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Federal Register

5–18–00 Thursday
Vol. 65 No. 97 May 18, 2000
Pages 31427–31782

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WASHINGTON, DC

WHEN: May 23, 2000 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Rules and Regulations

Federal Register
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Thursday, May 18, 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.

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 245

Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools

CFR Correction

In Title 7 of the Code of Federal Regulations, parts 210 to 299, revised as of January 1, 2000, page 285, § 245.6a is corrected by revising the fourth sentence of paragraph (a)(2)(v), and revising the last sentence in paragraph (a)(5) to read as follows:

§ 245.6a Verification requirements.

(a) * * *

(2) * * *

(v) * * * Selected households must also be informed that, in lieu of any information that would otherwise be required, they can submit proof of current food stamp, FDPIR or TANF certification as described in paragraph (a)(3) of this section to verify the free meal eligibility of a child who is a member of a food stamp, FDPIR or TANF household. * * *

* * * * *

(5) * * * Verification of eligibility is not required of households when the determination of eligibility was based on documentation provided by the State or local agency responsible for the administration of the Food Stamp Program, FDPIR or TANF Program, as described in § 245.6(b).

* * * * *

[FR Doc. 00–55508 Filed 5–17–00; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30043; Amdt. No. 1992]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination—

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

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

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each

SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on May 12, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

2. Part 97 is amended to read as follows:

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

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

* * * effective upon publication.

FDC date	State	City	Airport	FDC number	SIAP
04/25/00	CA	Burbank	Burbank-Glendale-Pasadena	FDC 0/4208	LOC RWY 8 AMDT 2A This corrects TL00–11.
4/25/00	CA	Burbank	Burbank-Glendale-Pasadena	FDC 0/4209	ILS RWY 8 AMDT 35A This corrects TL00–11.
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04/27/00	IL	Moline	Quad City	FDC 0/4367	NDB OR GPS RWY 9, AMDT 27B.
04/27/00	MA	Bedford	Laurence G. Hanscon Field	FDC 0/4355	VOR RWY 23 AMDT 8C.
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04/27/00.	OH	Akron	Akron-Canton Regional	FDC 0/4339	VOR OR GPS RWY 23 AMDT 9.
04/27/00	OH	Columbus	Port Columbus Intl	FDC 0/4352	NDB OR GPS RWY 10L, AMDT 8.
04/27/00	OH	Springfield	Springfield-Beckly Muni	FDC 0/4335	VOR OR GPS RWY 6 AMDT 10A.
04/27/00	OH	Springfield	Springfield-Beckley Muni	FDC 0/4336	VOR RWY 24 AMDT 10.
04/27/00	OR	John Day	Grant Co. Rgnl/Ogilvie Field	FDC 0/4359	GPS RWY 9, ORIG.
04/27/00	SD	Aberdeen	Aberdeen Regional	FDC 0/4337	VOR/DME OR GPS RWY 13 AMDT 12.
04/27/00	SD	Pierre	Pierre Regional	FDC 0/4340	VOR/DME OR TACAN OR GPS RWY 25 AMDT 16.
04/27/00	WI	Appleton	Outagamie County Regional	FDC 0/4345	VOR/DME RWY 3 AMDT 8B.
04/27/00	WI	Appleton	Outagamie County Regional	FDC 0/4346	LOC BC RWY 11 AMDT 1A.
04/27/00	WI	Rhinelander	Rhinelander-Onieda	FDC 0/4341	VOR/DME OR GPS RWY 27 ORIG-C.
04/28/00	DE	Georgetown	Sussex County	FDC 0/4421	RNAV RWY 4, ORIG-A.
04/28/00	DE	Georgetown	Sussex County	FDC 0/4422	RNAV RWY 22, ORIG-A.
04/28/00	IL	Macomb	Macomb Muni	FDC 0/4386	LOC RWY 27, AMDT 2A.

FDC date	State	City	Airport	FDC number	SIAP
04/28/00	MD	Ocean City	Ocean City Muni	FDC 0/4405	RNAV RWY 14, ORIG-A.
04/28/00	MO	Kansas City	Kansas City Intl	FDC 0/4402	VOR/DME OR TACAN RWY 1L, ORIG.
04/28/00	MO	Kansas City	Kansas City Intl	FDC 0/4403	VOR/DME OR TACAN RWY 19R, ORIG.
04/28/00	NY	Farmingdale	Republic	FDC 0/4395	ILS RWY 14, AMDT 7A.
04/28/00.	SD	Aberdeen	Aberdeen Regional	FDC 0/4388	VOR OR GPS RWY 31, AMDT 20.
04/28/00	UT	Salt Lake City	Salt Lake City Intl	FDC 0/4408	ILS RWY 34R (CAT I,II,III), ORIG.
04/28/00	UT	Salt Lake City	Salt Lake City Intl	FDC 0/4411	GPS RWY 16L, ORIG.
04/28/00	UT	Salt Lake City	Salt Lake City Intl	FDC 0/4412	GPS RWY 17, ORIG.
04/28/00	UT	Salt Lake City	Salt lake City Intl	FDC 0/4414	ILS/DME RWY 16R (CAT I, II, III), AMDT 3.
04/28/00	UT	Salt Lake City	Salt Lake City Intl	FDC 04/4416	VOR/DME OR TACAN OR GPS RWY 34R, AMDT 7.
04/28/00	UT	Salt Lake City	Salt Lake City Intl	FDC 0/4420	ILS/DME RWY 34L, AMDT 1.
05/01/00	FL	West Palm Beach	North Palm Beach County General Aviation.	FDC 0/4476	VOR RWY 85 AMDT 1.
05/01/00	IA	Marshalltown	Marshalltown Muni	FDC 0/4499	GPS RWY 12, ORIG-A.
05/01/00	KS	Garden City	Garden City Regional	FDC 0/4495	VOR/DME OR GPS RWY 35, AMDT 1.
05/01/00	KS	Garden City	Garden City Regional	FDC 0/4496	VOR/DME OR GPS RWY 30, ORIG.
05/01/00	KS	Goodland	Renner Field (Goodland Muni)	FDC 0/4493	VOR/DME RWY 30, AMDT 6.
05/01/00	KS	Hays	Hays Regional	FDC 0/4494	VOR/DME RWY 34, AMDT 2A.
05/01/00	KS	Hays	Hays Regional	FDC 0/4501	LOC RWY 34, AMDT 2A.
05/01/00	KS	Ottawa	Ottawa Muni	FDC 0/4474	GPS RWY 17, ORIG.
05/01/00	MO	Jefferson City	Jefferson City Memorial	FDC 0/4497	LOC BC RWY 12, AMDT 6C.
05/01/00	MO	Jefferson City	Jefferson City Memorial	FDC 0/4498	NDB RWY 12, AMDT 2A.
05/01/00	MO	Kansas City	Kansas City Intl	FDC 0/4500	NDB OR GPS RWY 1L, AMDT 15.
05/01/00	ND	Jamestown	Jamestown Muni	FDC 0/4490	LOC/DME BC RWY 13, AMDT 7C.
05/01/00	NE	Grand Island	Central Nebraska Regional	FDC 0/4472	LOC/DME BC RWY 17, AMDT 9A.
05/01/00	NE	Omaha	Eppley Airfield	FDC 0/4491	VOR RWY 32L, AMDT 10A.
05/01/00	SD	Rapid City	Rapid City Regional	FDC 0/4489	VOR OR TACAN OR GPS RWY 14, ORIG.
05/01/00	SD	Watertown	Watertown Muni	FDC 0/4487	VOR OR TACAN OR GPS RWY 17, AMDT 16.
05/01/00		Watertown	Watertown Muni	FDC 0/4488	VOR/DME OR TACAN RWY 35, AMDT 11.
05/01/00	SD	Williston	Sloulin Field Intl	FDC 0/4492	VOR/DME OR GPS RWY 29, AMDT 3A.
05/01/00	UT	Salt Lake City	Salt Lake City Intl	FDC 0/4477	ILS/DME RWY 16L (CAT I, II, III), AMDT 12.
05/02/00	CA	Monterey	Monterey Peninsula	FDC 0/4543	ILS RWY 10R AMDT 26.
05/03/00	ID	Boise	Boise Air Terminal (Gowen Field).	FDC 0/4599	GPS RWY 28L, AMDT 1A.
05/03/00	MA	Nantucket	Nantucket Memorial	FDC 0/4598	LOC BC RWY 6 AMDT 10.
05/03/00	MID	Sand Island	Henderson Field	FDC 0/4564	AY ATOLL, MQ. GPS RWY 6 ORIG.
05/03/00	WY	Guernesey	Camp Guernsey	FDC 0/4567	NDB RWY 32, ORIG.
05/04/00	GA	Mc Rae	Telfair-Wheeler	FDC 0/4638	NDB OR GPS RWY 20 AMDT 8.
05/04/00	KS	Garden City	Garden City Regional	FDC 0/4633	NDB RWY 35, ORIG.
05/04/00	KS	Garden City	Garden City Regional	FDC 0/4637	VOR/DME RWY 17, AMDT.
05/04/00	MI	Detroit	Detroit Metropolitan Wayne County.	FDC 0/4689	ILS RWY 3R (CAT I, II, III), AMDT 13.
05/04/00	MO	Fort Leonard Wood	Waynesville Regional Arpt at Forney Field.	FDC 0/4639	LOC RWY 14, ORIG.
05/04/00	MO	Fort Leonard Wood	Waynesville Regional Arpt at Forney Field.	FDC 0/4640	NDB/DME RWY 14 AMDT 1.
05/04/00	MO	Fort Leonard Wood	Waynesville Regional Arpt at Forney Field.	FDC 0/4641	VOR RWY 32, ORIG.
05/04/00	MO	Fort Leonard Wood	Waynesville Regional Arpt at Forney Field.	FDC 0/4642	NDB RWY 32, ORIG.
05/04/00	MO	Fort Leonard Wood	Waynesville Regional Arpt at Forney Field.	FDC 0/4649	GPS RWY 14, ORIG.
05/04/00	TX	Houston	George Bush Intercontinental Airport/Houston.	FDC 0/4631	GPS RWY 8, ORIG. This Replaces FDC 0/4261.

