Appeal of PHAS score.* If a PHA believes that an objectively verifiable and material error (or errors) exists in any of the scores for its PHAS Indicators, which, if corrected, will result in a significant change in the PHA's PHAS score and its designation (*i.e.,* as troubled, standard, or high performer), the PHA may appeal its PHAS score. A significant change in a PHAS score is a change that would cause the PHA's PHAS score to increase, resulting in a higher PHAS designation for the PHA (i.e., from troubled performer to standard performer, or from standard performer to high performer).

(c) *Appeal and petition procedures.* (1) To appeal troubled designation or a PHAS score, a PHA must submit a request in writing to the Director of the Real Estate Assessment Center that must be received by REAC no later than 30 days following the issuance of the final PHAS score to the PHA. To petition removal of troubled designation, a PHA must submit its request in writing to the Director of the Real Estate Assessment Center. The written request must be received by REAC no later than 30 days after HUD's decision to refuse to remove the PHA's troubled designation.

(2) An appeal of troubled designation or petition for removal of troubled designation must include the PHA's supporting documentation and reasons for the appeal. An appeal of a PHAS score must be accompanied by the PHA's reasonable evidence that an objectively verifiable and material error occurred. An appeal submitted to REAC without appropriate documentation will not be considered and will be returned to the PHA.

(d) *Consideration of appeal.* (1) *Consideration of appeal of PHAS score.* Upon receipt of an appeal of a PHAS score from a PHA, REAC will review the PHA's file and the evidence submitted by the PHA to support that an error occurred. If REAC determines that an objectively verifiable and material error has been documented by the PHA, REAC may undertake a new inspection of the property, and/or a reexamination of the financial information, management information, or resident information (the components of the PHAS score), depending upon which PHAS Indicator the PHA believes was scored erroneously and the type of evidence submitted by the PHA to support its position that an error occurred.

(2) *Consideration of appeal of troubled designation or refusal to remove troubled designation.* Upon receipt of an appeal of a troubled designation from a PHA, REAC will convene a Board of Review (the Board) to evaluate the appeal and its merits for the purpose of determining whether a reassessment of the PHA is warranted. Board membership will be comprised of a representative from REAC, from the Office of Public and Indian Housing, and from such other office or representative as the Secretary may designate (excluding, however, representation from the Troubled Agency Recovery Center). For purposes of reassessment, REAC will schedule a reinspection and/or acquire audit services, as determined by the Board, and a new score will be issued, if appropriate. Decisions by the Board will be reported to the PHA by the Assistant Secretary for Public and Indian Housing.

(e) *Final appeal decisions.* HUD will make final decisions of appeals within 30 days of receipt of an appeal, and may extend this period for an additional 30 days if further inquiry is necessary. Failure by a PHA to submit supporting documentation with its request for appeal, or within any additional period granted by HUD is grounds for denial of an appeal. Final appeal decisions will be reported to the PHA by the Assistant Secretary for Public and Indian Housing.

## Subpart G—PHAS Incentives and Remedies

### § 902.71 Incentives for high performers.

(a) *Incentives for high performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives, and such other incentives that HUD may determine appropriate and permissible under program statutes or regulations:

(1) *Relief from specific HUD requirements.* (i) A PHA that is designated high performer will be relieved of specific HUD requirements (for example, fewer reviews and less monitoring), effective upon notification of high performer designation.

(ii) The development or developments of a PHA that receives a physical condition score of 90 percent or greater under PHAS Indicator #1 shall be subject to a physical inspection every other year rather than annually. (All developments of the high performer PHA are subject to inspection every other year, not only those inspected for

which the physical condition score of 90 percent or greater was achieved.)

(2) *Public recognition.* High performer PHAs and RMCs that receive a score of at least 60 percent of the points available under each of the four PHAS Indicators and achieve an overall PHAS score of 90, will receive a Certificate of Commendation from HUD as well as special public recognition, as provided by the HUB/Program Center.

(3) *Bonus points in funding competitions.* A high performer PHA will be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program. Where permissible by statute or regulation, eligibility for high performers to receive bonus points in HUD's funding competitions, will be stated in HUD's notices of funding availability or other funding documents.

(b) *Compliance with applicable Federal laws and regulations.* Relief from any standard procedural requirement that may be provided under this section does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations or other handbook requirements. For example, although a high performer or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, the PHA must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36).