FDC date	State	City	Airport	FDC number	SIAP
05/04/00	TX	Houston	George Bush Intercontinental Airport/Houston.	FDC 0/4632	ILS RWY 8, AMDT 18G. This Replaces FDC 0/4292.
05/05/00	ID	Driggs	Driggs-Reed Memorial	FDC 0/4702	GPS-A, ORIG-A.
05/05/00	IN	Evansville	Evansville Regional	FDC 0/4678	NDB OR GPS RWY 22, AMDT 12.
05/05/00	MO	Fort Leonard Wood	Waynesville Regional Arpt at Forney Field.	FDC 0/4721	GPS RWY 32, ORIG.
05/05/00	OH	Middletown	Hook Field Muni	FDC 0/4746	LOC RWY 23, AMDT 7D.
05/08/00	IN	Evansville	Evansville Regional	FDC 0/4786	VOR OR GPS RWY 4, AMDT 5.
05/09/00	GUA	Agana	Guam Intl	FDC 0/4825	GPS RWY 24R ORIG.
05/09/00	IL	Freeport	Albertus	FDC 0/4819	NDB RWY 6, ORIG-A.
05/09/00	IL	Freeport	Albertus	FDC 0/4820	LOC RWY 24, ORIG-A.
05/09/00	IL	Freeport	Albertus	FDC 0/4821	VOR OR GPS RWY 24, AMDT 6A.
05/09/00	MO	Fredericktown	Fredericktown Regional	FDC 0/4809	RNAV RWY 19, ORIG. This replaces FDC 0/4021.
05/09/00	MO	Fredericktown	Fredericktown Regional	FDC 0/4810	RNAV RWY 1, ORIG. This replaces FDC 0/4054.
05/09/00	MO	Marshall	Marshall Memorial Muni	FDC 0/4833	RNAV RWY 36, ORIG-A.
05/09/00	MO	Marshall	Marshall Memorial Muni	FDC 0/4834	RNAV RWY 18, ORIG-A.
05/09/00	WI	Madison	Dane County Regional-Truax Field.	FDC 0/4827	ILS RWY 18, AMDT 7B
05/10/00	CA	Burbank	Burbank-Glendale-Pasadena	FDC 0/4849	NDB RWY 8 AMDT 2A. This replaces FDC 0/4211 IN TL00–11

[FR Doc. 00–12560 Filed 5–17–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 600

[Docket No. 980812215–0109–02; I.D. 072898D] 648–AK76

Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program

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

ACTION: Interim final rule; request for public comments.

SUMMARY: NMFS issues interim final framework regulations specifying procedures for requesting and conducting fishing capacity reduction programs (reduction programs). A reduction program pays harvesters in a fishery with too much fishing capacity either to surrender their fishing permits for that fishery or both to surrender all their fishing permits and withdraw their fishing vessels from all fishing. Reduction costs can be paid by post-reduction harvesters, taxpayers, or others. The intent is to decrease excess harvesting capacity, increase the economic efficiency of harvesting, and facilitate the conservation and management of fishery resources in each fishery in which NMFS conducts a reduction program.

DATES: This interim final rule is effective June 19, 2000. Comments must be received on or before June 19, 2000.

ADDRESSES: Copies of the Regulatory Impact Review may be obtained from Michael L. Grable, Chief, Financial Services Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. Written comments should be sent to Michael L. Grable at the above address. Comments also may be sent, via facsimile, to (301) 713–1306. NMFS will not accept comments sent by e-mail or the Internet. Comments involving the reporting burden estimates or any other aspects of the collection of information requirements contained in this interim final rule should be sent to both Michael L. Grable and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713-2390.

SUPPLEMENTARY INFORMATION:

Background

Many U.S. fisheries have excess fishing capacity. Excess fishing capacity decreases earnings, complicates management, and imperils conservation. To provide for fishing capacity reduction programs, Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by adding section 312(b)-(e) (16 U.S.C. 1861a(b)-(e)). To finance reduction costs, Congress amended Title XI of the Merchant Marine Act, 1936 (Title XI), by adding new sections 1111 and 1112. The Title XI provisions involving fishing capacity reduction loans have been codified at 46 U.S.C. App. 1279f and g.

This action adds a subpart L to 50 CFR part 600 establishing framework regulations for requesting and conducting fishing capacity reduction programs. These framework regulations were published as a proposed rule on February 11, 1999 (64 FR 6854–6869), with a public comment period that ended on April 12, 1999.

While NMFS received numerous comments on the proposed rule (addressed in more detail below), it believes further comment on the revised capacity reduction referenda provisions would be useful.

Comments on Proposed Rule and Responses

NMFS received comments from 24 entities. Most of the comments are from organizations that represent the views of many parties. All but one of the comments supported fishing capacity reduction, although many comments disagreed with some aspects of the proposed rule. The following summarizes the comments and gives NMFS' responses.

Comment Issue 1: Five comments addressed interest rates for loans financing capacity reduction costs.

Three comments said that a reduction loan interest rate 2 percent higher than the interest cost for borrowing loan capital from the U.S. Treasury is unnecessary, burdensome, and counterproductive.

One comment said that the interim final rule should state whether the reduction loan interest rate is fixed or adjustable and that the interest rate projected for reduction planning purposes can change before reduction implementation.

One comment said that there should be no interest prepayment penalties.

Response: A reduction loan interest rate 2 percent higher than NMFS' interest cost is required by the statute (46 U.S.C. App. 1279g).

Reduction loan interest rates depend on prevailing yields on comparable maturity Treasury obligations at the time the U.S. Treasury Department establishes the interest rate NMFS must pay on loan capital borrowed from the U.S. Treasury. The actual interest rate NMFS charges for a specific reduction loan could be higher or lower than the interest rates projected for reduction planning purposes. The projection of an interest rate could occur many months before the disbursement of reduction loan funds. The interim final rule revises the proposed rule to more fully address this issue (see § 600.1012(b) and (c) and the definition of ''Treasury percentage'' in § 600.1000).

All reduction loan interest rates are fixed rather than adjustable. There is no prepayment penalty.

Comment Issue 2: Ten comments involved the reduction program process.

Six comments said that referenda about industry fee systems should occur earlier in the reduction process. Most believed that, until referenda first demonstrate the fishing industry's willingness to pay for financed reduction programs, fishery management councils (FMCs) will be reluctant to process fishery management plan (FMP) amendments complementing reduction programs and industry will be reluctant to submit reduction bids. Some also believed that industry will be reluctant to prepare business plans until after successful referenda.

Three comments said that the reduction process would be shorter if all its components were concurrent.

One comment said that the process for reduction loans should be kept as simple as possible, or the fishing industry will seek subsidized reduction programs rather than financed ones.

Two comments said that pre-bidding referenda should involve ranges of projected reduction results, with a minimum acceptable level.

Response: NMFS based the proposed rule's process for financed reduction programs on two concepts. First, industry reduction proponents and an FMC should demonstrate their commitment to a reduction program by establishing, at the time of making a reduction program request, everything necessary for prompt and reliable reduction program completion. Second, reduction bidding results need to be known before a referendum asks post-reduction harvesters to commit themselves to repaying a reduction loan.

NMFS acknowledges that FMCs may be reluctant to invest the time and resources necessary to prepare and process FMP reduction amendments, and industry may be reluctant to submit reduction bids, unless referenda have first demonstrated the industry's willingness to pay for financed reduction programs. The interim final rule revises the proposed rule in many places to better address these concerns (see, particularly, § 600.1010).

The interim final rule provides for pre-bidding referenda and, if necessary, a post-bidding referendum as well. The necessary pre-bidding referendum can occur at any time after an FMC requests a reduction program and before NMFS proposes a plan and regulations to implement the program. Each pre-bidding referendum is based on a reduction loan amount not greater than the maximum specified in the business plan being sufficient to reduce at least the minimum amount of fishing capacity specified in the business plan. A post-bidding referendum occurs only if the maximum reduction loan amount is insufficient to reduce at least the minimum amount of fishing capacity.

If an initial pre-bidding referendum occurs before the FMC adopts any FMP reduction amendment necessary, the referendum is based on the FMP reduction amendment that the business plan specifies. If afterwards, the referendum is based on the FMP reduction amendment that the FMC adopts.

If the initial pre-bidding referendum is successful, the reduction process proceeds. If the referendum precedes any FMP reduction amendment necessary, a second pre-bidding referendum is required if, in NMFS' judgment, the adopted FMP reduction amendment differs materially from the FMP reduction amendment that the business plan specifies. A material difference would, for example, be a post-reduction harvesting allocation for the harvesters who must repay a reduction loan that is less than the allocation specified in the business plan. The second pre-bidding referendum is to determine whether the referendum voters approve an industry fee system despite any such material difference.

If the initial pre-bidding referendum is unsuccessful, the reduction process then either ceases or is suspended pending an appropriate amendment of the business plan.

The interim final rule requires the business plan to specify the maximum amount of a reduction loan and the minimum amount of fishing capacity this must be sufficient to reduce. The interim final rule also requires the business plan to provide guidance about when pre-bidding referenda should occur.

Under the interim final rule, a reduction request from an FMC based on a business plan serves as the FMC's endorsement, in principle, of all aspects of the business plan that depend on the FMC's action (see § 600.1003(g)). Endorsement in principle does not, however, mean that the FMC will eventually vote to recommend implementing the business plan's concept of an FMP reduction amendment. Implementing any FMP reduction amendment necessary remains subject to all the requirements applicable to all other FMP amendments. Endorsement in principle merely means that the FMC has taken whatever action the FMC deems necessary to endorse the business plan (including the business plan's proposed FMP reduction amendment) by requesting NMFS to initiate a reduction program based on the business plan. Subsequent consideration, in accordance with the ordinary Magnuson-Stevens Act process, of the FMP reduction amendment may result either in no FMP amendment or one that differs from the business plan specifications.

Nevertheless, an FMC may not make a reduction request based on a business plan that the FMC does not endorse in principle. If an FMC cannot endorse the business plan in principle, the FMC should not make a reduction request.

If reduction bidding achieves, with a reduction loan not greater than the maximum amount that the business plan specifies, at least the minimum amount of fishing capacity reduction that the business plan specifies, then a post-bidding referendum does not occur. A post-bidding referendum occurs only if bidding does not achieve at least the minimum reduction for not more than the maximum reduction loan.