(c) *Audits and reviews not relieved by designation.* A PHA designated as a high performer or standard performer remains subject to:

(1) Regular independent auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue to be conducted as circumstances may warrant.

**§ 902.73 Referral to an Area HUB/Program Center.**

(a) Standard performers will be referred to the HUB/Program Center for appropriate action.

(1) A standard performer that receives a total score of less than 70 percent but not less than 60 percent shall be required to submit an Improvement Plan to eliminate deficiencies in the PHA's performance.

(2) A standard performer that receives a score of not less than 70 percent may be required, at the discretion of the appropriate area HUB/Program Center, to submit an Improvement Plan to address specific deficiencies.

(b) *Submission of an Improvement Plan.* (1) Within 30 days after the final PHAS score is issued, a standard performer with a score of less than 70 percent is required to submit an Improvement Plan to the HUB/Program Center in accordance with paragraphs (d) and (e) of this section.

(2) An RMC, unless a DF–RMC, that is required to submit an Improvement Plan must develop the plan in consultation with its PHA and submit the plan to the HUB/Program Center through its PHA. A DF–RMC that is required to submit an Improvement Plan, also must develop its plan in consultation with its PHA, but must submit its plan directly to the HUB/Program Center.

(3) On a risk management basis, the HUB/Program Center may require a standard performer with a score of not less than 70 percent to submit within 30 days after receipt of its final PHAS score an Improvement Plan, which includes the information stated in paragraph (d) of this section.

(c) *Correction of deficiencies.* (1) *Time period for correction.* After a PHA's (or DF–RMC's) receipt of its PHAS score and designation as a standard performer or, in the case of an RMC, notification of its score from a PHA, a PHA or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD approved Improvement Plan if an Improvement Plan is required.

(2) *Notification and report to HUB/Program Center.* A PHA shall notify the HUB/Program Center of its action to correct a deficiency. A PHA shall also forward to the HUB/Program Center an RMC's report of its action to correct a deficiency. A DF–RMC shall forward directly to the HUB/Program Center its report of its action to correct a deficiency.

(d) *Improvement Plan.* An Improvement Plan shall:

(1) Identify baseline data, which should be raw data but may be the PHA's score for each individual PHAS indicator, sub-indicator and/or component that was identified as a deficiency;

(2) Identify any other performance and/or compliance deficiencies that were identified as a result of an on-site review of the PHA's operations;

(3) Describe the procedures that will be followed to correct each deficiency;

(4) Provide a timetable for the correction of each deficiency; and

(5) Provide for or facilitate technical assistance to the PHA.

(e) *Determination of acceptability of Improvement Plan* (1) The HUB/Program Center will approve or deny a PHA's Improvement Plan (or RMC's Improvement Plan submitted to the HUB/Program Center through the RMC's PHA, or the DF–RMC's Improvement Plan submitted directly to the HUB/Program Center), and notify the PHA of its decision. A PHA that submits an RMC's Improvement Plan must notify the RMC in writing, immediately upon receipt of the HUB/Program Center notification, of the HUB/Program Center approval or denial of the RMC's Improvement Plan.

(2) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the HUB/Program Center for revising the Improvement Plan to obtain approval.

(f) *Submission of revised Improvement Plan.* A revised Improvement Plan shall be resubmitted by the PHA within 30 calendar days of its receipt of the HUB/Program Center recommendations.

(g) *Failure to submit acceptable Improvement Plan or correct deficiencies.* (1) If a PHA fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the HUB/Program Center will notify the PHA of its noncompliance.

(2) The PHA (or DF–RMC or the RMC through the PHA) will provide the HUB/Program Center its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress.

(3) If HUD finds the PHA's reasons for lack of progress unacceptable, HUD will notify the PHA that it will be referred to the area Troubled Agency Recovery Center (TARC) for remedial actions or such actions as the TARC may determine appropriate in accordance with the provisions of the ACC, this part and other HUD regulations, including the remedies available for substantial default.

(4) In the case of a PHA's failure to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, if the TARC determines that it is appropriate to refer the PHA to the Departmental Enforcement Center (DEC), it will only do so after the PHA has had one year since the issuance of the PHAS score (or, in the case of an RMC, that is not a DF–RMC, notification of its score from a PHA) to correct its deficiencies.