Any necessary post-bidding referendum is to determine whether the referendum voters approve an industry fee system for a reduction less than the minimum.

This pre- and post-bidding approach should solve several problems. First, the approach should solve the problem of an FMC not wanting to make a large time and resource investment in an FMP reduction amendment without assurance that the industry is willing to repay a reduction loan. The business plan's survey (§ 600.1003(n)(12) in the interim final rule) of potential referendum voters should provide an FMC with enough assurance for the FMC to make a reduction request based upon that business plan. A successful pre-bidding referendum reinforces this assurance before an FMC invests time and resources in an FMP reduction amendment.

Second, allowing a second pre-bidding referendum should solve the problem of an actual FMP reduction amendment that differs materially from the FMP reduction amendment specified in the business plan.

Third, allowing a post-bidding referendum should solve the problem of reduction bidding results that do not achieve at least the minimum amount of fishing capacity reduction that the business plan specifies for a reduction loan whose principal amount is not greater than the maximum that the business plan specifies.

Finally, the approach eliminates the need for a linear processing sequence that precludes concurrent work on different parts of the reduction process. The revision allows the FMP reduction amendment process to proceed concurrently with the rest of the reduction process that occurs before NMFS proposes a plan and regulations to implement a reduction program. All other components of the reduction process, up to NMFS' publication of a plan and regulations implementing each reduction program, may now occur before an FMC prepares and processes, and NMFS approves, an FMP reduction amendment. The FMP reduction amendment must still, however, be in place before NMFS proposes the reduction plan and implementing regulations.

A completed business plan, however, remains essential both to an FMC's reduction request and the pre-bidding referendum that follows. Without a completed business plan, the FMC cannot fully know what it is endorsing in principle, NMFS does not fully know what the FMC and the industry is requesting, and referendum voters do not fully know for what they are voting.

The interim final rule requires that the business plan specify the maximum reduction cost and the minimum reduction that must be achieved for that cost. This achieves the same result as specifying ranges of projected reduction results, with a minimum acceptable level.

Comment Issue 3: Five comments involved payment and collection of the reduction loan repayment fee.

All 5 comments, to one degree or another, said that the proposed rule's fee payment and collection provisions are too costly, burdensome, or complicated.

One comment said that fish buyers in California, Washington, and Oregon collect other fees for state and industry groups, and that the interim final rule should allow the payment and collection of the reduction loan repayment fee to conform to established regional practices.

One comment said that the fee payment and collection provisions provide an incentive for ''kickbacks'' based on misreported fish deliveries, and that this could change the assumptions upon which accurate catch reporting depends.

One comment said that these provisions do not accommodate fish buyers paying for fish on a periodic, rather than a trip, basis.

One comment said that collecting the fee that repays reduction loans is not the fish buyers' business, and that the fish buyers' cost of collecting the fee could itself be considered an illegal fee under the Magnuson-Stevens Act.

One comment said that, because bank rules about interest bearing accounts vary widely from state to state, some fish buyers might be able to offset some fee collection costs by interest earnings while others might not. The comment said that this violates section 301(a)(4) of the Magnuson-Stevens Act.

One comment said that fee collection audits are unrestricted.

One comment said that fish buyers are the enforcers of fee collection, without protection against fish sellers who might sue them. If a fish buyer deducts the fee over a fish seller's protest, the fish buyer risks the fish seller's legal action. Fish buyers refusing to buy fish from fish sellers who refuse to pay the fee (the alternative to deducting the fee over the fish seller's protest) is inconsistent with the business of buying fish.

One comment said that the proposed rule's provision about state confidentiality requirements not preventing NMFS' access to fish tickets places fish buyers in an impossible position.

One comment said that many fish buyers will be unaware of their fee collection responsibilities.

Response: The proposed rule is a framework rule involving matters common to all reduction programs. Some aspects of a framework rule will apply, without exception, to all reduction programs. Other aspects of the framework rule may be inappropriate for application to some reduction programs in some reduction fisheries. Nevertheless, these aspects provide a framework against which everyone can measure the circumstances of different reduction programs in different reduction fisheries. The rule's fee collection, deposit, disbursement, accounting, record keeping, and reporting procedures are of the latter type. § 253.27(q)(10), § 253.36(f), and § 253.37(h) of the proposed rule provide sufficient opportunity for approaches in each reduction program different from the framework approach. Nevertheless, the interim final rule revises the proposed rule to require business planners to consult with fish buyers before including in their business plan any special circumstances in their reduction fishery that might require some fee provisions different from the framework provisions (see § (n)(9)). Thus, the interim final rule provides opportunity for reduction program to accommodate the circumstances of, and practices, in different fisheries as long as accommodation does not jeopardize the intent and purpose of the framework rule provisions.

There are substantial penalties for misreporting catches and otherwise failing to pay and collect the fees due. The rule's fee accounting and reporting provisions require documentation that provides ample audit opportunity, and NMFS intends to audit sufficiently to ensure compliance.

NMFS believes the time at which fish sellers deliver fee fish to fish buyers is the most appropriate time for the fish sellers to pay and the fish buyers to collect the fee. The interim final rule, however, revises the proposed rule to provide for paying and collecting fees on bonuses at the time the bonuses first become known rather than at the time the fish sellers deliver the fee fish involving the bonuses to fish buyers (see § 600.1013(c)(2)).

The Magnuson-Stevens Act requires fish buyers to collect the fee. Interest earnings on collected fee revenues might allow, depending on state banking regulations, some fish buyers to offset some of the costs of discharging this statutory obligation.

A reduction loan can involve up to $100 million repaid on a incidental

basis amortized over 20 years by many fish sellers, and collected by many fish buyers, as a small percentage of variable revenue from many fishing trips. This loan collection environment is susceptible to considerable nonperformance and fraud. Due diligence requires audit and, where necessary, enforcement.

Auditing is not, however, unrestricted. The rule restricts audits to those ''reasonably necessary...to ensure proper fee payment, collection, deposit, disbursement, record keeping, and reporting.'' The rule also restricts audits to ''reasonable times and places...'' NMFS does not intend any greater auditing burden than reasonable due diligence requires for the proper repayment of reduction loans. Audits may either be random (deterrent) or triggered by circumstances that indicate fee payment and collection activities inconsistent with this rule's requirements, but will not be more frequent or burdensome than needed to fulfill due diligence.

NMFS does not anticipate that fish sellers will violate these regulations by refusing to pay the fee. If any do, this does not excuse fish buyers from failing to comply with these regulations, either by collecting the fee over the fish seller's protest or by refusing to buy fish from fish sellers from whom fish buyers are unable to collect the fee as the Magnuson-Stevens Act requires.

The interim final rule does not contain the proposed rule's provision about fish tickets and state confidentiality requirements.

The interim final rule requires fish buyers to maintain the records and to submit the reports specified in § 600.1014(d) (or whatever alternative records and reports might be specified, under § 600.1014(j), in the implementation regulations for each reduction program). If landing records that a state requires contain some or all of the data that § 600.1014(d) requires and state confidentiality provisions do not prevent NMFS' access to the records maintained for the state, then fish buyers can use those records to meet appropriate portions of the § 600.1014(d) requirements. If, however, state confidentiality provisions make those records unavailable to NMFS, then fish buyers will be required to maintain separate records that meet the requirements of § 600.1014(d).

Where it becomes necessary to audit the reports that fish buyers submit in compliance with § 600.1014(d), trip tickets (or equivalent accounting records establishing the pounds of fee fish purchased and the price paid) are essential audit documentation. If, for any reason, any state law or regulation makes it illegal for fish buyers to keep separate records that involve some or all of the same data as the landing records that the fish buyers keep for state purposes, then a financed reduction program will not be possible unless there is a change in the state law or regulations to give NMFS access to the records necessary for administration of reduction loans. The interim final rule revises the proposed rule accordingly (see § 600.1003(n)(11)(i) and § 600.1014(f) and (g)).

Existing regulations require many fish buyers to have dealer permits, so NMFS often knows who the authorized fish buyers are. The rule also requires each business plan to include information about fish buyers who can, after reduction, reasonably be expected to have fee collection responsibilities. The rule requires NMFS to notify, both by a **Federal Register** notice and by mailed notification to fish buyers of whom NMFS is aware, all fish buyers about their fee collection responsibilities.

Comment Issue 4: Four comments involved exempting reduction requests preceding publication of the proposed rule from some aspects of the interim final rule.

All four comments generally said that various parties had expended much effort and expense on two reduction requests that substantially preceded NMFS's publishing the proposed rule. The proposed rule required the FMCs and the business planners for these two reduction requests to start at the beginning of a process of which they were unaware before NMFS published the proposed rule. Thus, these parties would have to expend additional time and money for the sole purpose of resubmitting their requests to conform with the interim final rule. This may be inequitable, because NMFS assured the parties involved that the lack of a proposed rule would not deter NMFS from processing their reduction requests as far as possible without a interim final rule. The interim final rule should ensure expeditious consideration of these two reduction requests.

Response: On November 27, 1997, the Pacific FMC submitted a request for a financed reduction program in the fishery for Pacific coast groundfish (limited entry trawl fishery). On October 10, 1997, the North Pacific FMC submitted a request for a financed reduction program in the fishery for Bering Sea and Aleutian Islands king and tanner crab. Industry proponents have since prepared business plans for each of these requests. The business planners and the FMCs have already expended considerable effort on these business plans and reduction requests. Both requests and their acceptances preceded, by many months, the publication of the proposed rule. NMFS agrees that it is counterproductive to now require the FMCs to resubmit these two reduction requests. The FMCs do not, consequently, have to resubmit these two reduction requests in accordance with the process in the interim final rule. However, the business planners and the FMCs will have to submit some additional information required by the interim final rule. After review of both plans and the interim final rule, NMFS will specify this additional information.

Comment Issue 5: Six comments concerned proposed rule provisions that allow financed reduction programs to involve only fishing permits in the reduction fishery, rather than requiring reduction programs to involve all fishing permits held by reduction program participants. These comments were evenly divided between supporting and opposing these provisions.