**§ 902.75 Referral to a Troubled Agency Recovery Center (TARC).**

(a) *General.* Upon a PHA's designation of troubled (including troubled in one area), in accordance with the requirements of section 6(j)(2)(B) of the Act and in accordance with this part (or part 901, of this chapter if applicable), REAC shall refer each troubled PHA to the PHA's area TARC for remedial action. Remedial action by the TARC may include referral to the HUB/Program Center for oversight and monitoring. The actions to be taken by HUD and the PHA will include actions statutorily required, and such other actions as may be determined appropriate by HUD.

(b) *Memorandum of Agreement (MOA).* Within 30 days of notification of a PHA's designation as a troubled performer (including substandard categorization), HUD will initiate activities to develop a MOA. The final MOA is a binding contractual agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the PHAS indicators, sub-indicators or components identified as a deficiency;

(2) Performance targets for such periods specified by HUD (*e.g.,* annual, semi-annual, quarterly, monthly), which may be the attainment of a higher score within an indicator, sub-indicator or component that is a problem, or the description of a goal to be achieved;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by HUD, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled designation or troubled with respect to the program for assistance from the Capital Fund under section 9(d) and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets include but are not limited to, such sanctions as the imposition of budget and management controls by HUD, declaration of substantial default and subsequent actions, including referral to the DEC for judicial appointment of a receiver, limited denial of participation, suspension, debarment, or other actions deemed appropriate by the DEC; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(c) *PHA review of MOA.* The PHA will have 10 days to review the MOA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the MOA with HUD, and discuss any recommended changes and target dates for improvement to be incorporated in the final MOA. Unless the time period is extended by HUD, the MOA is to be executed 15 days following issuance of the preliminary MOA.

(d) *Maximum recovery period.* (1) *Expiration of one-year recovery period.* Upon the expiration of the one-year period beginning on the date on which the PHA receives initial notice of troubled designation (including notice of substandard status) or October 21, 1998, whichever is later, the PHA shall improve its performance, as measured by the PHAS Indicators, by at least 50 percent of the difference between the most recent performance measurement and the measurement necessary to remove the PHA's designation as troubled or substandard status.

(2) *Expiration of two-year recovery period.* Upon the expiration of the two-year period beginning on the later of the date on which the PHA receives initial notice of troubled designation (including notice of substandard status) or October 21, 1998, the PHA shall improve its performance and achieve an overall PHAS score of at least 60 percent, and achieve a score of at least 60 percent of the total points available under each of PHAS Indicators #1, #2 and #3.

(e) *Parties to the MOA.* An MOA shall be executed by:

(1) The PHA Board Chairperson (supported by a Board resolution), or a receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME-designated Chief Executive Officer;

(3) The Director of the area TARC; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the TARC.

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.* (1) If a troubled PHA fails or refuses to execute a MOA within the period provided in paragraph (b) of this section, or a troubled PHA operating under an executed MOA does not show a substantial improvement, as provided in paragraph (d) of this section, toward a passing PHAS score following the issuance of the failing PHAS score by REAC, the TARC shall refer the PHA to the DEC in accordance with § 902.77, and the DEC shall take the actions required by § 902.77(a)(2).

(2) For purposes of this paragraph (g), *substantial improvement* is defined as the improvement required by paragraphs (d)(1) and (d)(2) of this section. The maximum period of time for remaining in troubled status before being referred to the DEC is two years. Therefore, the PHA must make substantial improvement in each year of this two year period.

(3) The following example illustrates the provisions of paragraph (g)(1) of this section:

**Example:** A PHA receives a score of 50 percent; 60 percent is a passing score. The PHA is referred to the TARC. Within one year after the score is issued to the PHA, the PHA must achieve a 55 (50% of the points necessary to achieve a passing score of 60 points) to continue recovery efforts in the TARC. In the second year, the PHA must achieve a minimum score of 60 points (a passing score). If in the first year, the PHA fails to achieve the five-point increase,the PHA will be referred to the DEC. If in the first year, the PHA achieves the five-point increase but fails to achieve a passing score in the second year, the PHA will be referred to the DEC. The maximum period of time for remaining in troubled status before being referred to the DEC is two years.

(h) *Audit review.* For a PHA designated as troubled, REAC will perform an audit review and may, at its discretion, select the audit firm that will perform the audit of the PHA and REAC may, at its discretion, serve as the audit committee for the audit in question.

(i) *Continuation of services to residents.* To the extent feasible, while a PHA is under a referral to a TARC, all services to residents will continue uninterrupted.

**§ 902.77 Referral to the Departmental Enforcement Center (DEC).**

(a) *Referral of Troubled PHA to the DEC for failing to execute or meet MOA requirements.* (1) Failure of a troubled PHA to execute or meet the requirements of a MOA in accordance with § 902.75 constitutes a substantial default under § 902.79 and may result in referral of the PHA to the DEC. The TARC will recommend to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. In accordance with § 902.69, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. A PHA shall be referred to the DEC if the PHA fails to cure the default within the a period not to exceed 30 days unless the Assistant Secretary for Public and Indian Housing determines that a longer period is appropriate.

(2) *Actions of the DEC.* The DEC shall initiate:

(i) The judicial appointment of a receiver, or

(ii) An administrative receivership at HUD's option but only:

(A) With respect to PHAs with fewer than 1250 units, or

(B) While HUD's petition for judicial receivership is pending; and

(iii) Upon the recommendation of the Assistant Secretary for Public and Indian Housing, the interventions provided in § 902.83, and may initiate such other sanctions available to HUD, including, limited denial of participation, suspension, debarment, and referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

(b) *Referral of PHAs in Substantial Default to the DEC.* A PHA that is not designated as troubled but that has been found to be in substantial default under the provisions of § 902.79 shall also be referred to the DEC. The Assistant Secretary for Public and Indian Housing makes the determination that a PHA is in substantial default. In accordance with § 902.79, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. If the PHA fails to cure the default within the specified period time, the PHA shall be referred to the DEC. The DEC shall initiate the judicial appointment of a receiver or the interventions provided in § 902.83 as recommended by the Assistant Secretary for Public and Indian Housing and may initiate such other sanctions available to HUD, including, limited denial of participation, suspension, debarment, and referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

(c) *Receivership/Possession of PHA by HUD.* (1) If a judicial receiver is appointed, the receiver, in addition to the powers provided by the court, shall have available the powers provided by section 6(j)(3)(C) of the Act (42 U.S.C. 1437d(j)(3)(C)).

(2) If HUD assumes responsibility for all or part of the PHA, the Secretary of HUD shall have available the powers provided by section 6(j)(3)(D) of the Act (42 U.S.C. 1437d(j)(3)(D)).

(3) If an administrative receiver is appointed, the Secretary may delegate to the administrative receiver any of the powers provided to the Secretary as described in paragraph (e)(2) of this section, in accordance with section 6(j)(3)(D).

(4) The appointments of receivers, the actions of receivers, and HUD's responsibilities toward the receivers are governed by the provisions of section 6(j)(3).

(d) To the extent feasible, while a PHA is under a referral to the DEC, all services to residents will continue uninterrupted.

**§ 902.79 Substantial default.**

(a) *Events or conditions that constitute substantial default.* The following events or conditions shall constitute substantial default.

(1) HUD may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant ACC.

(2) HUD may determine that a PHA's failure to satisfy the terms of a memorandum of agreement entered into in accordance with § 902.75, or to make reasonable progress to execute or meet requirements included in a memorandum of agreement, are events or conditions that constitute a substantial default.

(3) HUD shall determine that a PHA that has been designated as troubled and does not show substantial improvement, as defined in § 902.75(g)(2), is in substantial default.

(4) HUD may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(5) HUD may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s).

(b) *Notification of substantial default and response.* If information from an annual assessment or audit, or any other credible source (including but not limited to the Office of Fair Housing Enforcement, the Office of the Inspector General, a judicial referral or a referral from a mayor or other official) indicates that there may exist events or conditions constituting a substantial breach or default, HUD shall advise a PHA of such information. HUD is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, HUD shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as troubled PHAs, or to demonstrate that the information is incorrect.

(1) *Form of notification.* Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall be transmitted to the Executive Director, the Chairperson of the Board, and the appointing authority(ies) of the Board, and shall include, but is not limited to:

(i) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in noncompliance;

(ii) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;

(iii) Citation of the communications and opportunities to effect remedies afforded pursuant to paragraph (a) of this section;

(iv) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (a) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate; and

(v) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (b) of this section, HUD will refer the PHA to the

Enforcement Center, using any or all of the interventions specified in § 902.83, and determined to be appropriate to remedy the noncompliance, citing § 902.83, and any additional authority for such action.