Three comments supported the proposed rule provisions. These comments generally said that it is impractical and unreasonable to require post-reduction harvesters in reduction fisheries to pay for the cost of reducing fishing permits in non-reduction fisheries, and otherwise agreed with the proposed rule's preamble discussion of this aspect.

Three comments opposed the proposed rule provisions. These comments generally said that reducing only the fishing permits in the reduction fishery causes reduction program fishing vessels to shift their effort from the reduction fishery to any non-reduction fisheries for which the vessels also have fishing permits. The goal of each reduction program should be removing the fishing capacity involved in a reduction program from all fishing rather than just fishing in the reduction fishery. To enable this result, one of these comments said that the interim final rule must define the term ''fishery'' differently than the Magnuson-Stevens Act does.

One comment said that the proposed rule provisions are inconsistent with the objective in section 312(b)(2) of the Magnuson-Stevens Act because the proposed rule provisions merely shift reduction costs to other fisheries in which reduction participants' vessels might also have fishing permits rather than obtaining the maximum sustained reduction in fishing capacity at the least cost.

Another comment said that all reduction programs should involve

analysis of the reduction programs' impact on non-reduction fisheries and that it is unacceptable and contrary to the Magnuson-Stevens Act for improvements in a reduction fishery to occur at the expense of any other fishery.

Response: The Magnuson-Stevens Act authorizes conducting reduction programs, like fishery management plans, on a fishery-by-fishery basis. Each reduction program must occur within a fishery that meets the Magnuson-Stevens Act's definition of ''fishery''. This requires each reduction program to occur in ''one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics...'' and to involve ''fishing for such stocks...'' The objective in section 312(B)(2) of the Magnuson-Stevens Act relates to each reduction program in each reduction fishery.

While section 312(b)(2)(A) of the Magnuson-Stevens Act authorizes reductions that include both fishing permit revocations and fishing vessel scrappings (or title restrictions that prevent future fishing), section 312(b)(2)(B) also authorizes reductions that are restricted to fishing permit revocations alone.

In a financed program, the post-reduction harvesters in the reduction fishery are paying for fishing capacity reduction. They are retiring excess capacity in their fishery. The Government is simply lending them the money to do this. NMFS should not require a borrower composed of post-reduction harvesters to spend any of the borrower's reduction loan proceeds on reducing fishing capacity that the borrower does not want to reduce. This includes reducing capacity in non-reduction fisheries, which benefits parties other than the borrower.

In a subsidized program, however, the taxpayers are paying the cost of reducing fishing capacity. The taxpayers can choose, through their Government, the fishing capacity reduction alternative that provides the broadest fishery conservation and management benefit. This may include withdrawing fishing vessels (either by scrapping them or imposing title restrictions that prevent their fishing) and revoking all fishing permits associated with the scrapped vessels that are not individually transferable. Individually transferable fishing permits in non-reduction fisheries could not, however, be revoked as part of such a reduction program (because these permits may be used by vessels other than the vessels whose fishing is prevented by scrapping or title restriction). Revoking individually transferable fishing permits in non-reduction fisheries would require separate reduction programs in the non-reduction fisheries involved.

A financed reduction program is, in essence, a contribution from post-reduction harvesters in a reduction fishery to fisheries conservation and management in that fishery. It is a contribution that is in the best economic interest of the post-reduction harvesters, but, nonetheless, it is their voluntary contribution. NMFS should not limit the opportunities for satisfying the statutory purposes by requiring post-reduction harvesters willing to repay the cost of buying and retiring fishing permits in their reduction fishery to also pay the cost of buying and retiring fishing permits in non-reduction fisheries. It is not in the taxpayers' interest to do so, because the net effect may be to limit most reduction programs to those whose entire cost the taxpayers bear. This is true because harvesters in reduction fisheries are generally unlikely to approve industry fee systems in reduction fisheries for repaying reduction loans that benefit harvesters in non-reduction fisheries.

In the interim final rule's revision of the proposed rule, business planners have the option of reducing only fishing permits in the reduction fishery or both doing that and withdrawing fishing vessels by scrapping or title restriction. The latter enables the revocation of all permits, except individually transferrable ones in non-reduction fisheries, associated with withdrawn vessels. Although business planners may voluntarily choose to withdraw fishing vessels, either by scrapping them or imposing title restrictions that prevent their fishing, FMCs may not require business planners to do so.

There is, however, one exception where a financed reduction program should always include the reduction of fishing permits that involve species other than those in the reduction fishery. That exception is fishing permits that merely allow the incidental catch of non-reduction species during directed fishing for reduction species. Once the directed fishing permits are bought and retired, the incidental fishing permits are of no further use. In addition to being useless, the incidental fishing permits were always a corollary of the directed fishing permits, and should be revoked along with the directed fishing permits. Accordingly, the interim final rule revises the proposed rule in this respect (see § 600.1011(d)).

The interim final rule also revises the proposed rule to require business planners and FMCs to consider the effect on non-reduction fisheries of financed reduction programs that involve only fishing permits in the reduction fishery (see § 600.1003(l) and § 600.1003(n)(9)).

NMFS notes that there may be other potential alternatives to deal with this situation. One alternative might be combining fisheries for fishery conservation and management purposes, which might then allow a financed reduction program to relate to the combined fishery rather than just to one of the fisheries. Another alternative might be conducting a separate financed (indeed, even subsidized) program in a fishery that a reduction program in another fishery affects. Both these potential alternatives would avoid one group of post-reduction harvesters paying for another group's benefit.

Comment Issue 6: Two comments concerned post-reduction fish allocations in financed reduction programs that do not involve all the harvesters in the reduction fishery. For example, say, a reduction fishery involves both longline and pot gear, but the financed reduction program in that reduction fishery involves only fishing permits for the longline gear.

One comment supported, and one comment opposed, allocations of this type and the proposed rule's treatment of this issue. The supporting comment said that allocation of the post-reduction resource protects the investment of the post-reduction harvesters who must repay a reduction loan as well as the interest as the Federal Government in ensuring the reduction loan's repayment. The opposing comment said that the allocation might damage the operators of non-reduction fishing gear who may have been less responsible for overfishing and, thus, creating the crisis in the fishery to which the financed reduction program relates.

Response: NMFS believes post-reduction allocation is essential in financed reduction programs that involve fewer than all the harvesters in a reduction fishery.

Assume that a fishery is composed of ''A'' gear fishermen and ''B'' gear fishermen, each group has a pre-reduction allocation equal to 50 percent of the fishery's total allowable catch, and the ''A'' gear fishermen encumber themselves with a 20-year debt to pay for buying and retiring 50 percent of the ''A'' gear fishing permits. Unless their post-reduction allocation stays at 50 percent of the fishery's total allowable catch, there is no economic incentive for the ''A'' gear fishermen to pay for

buying half of the pre-reduction ''A'' gear fishing permits. Similarly, neither does the government have the requisite assurance that up to 5 percent of the ''A'' gear fishermen's post-reduction trip proceeds will be sufficient to repay the reduction loan over a 20-year period. Without post-reduction allocations, there is little economic incentive either for the reduction borrowers to borrow or for the reduction lender to lend, and the taxpayers may, consequently, be called upon to pay for most reduction programs of this type.

Moreover, it is inequitable for ''A'' gear fishermen to pay for a benefit that ''B'' gear fishermen receive without payment. Business plans for, and FMPs complementing, financed reduction programs that involve only one of several gear types within a reduction fishery must adequately address this critical issue sufficiently to provide economic incentive both for reduction borrowers and the reduction lender.

Financed reduction programs cannot usefully address the possibility that allocations to gear operators who some perceive as less responsible harvesters may have impacted allocations to other gear operators who some perceive as more responsible harvesters.

Comment Issue 7: Two comments involved consultation with fishing communities and other interested parties during reduction program development. One comment pointed out, in the context of reduction programs that involve only fishing permits in a reduction fishery, that the law requires this consultation. The other comment said that, if NMFS consults with conservation organizations (and other interested parties who are, presumably, not directly involved in the reduction fishery), ''those entities must have their own substantiated fishery and economic data base [sic] to be considered a valid consulting participants [sic], or we will challenge their participation. No more rhetoric of how many people they represent, they will deal in facts and not personal agenda generalities.''

Response: The statutory reduction provisions require consultation ''as appropriate, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any...'' reduction program.

Comment Issue 8: One comment addressed the potential for the eventual replacement of the fishing capacity that reduction programs remove from reduction fisheries (and other comments also indirectly involved this issue). The comment expressed concern about the potential for post-reduction fishing capacity to gradually expand through the post-reduction adoption of new technology and the pre-reduction existence of latent fishing capacity. This comment said that analysis of the Fishing Capacity Reduction Demonstration Program and the Fishing Capacity Reduction Initiative in the Northeast multispecies fishery suggests that the existence of significant latent fishing capacity will result in little or no long-term reduction in the multispecies fishery's fishing capacity.

Response: The reduction programs in the Northeast multispecies fishery were authorized under the Interjurisdictional Fisheries Act rather than under the Magnuson-Stevens Act. The Interjurisdictional Fisheries Act does not address the issue involved in this comment, but the reduction provisions of the Magnuson-Stevens Act do. The reduction provisions of the Magnuson-Stevens Act require FMPs for reduction fisheries to prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet (16 U.S.C. 1861a(b)(1)(B)(i)).

The proposed rule addresses this statutory provision by requiring each reduction request (and, in the instance of financed reduction programs, each business plan) to demonstrate how the FMP complies with this statutory provision or will comply with it after an FMP reduction amendment. The interim final rule continues this requirement.

Comment 9: NMFS should evaluate the efficacy of each reduction program two years after the reduction program's implementation. The evaluation should help identify areas where capacity leaks back into the fishery and will help in designing future reduction programs. It will take a few more reduction programs to iron out the difficulties in designing efficient reduction programs, and post-program evaluation will be critical.

Response: NMFS agrees. NMFS will include post-reduction evaluations as part of the SAFE reports under 50 CFR 600.315(e).

Comment 10: Reduction is an extremely valuable tool to remove capital from fisheries in a rational and orderly fashion. Many of the proposed rule's elements will allow capacity reduction to move forward.

Response: NMFS agrees.