(2) *Receipt of notification.* Upon receipt of the notification described in paragraph (b)(1) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in HUD's description of events, occurrences, or conditions, or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is cited in the notification.

(3) *Waiver of notification.* A PHA may waive, in writing, receipt of explicit notice from HUD as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA must concur on the existence of substantial default conditions which can be remedied by technical assistance, and the PHA shall provide HUD with written assurances that all deficiencies will be addressed by the PHA. HUD will then immediately proceed with interventions as provided in § 902.83.

(4) *Emergency situations.* In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Secretary or the Secretary's designee is authorized to intercede to protect the residents' and HUD's interests by causing the proposed interventions to be implemented without further appeals or delays.

**§ 902.83 Interventions.**

(a) Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (*e.g.,* maintenance, modernization, occupancy, or financial management) or to a single development or a group of developments. Under this limited intervention procedure, HUD could select, or participate in the selection of, an AME to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and developments not so designated.

(b) Upon determining that a substantial default exists under this part, HUD may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an AME to provide technical assistance or other services up to and including contract management of all or any part of the public housing developments administered by a PHA;

(3) Assuming possession and operational responsibility for all or any part of the public housing administered by a PHA;

(4) Entering into agreements, arrangements, and/or contracts for or on behalf of a PHA, or acting as the PHA, and expending or authorizing the expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default;

(5) The provision of intervention and assistance necessary to remedy emergency conditions;

(6) After the solicitation of competitive proposals, select an administrative receiver to manage and operate all or part of the PHA's housing; and

(7) Petition for the appointment of a receiver to any District Court of the United States or any court of the State in which real property of the PHA is located.

(c) The receiver is to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide and with section 6(j)(3)(C) of the Act.

(d) The appointment of a receiver pursuant to this section may be terminated upon the petition of any party, when the court determines that all defaults have been cured or the public housing agency is capable again of discharging its duties.

(e) HUD may take the actions described in this part sequentially or simultaneously in any combination.

**§ 902.85 Resident petitions for remedial action.**

The total number of residents that petition HUD to take remedial action pursuant to sections 6(j)(3)(A) (i) through (iv) of the Act must equal at least 20 percent of the residents, or the petition must be from an organization or organizations of residents whose membership must equal at least 20 percent of the PHA's residents.

Dated: January 5, 2000.

**Deborah Vincent,**

*General Deputy Secretary for Public and Indian Housing.*

**Donald J. LaVoy,**

*Acting Director, Real Estate Assessment Center.*

[FR Doc. 00–591 Filed 1–10–00; 8:45 am]

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# Reader Aids

**Federal Register**

Vol. 65, No. 7

Tuesday, January 11, 2000

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## FEDERAL REGISTER PAGES AND DATE, JANUARY

1–200 ..... 3
201–344 ..... 4
345–688 ..... 5
689–1050 ..... 6
1051–1296 ..... 7
1297–1528 ..... 10
1529–1754 ..... 11

## CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**3 CFR**

**Executive Orders:**
12543 (See Notice of December 29, 1999) ..... 199
12544 (See Notice of December 29, 1999) ..... 199

**Administrative Orders:**

Presidential Determinations:
No. 2000–9 of December 23, 1999 ..... 689

Notices:
December 29, 1999 ..... 199

**7 CFR**

6 ..... 1297
201 ..... 1704
371 ..... 1298
997 ..... 1302
998 ..... 1302
999 ..... 1302
1220 ..... 1

**Proposed Rules:**
800 ..... 75
868 ..... 78
930 ..... 672
979 ..... 1347

**9 CFR**

93 ..... 345
94 ..... 1304, 1529
96 ..... 1304
303 ..... 201
381 ..... 201

**Proposed Rules:**
54 ..... 1074
79 ..... 1074
130 ..... 391

**11 CFR**

**Proposed Rules:**
100 ..... 1074
102 ..... 1074
103 ..... 1074
104 ..... 1074
106 ..... 1074
107 ..... 1074
109 ..... 1074
110 ..... 1074
114 ..... 1074
116 ..... 1074

**12 CFR**

935 ..... 202
960 ..... 203

**Proposed Rules:**
650 ..... 1676
900 ..... 324
910 ..... 324
917 ..... 81
941 ..... 324

**13 CFR**

**Proposed Rules:**
120 ..... 1349

**14 CFR**

39 ..... 1, 204, 205, 207, 209, 211, 213, 346, 691, 692, 695, 697, 1051, 1537, 1538, 1540
71 ..... 348, 349, 699, 700, 1308, 1309
97 ..... 350
382 ..... 352

**Proposed Rules:**
39 ..... 250, 251, 254, 395, 397, 399, 401, 1075, 1350, 1353
71 ..... 402
108 ..... 560
109 ..... 560
111 ..... 560
129 ..... 560
191 ..... 560

**15 CFR**

902 ..... 30

**Proposed Rules:**
280 ..... 1572
303 ..... 731

**16 CFR**

1615 ..... 1435
1700 ..... 93

**18 CFR**

35 ..... 810

**Proposed Rules:**
125 ..... 1484
225 ..... 1484
356 ..... 1484

**21 CFR**

101 ..... 1000
201 ..... 7
341 ..... 7
369 ..... 7

**Proposed Rules:**
216 ..... 256

**22 CFR**

22 ..... 352
514 ..... 352

**23 CFR**

655 ..... 9

**24 CFR**

902 ..... 1712

**26 CFR**

1 ..... 701, 1236, 1310

49.....1056
301.....215, 263, 1059
602.....1056, 1236, 1310
**Proposed Rules:**
1.....258, 1572
40.....1076

**27 CFR**
270.....1676

**29 CFR**
2550.....614

**30 CFR**
202.....1542
206.....1542
250.....217
914.....1059
946.....1063
**Proposed Rules:**
206.....1580

**32 CFR**
**Proposed Rules:**
813.....419

**33 CFR**
117.....353, 710, 1543, 1543
154.....710
155.....710
165.....1065
**Proposed Rules:**
110.....1581
117.....1077
165.....1079

**34 CFR**
**Proposed Rules:**
Ch. VI.....1582

**38 CFR**
Ch. 1.....1544
17.....762
51.....762
58.....762

**39 CFR**
111.....1318
**Proposed Rules:**
111.....264
206.....403

**40 CFR**
49.....1322
52.....14, 16, 1068, 1545
60.....1323
82.....716
300.....19, 1070
712.....1548
716.....1554
721.....354
**Proposed Rules:**
52.....104, 421, 732, 1080, 1583
180.....425
300.....1081
503.....1676

**41 CFR**
301-10.....1268
301-11.....1326
301-74.....1326

**42 CFR**
121.....1435
**Proposed Rules:**
405.....1081

**44 CFR**
64.....1554, 1555
**Proposed Rules:**
67.....1435

**45 CFR**
**Proposed Rules:**
160.....427
164.....427

**46 CFR**
**Proposed Rules:**
356.....646

**47 CFR**
0.....374
51.....1331
73.....219, 220
76.....375
**Proposed Rules:**
73.....270

**48 CFR**
**Proposed Rules:**
1.....1438
2.....1438
4.....1438
7.....1438
8.....1438
15.....1438
16.....1438
17.....1438
22.....1438
27.....1438
28.....1438
31.....1438
32.....1438
35.....1438
37.....1438
42.....1438
43.....1438
44.....1438
45.....1438
49.....1438
51.....1438
52.....1438
53.....1438
1804.....429
1852.....429

**49 CFR**
1.....220
**Proposed Rules:**
1244.....732

**50 CFR**
17.....20,
216.....30
226.....1584
300.....59
600.....221
648.....377, 1557, 1568
660.....221
679.....60, 65, 74, 380
**Proposed Rules:**
17.....1082, 1583
18.....109
216.....270, 1083
222.....270
223.....105
224.....1082
226.....105, 1584
300.....272
648.....275, 431

## REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT JANUARY 11, 2000

**ENVIRONMENTAL PROTECTION AGENCY**

Air quality implementation plans; approval and promulgation; various States:

Texas; published 11-12-99

Hazardous waste program authorizations:

Washington; published 10-12-99

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Bell; published 12-7-99

General Electric Co.; published 1-6-00

**VETERANS AFFAIRS DEPARTMENT**

Organization, functions, and authority delegations:

Board of Veterans Appeals; Office of Counsel to Chairman title change to Office of Senior Deputy Vice Chairman; published 1-11-00

## COMMENTS DUE NEXT WEEK

**AGRICULTURE DEPARTMENT**

**Animal and Plant Health Inspection Service**

Interstate transportation of animals and animal products (quarantine):

Scrapie pilot projects; comments due by 1-18-00; published 12-17-99

**AGRICULTURE DEPARTMENT**

**Food Safety and Inspection Service**

Meat and poultry inspection:

Meat produced by advanced meat/bone separation machinery and recovery systems; comments due by 1-18-00; published 12-16-99

**COMMERCE DEPARTMENT**

**National Institute of Standards and Technology**

Accreditation and assessment programs:

Federal conformity assessment activities; policy guidance; comments due by 1-17-00; published 11-3-99

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

Endangered and threatened species:

Cook Inlet beluga whales; depleted designation; comments due by 1-19-00; published 12-17-99

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Bering Sea and Aleutian Islands pollock; comments due by 1-20-00; published 1-5-00

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 1-20-00; published 12-21-99

**DEFENSE DEPARTMENT**

Acquisition regulations:

Anticompetitive teaming; comments due by 1-18-00; published 11-18-99

Utilization of Indian organizations and Indian-owned economic enterprises; comments due by 1-18-00; published 11-18-99

**DEFENSE DEPARTMENT**

**Navy Department**

Underwater archeological research permits on submerged cultural resources; application guidelines; comments due by 1-18-00; published 11-19-99

**EDUCATION DEPARTMENT**

Postsecondary education:

Higher Education Act—

Negotiated rulemaking committees on issues under Title IV; establishment; comments due by 1-18-00; published 12-30-99

Postsecondary eduction:

Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) Program; comments due by 1-20-00; published 12-21-99

**ENVIRONMENTAL PROTECTION AGENCY**

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Arizona; comments due by 1-18-00; published 12-17-99

Indiana; comments due by 1-18-00; published 12-17-99

Air quality implementation plans; approval and promulgation; various States:

Alabama; comments due by 1-18-00; published 12-16-99

California; comments due by 1-17-00; published 1-6-00

Indiana; comments due by 1-19-00; published 12-20-99

Missouri; comments due by 1-19-00; published 12-20-99

New Jersey; comments due by 1-18-00; published 12-17-99

New Mexico; comments due by 1-19-00; published 12-20-99

Pennsylvania; comments due by 1-18-00; published 12-17-99

Rhode Island; comments due by 1-21-00; published 12-22-99

Texas; comments due by 1-21-00; published 12-22-99

Pesticide programs:

Antimicrobial pesticide products; registration procedures and labeling standards, etc.; comments due by 1-18-00; published 11-16-99

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Herbicide safener HOE-107892 and metabolites; comments due by 1-21-00; published 11-22-99

Paraquat; comments due by 1-21-00; published 11-22-99

Solid wastes:

Residential, commercial, and institutional solid waste; guideline revisions; comments due by 1-18-00; published 12-17-99

Storage and collection of residential, commercial, and institutional solid waste; comments due by 1-18-00; published 12-17-99

Water programs:

Clean Water Act—

Water quality planning and management; National Pollutant Discharge Elimination System program and Federal antidegradation policy, etc.; comments due by 1-20-00; published 10-27-99

**FEDERAL COMMUNICATIONS COMMISSION**

Radio services, special:

Fixed microwave services—

24 GHz band; licensing and service rules; comments due by 1-19-00; published 12-20-99

Local multipoint distribution service; comments due by 1-21-00; published 12-21-99

Maritime services—

Los Angeles and Long Beach, CA; 156.250 MHz frequency availability for port operations; comments due by 1-18-00; published 12-21-99

**FEDERAL HOUSING FINANCE BOARD**

Federal home loan bank system:

Corporate governance responsibilities devolution; comments due by 1-20-00; published 12-21-99

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Food and Drug Administration**

Medical devices:

Hearing aids; technical data amendments; comments due by 1-17-00; published 11-3-99

**HEALTH AND HUMAN SERVICES DEPARTMENT**

**Inspector General Office, Health and Human Services Department**

Health care programs; fraud and abuse:

Health Insurance Portability and Accountability Act—

Medicare and State health care programs; anti-kickback statute for shared risk arrangements; statutory exception; comments due by 1-18-00; published 11-19-99