Comment 11: The proposed rule does not define ''capacity''. If this is intentional in order to provide flexibility in constructing reduction programs this should be stated. The proposed rule's preamble uses ''excess capacity'', but does not define the term. ''Excess capacity'' could mean either that there are more vessels than necessary for maximum economic efficiency or that the capacity exceeds the resource's ability to support the capacity. The use of ''full potential fishing capacity'' highlights this problem. Defining these terms has enormous implications for interpreting the regulations and these definitions should undergo public comment before their adoption. Alternatively, the interim final rule should state that definitions for these terms will be included in the program implementation regulations.

Response: The term ''excess capacity'' did not appear in the proposed rule (the term appeared only once in the proposed rule's preamble).

The statutory term ''full potential fishing capacity'' appeared once in the proposed rule (in the definition of the term ''non-replacement requirement'') and once in the proposed rule's preamble.

The appropriate context in which to make distinctions between concepts like ''more vessels in a fishery than are necessary for maximum economic efficiency'' and ''capacity in the fishery...[exceeding] what the resources can support'' is implementation of the Magnuson-Stevens Act's provision that authorizes a reduction program only if the reduction program ''is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery.'' Each reduction program must meet one of these criteria. For the sake of flexibility, NMFS does not qualify these criteria further. Each reduction request must make its best case on the merits of the request's own particulars.

Comment 12: ''Reduction fishery'' traditionally refers to fisheries that convert fish to meal and/or oil. Substitute ''buyback fishery'' for ''reduction fishery''.

Response: ''Fishing capacity reduction'' is the operative statutory term. NMFS chose, for brevity's sake, to define a fishery in which reduction is proposed or occurs as a ''reduction fishery'' rather than a ''fishing capacity reduction fishery''. The interim final rule defines the term ''reduction fishery'' sufficiently to distinguish this term from a fishery involving the production of fish meal and oil.

Comment 13: The interim final rule should ''include criteria that will be used to determine...'' a reduction loan's

repayment period. A repayment period can be longer than the maximum 5 percent repayment fee might otherwise indicate.

Response: The amount annually required to service debt is a function of principal, interest, and the repayment term. Business planners must propose an annual reduction loan debt service burden that post-reduction harvesters are likely to be willing to undertake in return for a finite reduction in fishing capacity. Harvester referenda must subsequently approve this. Subject to the statutory constraints (maximum 5 percent fee and maximum 20-year repayment period), NMFS will accommodate each business plan's debt service proposal unless the circumstances of the reduction program involved clearly warrant doing otherwise.

Comment 14: Failure to address how in-kind compensation (e.g., dock space, ice) affects the delivery value used to calculate the reduction loan repayment fee could result in ''creative reimbursement arrangements to avoid fees.'' The interim final rule should avoid this result by addressing this issue.

Response: The fee rate required to repay reduction loans is applied to ''delivery value''. The proposed rule's definition of ''delivery value'' excludes in-kind compensation because ''delivery value'', as defined in the proposed rule, is the ''full, fair market value...in an arm's length transaction...'' Full, fair market value in an arm's length transaction cannot, by definition, include in-kind compensation. In-kind compensation cannot, consequently, be used to avoid the fee. Nevertheless, the interim final rule revises the proposed rule's definition of ''delivery value'' to clarify that the term includes ''the value of in kind compensation or all other goods or services exchanged in lieu of cash.'' (see the definition of ''delivery value'' in § 600.1000).

Comment 15: The proposed rule's definition of ''fee fish'' requires fishing vessels in a post-reduction fishery to pay the reduction loan repayment fee on fish harvested incidentally to the targeted reduction species. The definition of this term should allow each reduction program to define the ''fee fish'' that will be used to calculate the fee. Some fisheries may have an incidental catch of ''fee fish'', and the interim final rule should ''clearly state that incidental catches in non reduction program fisheries are not subject to the fee unless those fisheries are included in the referendum for a financed reduction program.''

Response: The term ''fee fish'', as defined in the interim final rule, means all fish harvested from the reduction fishery. The term fee fish excludes fish harvested incidentally while fishing for fish not included in the reduction fishery. The term ''reduction fishery'', as defined in the interim final rule, means the fishery or portion of a fishery to which a program applies. The reduction fishery must specify each included species, as well as any limitations by gear type, size of fishing vessel, geographic area, and any other relevant factor. Except in extraordinary instances, the interim final rule's intent is to limit fee fish to those that are directly rather than incidentally harvested.

Comment 16: The proposed rule requires a reduction request to list all parties who are authorized to fish in the proposed reduction fishery and to specify the catch allocated to those parties for the past five years. The proposed rule also requires a business plan to analyze the proposed reduction loan's cost effectiveness based on the best historical fishing revenue and expense date available in the reduction fishery. NMFS is a likely source for this information, but these data are considered confidential at the individual fishing vessel level required by the regulations. The regulations in 50 CFR 600 Subpart E state that this type of information can only be released to NMFS employees or contractors, state employees, and Council staff or contractors. Thus, business planners will not have access to this information. The interim final rule should address this by requiring NMFS to provide, in an aggregate form, the data business planners need.

Response: The proposed rule intends catch allocation data to be aggregate data for all parties authorized to fish in the reduction fishery rather than individual data for each such party. The interim final rule revises the proposed rule to make this intent clearer (see § 600.1003(j) and § 600.1005(f)).

Section 253.27(q)(5)(1) of the proposed rule merely requires that business plans include the ''Best historical fishing revenue and expense data (and any other relevant productivity measures) available in the reduction fishery.'' This neither requires these data to be provided at the individual fishing vessel or fishing permit level nor requires those data to be identified with specific fishing vessels or fishing permits. The interim final rule revises this aspect of the proposed rule to clarify that NMFS seeks the ''best and most representative historical...data... available...'' (see § 600.1003(n)(5)(l)).

NMFS does not know, in every fishery that may become the subject of a reduction request (which includes fisheries managed by states), who may have the best available data. NMFS may have these data for some fisheries, but may not have them for others. The fishing industry itself generally is the source of these data, and, if adequate data have not been elsewhere gathered, business planners must arrange to make available sufficiently representative data from the industry in order to make the business planners' case.

This aspect of the rule does not require NMFS to violate data confidentiality, and NMFS intends, upon request, to make available to business planners, in a way that does not violate data confidentiality, whatever useful data NMFS has.

Comment 17: The proposed rule requires the FMCs to provide the names and addresses of fishing permit holders authorized to fish in a reduction fishery, but NMFS (as the permitting authority) has the most current information and should supply the information itself.

Response: NMFS has these data for fishing permits in Federal fisheries. Nevertheless, the referenda aspect of the statutory reduction provisions requires NMFS, ''in consultation with the FMC...'' to ''identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the...'' (16 U.S.C. App. 1861a) reduction. The proposed rule was premised on the assumption that an FMC would ask NMFS for the data needed to complete this aspect of a reduction request, examine the data NMFS provided, and, where necessary, consult with NMFS about any aspect of the data before confirming the data by including them in a reduction request to NMFS. NMFS continues to believe this is the most appropriate approach. Moreover, reduction programs can involve state, as well as Federal, fisheries, and NMFS may not have these data for fishing permits in state fisheries.

The interim final rule revises the proposed rule to clarify that NMFS is a source of Federal fishing permit data (see § 600.1003(i) and § 600.1005(e)).

Comment 18: The proposed rule requires the FMCs to provide the names and addresses of likely post-reduction fish buyers, but NMFS has this information in NMFS' dealer permit database and should, consequently, remove this requirement.

Response: The proposed rule requires business planners, not FMCs, to provide this information (although FMCs must include business plans with reduction

requests). NMFS may not always have these data even for all Federal fisheries, let alone state fisheries. Where NMFS has these data, however, NMFS will be pleased to supply the data to business planners for their review, (where appropriate) revision, and inclusion in their business plans. Where NMFS does not have these data, business planners must produce the data for inclusion in their business plans.

Comment 19: Business planners must be able to gauge the amount of time NMFS will take to implement reduction. The regulations should specify a maximum time for the agency to do this.

Response: NMFS will process reduction requests as quickly as NMFS can, but cannot specify time limits for doing so.

Comment 20: Reduction amendments to FMPs may not always be necessary to accommodate reduction because ''some Councils may be able to adjust management plans through a framework adjustment rather than a full plan amendment.'' The interim final rule should change ''reduction amendment'' to ''reduction amendment or framework adjustment.''

Response: The interim final rule revises the proposed rule's definition of the term ''reduction amendment'' to include framework adjustments (see the definition of this term in § 600.1000).

Comment 21: In some cases, latent fishing permits may be held by parties who do not own fishing vessels. The basis of the referendum voter lists should be explained (''in particular, whether it is based on vessels or permits''). The proposed rule ''does not state if a reduction program could apportion voting rights based on landings, permit categories, days-at-sea usage, or other criteria.'' Referenda results ''may require as much as one-third of the industry to fund a program they oppose.'' This could both be unfair and make designing successful reductions difficult. In a fishery where the few catch most of the fish, the many who catch few of the fish could force the former into a reduction they oppose. (The example given is a 100 permit fishery where 20 percent of the fishing permit holders catch 80 percent of the fish). ''The interim final rule should clearly state how voting rights are apportioned...[and should allow apportionment] based on relative criteria determined by the designers of the program.'' The proposed rule does not specify what happens if an eligible voter is inadvertently omitted. The interim final rule should provide for an appeal process prior to referendum ballot distribution.

Response: Referenda voters under the statutory reduction provisions are ''permit or vessel owners who would be affected by the program...'' The rule mirrors the statutory language by including either fishing vessel owners or fishing permit owners as potential referenda voters. Nevertheless, because reduction programs can occur only in limited access fisheries, NMFS believes referenda voters will always be those who hold fishing permits at the time of the referenda.

The proposed rule requires each reduction implementation plan to include the names and addresses of all parties eligible to vote in a referendum. The interim final rule, however, revises the proposed rule to allow referenda before reduction implementation plans. This requires public comment about voter eligibility to occur earlier in the reduction process. Consequently, the interim final rule also revises the proposed rule to make the names and addresses of eligible voters subject to public comment by including them in the **Federal Register** notice that NMFS publishes when NMFS accepts a request for a financed reduction program (see § 600.1003(i) and § 600.1004(a)).