**INTERIOR DEPARTMENT**

**Fish and Wildlife Service**

Endangered and threatened species:

Findings on petitions, etc.—

Alabama beach mouse, etc.; comments due by 1-18-00; published 11-18-99

Straight-horned markhor; comments due by 1-21-00; published 9-23-99

**INTERIOR DEPARTMENT**

**Surface Mining Reclamation and Enforcement Office**

Permanent program and abandoned mine land reclamation plan submissions:

Pennsylvania; comments due by 1-18-00; published 12-17-99

**JUSTICE DEPARTMENT**

Privacy Act; implementation; comments due by 1-18-00; published 12-16-99

**NUCLEAR REGULATORY COMMISSION**

Rulemaking petitions:

Stein, Michael; comments due by 1-18-00; published 11-3-99

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Flexibility; clarification and addition; comments due by 1-17-00; published 11-3-99

**POSTAL RATE COMMISSION**

Practice and procedure:

Procedings; efficiency improvement; comments due by 1-21-00; published 12-28-99

**POSTAL SERVICE**

Domestic Mail Manual:

Standard Mail destination entry mailings; procedure changes; comments due by 1-21-00; published 12-22-99

**RAILROAD RETIREMENT BOARD**

Railroad Retirement Act:

Disability determination; comments due by 1-18-00; published 11-18-99

Disability determination—

Reviews for medical recovery of annuitants; discontinuance; comments due by 1-18-00; published 11-18-99

Railroad Unemployment Insurance Act:

Remuneration; definition; comments due by 1-18-00; published 11-16-99

**SECURITIES AND EXCHANGE COMMISSION**

Securities:

Proxy and information statements; delivery to households; comments due by 1-18-00; published 11-16-99

**TRANSPORTATION DEPARTMENT**

**Coast Guard**

Ports and waterways safety:

Cape Cod Canal; arrival notification and Year 2000 (Y2K) reporting requirements for transiting vessels; regulated navigation area; comments due by 1-21-00; published 12-22-99

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

Airworthiness directives:

Airbus; comments due by 1-20-00; published 12-21-99

AlliedSignal, Inc.; comments due by 1-18-00; published 11-19-99

Ayres Corp.; comments due by 1-21-00; published 11-24-99

Bell Helicopter Textron, Inc.; comments due by 1-18-00; published 11-16-99

Boeing; comments due by 1-18-00; published 11-19-99

Eurocopter France; comments due by 1-18-00; published 11-18-99

General Electric Aircraft Engines; comments due by 1-18-00; published 11-19-99

McDonnell Douglas; comments due by 1-21-00; published 12-7-99

Raytheon; comments due by 1-20-00; published 12-6-99

Airworthiness standards:

Special conditions—

McDonnell Douglas DC-9-30 series airplanes; comments due by 1-18-00; published 12-3-99

Class C and Class E airspace; comments due by 1-17-00; published 12-2-99

Class E airspace; comments due by 1-18-00; published 12-17-99

Commercial space transportation:

Licensed reentry activities; financial responsibility requirements; comments due by 1-21-00; published 12-13-99

**TRANSPORTATION DEPARTMENT**

**National Highway Traffic Safety Administration**

Motor vehicle safety standards:

Motorcycle brake systems; comments due by 1-18-00; published 11-17-99

**TRANSPORTATION DEPARTMENT**

**Research and Special Programs Administration**

Pipeline safety:

Gas transmission and hazardous liquid pipelines in high-consequence areas; enhanced safety and environmental protection; comments due by 1-17-00; published 12-22-99

**TREASURY DEPARTMENT**

**Customs Service**

Customs financial and accounting procedure:

Endorsement of checks deposited; comments due by 1-18-00; published 11-17-99

Mechandise, special classes:

Products of forced or indentured child labor; prohibited importation and seizure; comments due by 1-18-00; published 11-17-99

**TREASURY DEPARTMENT**

**Fiscal Service**

Federal claims collection:

State income tax obligations; tax refund payments offset; comments due by 1-19-00; published 12-20-99

**TREASURY DEPARTMENT**

**Internal Revenue Service**

Income taxes:

Charitable remainder trusts; prevention of abuse; comments due by 1-19-00; published 10-21-99

## LIST OF PUBLIC LAWS

**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.**