During the proposed rule's formulation, NMFS considered the possibility of apportioning referenda votes according to various criteria. NMFS believed, however, that the most equitable approach in the greatest number of cases is a one fishing permit/one vote rule. NMFS still believes this. NMFS believes that the concern in this comment might be better addressed by an FMC. This Council, by refusing to request a reduction program (based on a business plan that allows the many who catch little to force a reduction of their fishing permits on the few who catch much) unless it appears to be in the best conservation and management interest of the reduction fishery and in the best economic interest of all post-reduction harvesters in the reduction fishery. However, NMFS does not, for a variety of reasons, anticipate that this hypothetical situation will often occur. Initiating a financed reduction program requires NMFS, for example, to determine that post-reduction harvesters will be able to repay the reduction loan. If, prospectively, the cost of buying 80 percent of the fishing permits that produce 20 percent of the fish were so high that the remaining 20 percent of fishing permit holders could not, with 20 percent more fish to harvest, reasonably afford to repay that cost over 20 years at a maximum fee limited to 5 percent of ex-vessel landings, then NMFS could decide not to initiate the reduction program.

Comment 22: The interim final rule should address the impact of fishing vessels or fishing permits being sold, bankruptcies, and corporate dissolutions during the interim between bid acceptance and actual fishing capacity reduction.

Response: Bids are irrevocable offers. NMFS' acceptance of bids creates reduction contracts that entitle NMFS to specific performance of the contract obligations. This is as far as NMFS can reasonably go to ensure that reduction contracts culminate in the reduction results upon which referenda are based. NMFS will, as a matter of course, take whatever legal action may be available to NMFS to enforce specific performance of reduction contracts, but cannot predict the outcome of hypothetical future events. NMFS realizes that some circumstances (e.g., bankruptcy) could conceivably delay or prevent NMFS' enforcing specific performance, but NMFS will have to deal with these circumstances as they present themselves during the conduct of each reduction program. Nevertheless, the interim final rule revises the proposed rule to more specifically address the impact of these potential occurrences (see § 600.1011, particularly § 600.1011(f) and (g)).

Comment 23: ''There may be a long period between bidding and actual implementation of the program. While at some point the bidders must commit to participation...they should...[be able to] withdraw up to the point...referendum ballots are prepared.''

Response: The proposed rule requires NMFS immediately after bid closing to accept bids, notify bidders, and conduct a referendum.

The proposed rule also requires NMFS to tally all ballots and notify all referendum voters, within seven business days after the last day for receipt of ballots, of the referendum results.

Additionally, in response to other comments about the proposed rule, the interim final rule revises the proposed rule to restrict post-bidding referenda to situations in which bidding results are insufficient for the maximum reduction loan amount specified in the business plan to reduce the minimum amount of fishing capacity specified in the business plan (see § 600.1010(c)).

NMFS will do everything possible to keep the elapsed time between bid closing and actual reduction as short as possible. NMFS fully realizes the commercial necessity of doing so.

NMFS' reduction experience in the Northeast multispecies fishery demonstrates that irrevocable bids are essential to effective reduction. Irrevocability will limit bidding to fishing permit or fishing vessel owners who are serious about reduction. This will also prevent the situation in which bid results that initially conformed with a business plan's capacity reduction specifications become nonconforming because of subsequent bid withdrawals.

Comment 24: Invitations to bid ''should include projections of the benefits of capacity reduction on the management plan for the subject species, notice of possible capital gains tax liabilities, and other limitations such as to CCF contributions. This information may not be readily apparent to permit holders.''

Response: The reduction plan that NMFS publishes in the **Federal Register** will, for each financed reduction program, ''describe in detail all relevant aspects of implementing...'' each reduction program. NMFS believes the reduction plan may be the better place to discuss, if appropriate, any matters like those involved in this comment. Invitations to bid are contractual in nature, and NMFS believes they should focus only on contractual matters.

Comment 25: The interim final rule ''should specify that NMFS will follow established standards for conducting referenda.'' The proposed rule does not specify that voting would be conducted by secret ballot, but the interim final rule should.

Response: NMFS does not know to what standards this comment refers. The interim final rule revises the proposed rule to clarify ballot confidentiality (see § 600.1010(d)(10)).

Comment 26: Where reduction programs involve withdrawing fishing vessels from fishing, the proposed rule requires state registered fishing vessels to always be scrapped (rather than either being scrapped or having their titles restricted). This complicates reduction programs involving both Federally registered and state registered fishing vessels, and may increase reduction cost or put owners of state-registered fishing vessels at a disadvantage. Some states may have the ability to impose title restrictions that will prevent the future use of state-registered fishing vessels in other fisheries. Fishing vessels not required to be scrapped should not be allowed to be sold to other countries if they exacerbate overcapacity in (presumably) any other fishery in the world. ''Vessels should also not be allowed to be sold to foreigners and then enter a fishery in U.S. waters that may not be subject to U.S. jurisdiction.''

Response: Although some states may have this title-restriction ability, NMFS has no way of ensuring that these states will enforce such title restrictions for as long as the fishing vessels exist. Moreover, little may prevent a fishing vessel owner whose fishing vessel title has been restricted in one State from re-registering the vessel in another state that cannot or will not similarly restrict the vessel's title. Federal title restrictions for Federally-documented fishing vessels are effective for reduction purposes, but state title restrictions for state-registered fishing vessels may not always be effective.

For the reasons stated in the preamble to the proposed rule, NMFS does not believe it should, for fishing vessels involved in financed reduction programs, impose any non-statutory use restrictions. No foreign country need allow these fishing vessels to be registered under the country's national flag or harvest fisheries resources under the country's national jurisdiction if the country believes that this registration is inconsistent with: the country's economic interests, the country's fisheries conservation and management responsibilities, the country's obligations under treaties or international law, or any other aspect of the country's sovereign affairs. Finally, all vessels fishing in U.S. waters are subject to U.S. jurisdiction.

Comment 27: The interim final rule should state that reduction loan repayment is the only basis for post-reduction fee increases. The interim final rule should ''describe the criteria NMFS will use to increase the fee amount rather than extend the period of the payback... This should include a determination that the increased fee will not result in a significant impact on ...[post-reduction fishermen or communities].''

Response: The only statutory authority NMFS has for any reduction fee (including the subsequent increase of an initial fee) is repayment of a reduction loan. Absent specific circumstances that clearly warrant the contrary, NMFS has no particular preference, in the instance of a reduction loan whose initial maturity was shorter than the statutory maximum, for either fee increases or longer repayment periods. NMFS will certainly attempt to avoid significantly adverse effects on post-reduction harvesters and fishing communities, but, where actual gross revenue experience in a reduction fishery clearly indicates the projected need for a fee increase in order to repay a reduction loan within the maximum maturity, NMFS is obliged to increase the fee up to and including the maximum fee.

Comment 28: Harvesters base their referenda votes on the fee rate projected to be necessary to repay the reduction loan. Additional fees during the time that post-reduction harvesters are paying the reduction loan repayment fee may become an economic burden. The interim final rule should prohibit the adoption of additional fees (e.g., for observer programs, for research or enforcement costs) during the period the industry is paying back reduction loan.

Response: Neither the reduction framework rule nor reduction regulations implementing any reduction program can control matters not pertinent to fishing capacity reduction. Fees involving matters other than the repayment of reduction loans may become necessary or advisable at some time during the 20 years during which reduction loans are repayable. While NMFS will always attempt to avoid fees that have significant adverse impacts, neither the reduction framework rule nor reduction program implementation regulation can prohibit whatever non-reduction fees may become necessary or advisable in the future. Furthermore, a reduction program should make the fishery economical and paying reduction fees should not be overly burdensome.

Comment 29: The proposed rule's requirement that the fishing industry submit business plans and the FMCs make certain other submissions places an enormous burden on the industry and the Councils—or, for state requests, on the states—to prepare capacity reduction programs. This shifts the burden of preparation from the Secretary to the Council and the industry. This is a shift that has not been accompanied by an increase in Council resources. Business plans should not always be required. The interim final rule should allow flexibility in determining the lead authority for the preparation of a financed reduction program or, alternatively, NMFS should immediately identify resources that will be made available to Councils to meet the requirements imposed by the regulation.

Response: For the reasons stated in the preamble to the proposed rule, NMFS believes that the business plan requirements appropriately place, on a reduction's industry proponents, the burden of developing proposals for financed reduction programs. NMFS realizes that business plans require industry to undertake a large effort. This is, however, no different from planning

for other business investments. NMFS views financed reduction programs as post-reduction harvesters making business investments in their economic future by retiring some of their competition, thereby increasing their harvests of finite natural resources. NMFS can lend post-reduction harvesters the money required to make this investment. As a lender, however, it is not appropriate for NMFS to do the business planning that may determine whether the investment succeeds or fails. Moreover, no one is more qualified to do this business planning than the harvesters affected by the plan and who will be required to mortgage, in effect, up to 5 percent of their future gross revenue over as much as 20 years to repaying the reduction investment's cost. Reduction planning is expensive, but so is most business planning. Reduction planning may, however, from time-to-time be eligible for grants. The Saltonstall-Kennedy Fisheries Research and Development Program's fiscal year 2000 grant cycle includes reduction planning.

Although FMCs have the lesser burden of reviewing, rather than preparing, business plans, the burden is one that cannot reasonably be avoided. It is the FMCs' responsibility to manage and conserve the national fisheries. Determining if a reduction program will assist in this is integral to an FMC's mandate. The reduction framework rule is not the proper venue for addressing FMC personnel or resource matters.

Comment 30: ''By failing to list the four possible funding sources included in the statute, the proposed rule sends a strong message that reduction programs must be industry funded. The interim final rule should clearly identify possible funding sources and ...emphasize that industry funding is only one way to finance a reduction program.''

Response: Financed reduction programs, in which the direct beneficiaries of a reduction program repay the programs' cost, are the preferred way of funding most reduction programs. The proposed rule, however, also equally addressed subsidized reduction programs, in which the taxpayers or other contributors fund reduction program costs. These are the only two basic methods of funding reduction program costs. Under the proposed rule, if any portion of a reduction program's cost is funded by a reduction loan, the reduction program is a financed reduction program. All other reduction programs are subsidized reduction programs, even though three different statutory funding sources are included in this category: (1) appropriations under the reduction provisions of the Magnuson-Stevens Act, (2) appropriations under the Saltonstall-Kennedy Act, and (3) contributions from States or other public or private sources. In the first 2 funding sources for subsidized reduction programs, Federal taxpayers provide the subsidy; in the third, State taxpayers or other public or private entities provide the subsidy. There appears to be no functional reason for the reduction framework rule to separately address the 3 different sources of subsidized funding.

Comment 31: Different industry groups may present competing business plans to the FMCs. The proposed rule does not provide criteria for deciding what industry groups have standing. ''Do the FMCs decide which proposals are forwarded to the Secretary for review? How will specific reduction proposals be compared and how will the choice be made between them?'' The interim final rule should allow the FMCs to decide what reduction request to forward to NMFS, but should clearly explain the criteria the FMCs should consider in making this decision.

Response: NMFS believes it is best to leave this to the FMCs' discretion. NMFS cannot, in a fishery subject to an FMC's jurisdiction, undertake a reduction program unless the FMC first requests NMFS to do so. Consequently, the FMCs have discretion to entertain reduction proposals from whatever industry reduction proponents the FMCs deem appropriate. The FMCs may reject proposals, merge or consolidate proposals, or accept proposals as submitted. If the industry proponents of a financed reduction program and the appropriate FMC cannot come to agreement about a prospective reduction program, it makes little sense for the FMC to request a financed reduction program. In financed reduction programs, NMFS believes the FMCs should defer to representative business planners who make a strong case for increasing the economic efficiency of post-reduction harvesters in the reduction fishery and, most particularly, for the widespread industry support that successful referenda require. Proposals for financed reduction programs that do not potentially enjoy widespread industry support will fail and waste much time, effort, and resources.

Comment 32: Reduction ''is important for the preservation of natural resources and the economic stability of American fisheries.''

Response: NMFS agrees.

Comment 33: The requirement that a proposed reduction be lawful at the time of reduction must be made clear. No person or government body can guarantee what will be lawful in the future. Future judicial interpretation is always an unknown. As long as a proposed reduction is not known to be unlawful at the time it is requested, all such requirements should be deemed satisfied.

Response: All reduction programs will be lawful at the time of their occurrence, and NMFS agrees that no one can guarantee what will be lawful in the future.

Comment 34: The proposed rule is sufficient for fisheries under Federal jurisdiction. For state-managed fisheries, however, it would be useful to have a sample request and business plan accessible at NMFS' web site.

Response: The proposed rule outlined the required contents of reduction requests and business plans for both Federal and state fisheries. NMFS does not have any samples that NMFS could post at NMFS' web site. NMFS is, however, willing to advise all parties about reduction in any appropriate way NMFS can.

Comment 35: The proposed rule ''has been thoughtfully and thoroughly developed...'' and ''has great merit and practical application ...'' to the salmon driftnet and purse seine fishery in Bristol Bay, Alaska.

Response: NMFS notes this comment.

Comment 36: ''In some cases...industry-funded license reductions may represent the only viable alternative to achieving needed reductions of capacity. In complex fisheries, overcapacity and inadequate management in any major fishery can lead to adverse consequences for other fisheries.''

Response: NMFS agrees.

Comment 37: Where fishing permit reductions involve Bristol Bay and Chignic, the number of fishing permits bought back from local residents must be proportional with the number of fishing permits bought back from parties who do not reside in Alaska. 1,325 Bristol Bay salmon fishing permits were initially issued to residents of the Bristol Bay and Chignic watershed region. Today, only about 900 of these remain owned by local residents. Each fishing permit sold to non-residents of the local area results in the loss of 2 crewmen jobs from the local economy. This devastates the local economy.

Response: A framework rule involving matters common to all reduction programs is not the appropriate place to address this matter.

Comment 38: The ''technical requirements for information ...[should not be] implemented in a way that the available databases and their managers

cannot accommodate. Flexibility to meet the data variability and personnel constraints should be clearly provided.''

Response: It is not clear to what ''technical requirements for information'' this comment related. Requiring unavailable data is nonfunctional. The interim final rule is a framework rule common to all reduction programs, and NMFS will accommodate specific data or technical information circumstances that do not reasonably allow individual requests for reduction programs to comply with the framework rule. The interim final rule revises the proposed rule to provide flexibility in this and other respects (see § 600.1001(f)).

Comment 39: Reduction planners (either industry business planners or Government reduction planners) will be unqualified to fully understand fisheries complexity and to ''comprehensively formulate a feasible...plan.'' Theoretical reduction plans might not achieve the intended purpose, and might have unplanned impacts on ''the permit holder, vessel owner, financiers, and buyers (fish fee collectors)...'' Experience demonstrates that ''decisions are reached to appease political agendas, therefore, constituents of the fisheries will not take a plan or program at face value.'' Industry members will incur substantial expense in analyzing reduction plans. Reduction plans will involve a major economic impact on small fishery businesses. The ''massive economic data that will be required...'' may be nonexistent.

Response: Financed reduction programs are based on business plans that the fishing industry itself develops. When FMCs request financed reduction programs, they must base their requests on those business plans. If NMFS undertakes financed reduction programs, NMFS must, to the greatest extent possible, base these programs on those business plans. Moreover, all fishing permit holders or fishing vessel owners affected have the opportunity, through a referendum, to approve or reject the business plans upon which financed reduction programs are based. A financed reduction program is not possible unless at least two-thirds of those voting in a referendum approve the fee necessary to repay a reduction loan.

Subsidized reduction programs are based on implementation plans that NMFS develops from general FMC recommendations. The rule provides ample opportunity for the views of all affected parties to be heard and duly considered.

Whether to offer one's fishing capacity for reduction in either a financed or subsidized reduction program is the voluntary decision of each fishing permit holder and/or fishing vessel owner.

Comment 40: A business plan should be subjected to a referendum of fishing permit holders and fishing vessel owners. Additionally, the fish buyers that are responsible for collecting the fee that repays a reduction loan should vote in a referendum about (presumably) the ''fee collection, disbursement, and accounting...'' aspects of the reduction. Moreover, a referendum committee of fishing vessel and fishing permit owners and fish buyers should review the results of all referenda involving financed reduction programs ''to alleviate [sic] any questions by the fishery as to the valid tally of support or non-support...'' A subsidized reduction program should also be subjected to a referendum of fishing permit and fishing vessel owners.

Response: The Magnuson-Stevens Act reduction provisions authorize referenda only for fee payers (fish sellers), not fee collectors (fish buyers). Fish buyers pay no fee, and cannot vote in referenda about fee payment. The statutory reduction provisions do not authorize referenda for subsidized reduction programs, where no one either pays or collects a fee. Those provisions do, however, require NMFS to consult with fish sellers, fish buyers, and all other affected parties through the development and implementation of subsidized reduction programs.

NMFS is the referendum authority under the statutory reduction provisions, and NMFS believes it can competently exercise this authority. NMFS does not, consequently, perceive a need for fish-seller and fish-buyer committees that will review referenda results. Moreover, the fact that referenda may sometimes follow irrevocable bidding precludes any referenda review or collaboration that lengthens the time between the submission of irrevocable bids and completing the reduction programs to which the bids relate.

Comment 41: It is good ''that industry is expected to pay for...[reduction] in the long run.'', but landing taxes are already high (''nearly 10 percent off the top for salmon in

Alaska...'') This, combined with the high cost of business and depressed markets, threatens the survival of many family fishing businesses. Further landing taxes should be minimal. As an alternative, consider putting ''a large tax [25 percent or more] on the sales of permits.''

Response: In financed reduction programs, the industry's business plans project the amount by which fishing capacity is reduced and the prospective fee rate necessary to pay for that reduction. Fee rates are based on post-reduction gross revenue that can only be projected over the life of the reduction loans, but all business is planned on the basis of future income that can only be projected. For a financed reduction loan to be possible, affected fishing vessel or fishing permit owners must vote in a referendum to approve the fee necessary to repay a reduction loan of a certain maximum amount whose disbursement in the form of reduction payments will reduce fishing capacity by a certain minimum amount. Business planners are unlikely to suggest a fee higher than post-reduction producers are reasonably likely to be able to pay, and, in the event they do, referenda voters are unlikely to approve a higher fee. Post-reduction fee rates may increase if post-reduction gross revenue proves to be lower than projected at the time of reduction, but may never exceed 5 percent of gross revenue. NMFS has no authority to consider the alternative this comment suggested.

Comment 42: The proposed rule is a ''very well done plan on how to implement. It is believable, do-able, and very much needed in the fishing industry.''

Response: NMFS notes this comment.

Comment 43: The comment applauds this avenue to reduce overcapitalization, return economic viability to fishing, and resolve many concerns (including bycatch and habitat) that the race for fish creates. Reductions reduces fishermen's pressure by eliminating ''derby fisheries.''

Response: NMFS agrees that fishing capacity reduction can help improve fisheries economics and fisheries conservation and management.

Comment 44: The fee for fish processed at sea cannot equitably be calculated in the same way as the fee for raw fish delivered ashore. Using appropriate recovery rates, NMFS should convert processed fish to the fish's round weight equivalent and calculate the fee based on the ex-vessel price for raw fish. If there is an ex-vessel price for raw fish delivered at sea, NMFS should use this. If not, NMFS should use the ex-vessel price for raw fish delivered ashore. Where all fish in a reduction fishery are processed and delivered at sea, NMFS must devise an appropriate proxy for a raw-fish, ex-vessel price. The fee should, in all cases, be based on the ex-vessel price for raw fish, rather than on the value that at-sea processing adds.

Response: NMFS considered this issue during the proposed rule's formulation, but elected in the proposed

rule to define ''delivery value'' and associated terms in a way that required payment of the reduction loan repayment fee based on fish in whatever form the fish existed at the time that the party who harvested the fish first delivered the fish for value to an unrelated fish buyer. This resulted, for fish harvested and processed at sea by the same party, in applying the fee rate to a higher delivery value than for fish delivered unprocessed and subsequently processed ashore by an unrelated fish buyer. There are good arguments for and against this approach, but, on balance, the more equitable way to resolve this issue is, as this comment suggests, to apply the fee to unprocessed fish. Doing so, however, creates considerable problems of its own.

One primary problem is a formula for accurately and efficiently converting the weight of processed fish to the weight of unprocessed fish. Another is a common value for unprocessed fish (prices may vary from time to time and from fish buyer to fish buyer). Nevertheless, the interim final rule revises the proposed rule to make the fee payable on the basis of the value of unprocessed fish. The interim final rule requires each business plan, for fisheries in which related parties both catch and process fish at sea, to formulate an accurate and efficient means of converting processed weight to unprocessed weight and of commonly valuing unprocessed fish (see, in § 600.1000, the definition of the terms ''delivery value'', ''processed fish'', and ''unprocessed fish'' and, in § 600.1003(n)(11), the new business plan requirement in this respect).

Comment 45: The framework rule represents an ''excellent job of distilling common sense answers from some very difficult and complex issues.''

Response: NMFS notes the comment.

Comment 46: The reduction loan repayment fee is the delivery value of fee fish times the fee rate. The definition of ''delivery value'', however, excludes ''any deductions whatsoever'' from the price that a fish buyer pays a fish seller when the fish seller first delivers fish to the fish buyer. This excludes ''weighbacks'' (small, unmarketable fish that the fish buyer deducts from the weight of delivered fish upon which the fish buyer calculates the delivery value). To comply with the statute's restriction of the fee to no more than 5 percent of ex-vessel value, the fee rate must be applied to the net weight of delivered fish (landed fish minus ''weighbacks'').

Response: Representative fish tickets provided with this comment deduct the weight of weighbacks from the gross weight of fee fish delivered before applying the purchase price per pound to the resulting net weight. Under these circumstances, the fee is not, as the proposed rule defined the relevant term, applied to the weighbacks because the fish buyer did not pay any ''delivery value'' for the weighbacks because they were deducted from the total weight of delivered fish before calculating the ''delivery value'' on the net weight of delivered fish. The rule bases the fee on whatever value fish buyers pay fish sellers for fish subject to the fee (see the definition of the term ''delivery value'' in § 600.1000).

Comment 47: This comment supported fishing capacity reduction, but is frustrated that ''the system'' moves so slowly.

Response: NMFS will expedite the process as much as it possibly can, but fishing capacity reduction is a complex undertaking. The FMP amendment required to complement each reduction program may become a major source of delay in implementing each reduction program.

Comment 48: The reduction concept is ''totally objectionable and immoral.'' Allowing ''two thirds of the fishermen in a fishery...'' to authorize the fee system required to repay a loan forces the other one third to repay a loan they do not want. The commenter objects to ''forced loans.'' The commenter does not ''believe in borrowing...'', and ''objects] to being forced to pay back a loan to stay fishing.'' Government should not be in the business of making loans. Reduction programs will not increase the price of post-reduction fish. The reduction concept ''has the potential to force out small boat owners.''

Response: NMFS notes the comment. The Magnuson-Stevens Act authorizes reduction programs and specifies the way in which they must be conducted. This rule implements the Act.

The reduction concept has the potential to reduce fishing capacity of every size, but decisions about whether to offer any fishing capacity for reduction are always the voluntary decisions of individual fishing permit and/or fishing vessel owners.

Comment 49: Reduction might have the collateral effect of putting some shoreline processors out of business, because fewer fishing vessels could result in the need for fewer shoreline processors.

Response: Absent concurrent reductions in total allowable catches, post-reduction harvests will require the same fish processing capacity as pre-reduction harvests. NMFS hopes that fewer harvesters catching the same amount of fish will not always mean a need for fewer processors, but it sometimes unavoidably may. Nevertheless, the statutory objective of the reduction provisions of the Magnuson-Stevens Act is to reduce fishing capacity.

Comment 50: ''Congress made it very clear in the Sustainable Fisheries Act of 1996 that all capacity reduction plans must achieve measurable and significant improvements in the conservation and management of the fishery in question...''

Response: The rule reflects this aspect of the statutory reduction provisions.

Summary of Revisions

The proposed rule was Subpart D of 50 CFR Part 253. The interim final rule, however, is subpart L of 50 CFR Part 600.

The following sections of the interim final rule revise the proposed rule:

(1) *§ 600.1000*. This section is revised to add some terms, delete some terms, rename some terms, and amend the definition of some terms. Added terms include: ''address of record'', ''bid'', ''business week'', ''fair market value'', ''fishing capacity reduction specifications'', ''net delivery value'', ''post-bidding referendum'', ''pre-bidding referendum'', ''processed fish'', ''reduction amendment specifications'', ''request'', ''treasury percentage'', ''unprocessed fish'', and ''vote''. Deleted terms include: ''consistency requirement'', ''control requirement'', ''Council'', ''necessity requirement'', and ''nonreplacement requirement''. Renamed terms include: ''program plan'', which becomes ''implementation plan''; ''program regulations'', which becomes ''implementation regulations''; and ''management plan'', which becomes ''controlling fishery management plan or program (CFMP)''. Amended definitions include ''borrower'', ''delivery value'', ''fee fish'', ''fish buyer'', ''fish delivery'', ''fish seller'', ''reduction amendment'', ''reduction fishery'', and ''reduction payment''.

(2) *§ 600.1001(f)*. This section is added to provide for waivers of framework rule provisions in order to accommodate special circumstances in particular reduction fisheries.

(3) *§ 600.1002*. This section is new. It encompasses four general requirements, three of which were, in the proposed rule, terms defined in § 253.25. This new section required conforming revisions of various other sections of the proposed rule.

(4) *§ 600.1003*. Paragraph (g) of this section is revised to require each request for a financed reduction program to include the FMC's endorsement in principle of any reduction amendment

to the FMP that the business plan proposes. Paragraph (i) of this section is revised to clarify that NMFS is a source for the fishing permit data that this section requires in requests for financed reduction programs. Paragraph (j) of this section is revised to clarify that financed reduction program requests require aggregate, rather than individual, catch data. Paragraph (n)(11) of this section is revised to require the business plan included in each financed reduction request to evaluate the need for fee payment and collection provisions in each reduction fishery's implementation regulations different from the fee collection provisions in the framework rule.

(5) *§ 600.1005*. Paragraph (e) of this section is revised to clarify that NMFS is a source for the fishing permit data that this section requires in requests for subsidized reduction programs. Paragraph (f) of this section is revised to clarify that financed reduction program requests require aggregate, rather than individual, catch data.

(6) *§ 600.1010*. This section is revised extensively to provide for referenda preceding reduction amendments to FMPs as well as other referenda that may be required by no longer limiting referenda to those following reduction bidding. This also required appropriately revising other sections of the proposed rule that referenced referenda. Paragraph (d)(10) of this section is revised to establish the confidentiality of referenda ballots.

(7) *§ 600.1011*. This section, particularly paragraphs (f) and (g), is revised to clarify the effect of reduction payments that NMFS is unable to make because of reduction contract non-performance.

(8) *§ 600.1012*. This section is new. Paragraphs (b) and (c) of this section pertain to reduction loan interest rates, including the effect of any difference between prospective and actual reduction loan interest rates. The balance of this new section pertains to the reduction loan obligation, including principal amount, repayment term, and penalties for non-payment or non-collection.

(9) *§ 600.1013(c)(2)*. This paragraph is revised to clarify that the fee applicable to post-delivery fish bonuses is paid and collected when the bonuses first become known rather than when fish sellers first deliver fish to fish buyers.

(10) *§ 600.1015*. This section is new. This provision is necessary to ensure prompt payment.

(11) *§ 600.1016*. This section is new. This provision is necessary to ensure compliance.

The interim final rule further revises the proposed rule to make the rule briefer, clearer, and more internally consistent.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers OMB assigned to NOAA's information collection requirements pursuant to the Paperwork Reduction Act (PRA). This interim final rule codifies OMB control number 0648–0376 and OMB control number 0648–0413 for Part 600 Subpart L—Fishing Vessel Capacity Reduction.

Classification

The Assistant Administrator for Fisheries, NMFS, determined that this interim final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This interim final rule has been determined to be significant for purposes of E.O. 12866, and a Regulatory Impact Review has been prepared by NMFS (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that, if adopted as proposed, it would not have a significant economic impact on a substantial number of small entities. NMFS received no comments about this certification. Because this interim final rule only establishes a framework for implementing future reduction programs in specific reduction fisheries, each future reduction program will require its own implementation regulations and analysis of effects on small entities. As a result, a regulatory flexibility analysis was not prepared.

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

This interim final rule contains new collection of information requirements subject to the PRA that have been approved by OMB, under OMB Control No. 0648–0376. The estimates of the public reporting burden for these requirements are: 6,634 hours for developing a business plan, 4 hours per voter for a referendum, four hours to make a bid, 10 minutes per fishing trip to maintain records on transactions, 2 hours for a buyer's monthly report, 4 hours for a buyer's annual report, 2 hours for a buyer/seller report (where either a buyer refuses to a fee or the seller refuses to pay the fee to the buyer), and 270 hours for state approval of a business plan and amendments to a state fishery management plan.

Emergency clearance has also been obtained under OMB Control Number 0648-0413 to conduct, in accordance with the interim final rule's revised referenda procedures, more than one referendum for each reduction program if the circumstances of a reduction program require multiple referenda. The response time per voter for these referenda is 4 hours. NMFS intends to ask OMB for a three-year extension of the clearance for these requirements, which are currently only approved on an emergency basis.

The response time estimates above include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information.

Send comments regarding the extension of the emergency clearance or any other aspect of the collection of information requirements contained in this rule, including the burden hour estimates, and suggestions for reducing the burdens to NMFS (see **ADDRESSES**) and to OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 600

Fishing capacity reduction, Fisheries, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs-business, Reporting and recordkeeping requirements.

Dated: May 8, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, is amended and 50 CFR part 600 is amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by adding under 50 CFR the following entries in numerical order:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number (All numbers begin with 0648–)
* * * * * * *	
50 CFR	
* * * * * * *	
600.1001	- 0376
600.1003	- 0376
600.1005	- 0376
600.1006	- 0376
600.1009	- 0376
600.1010	- 0376 and–0413
600.1011	- 0376
600.1012	- 0376
600.1013	- 0376
600.1014	- 0376
* * * * * * *	

3. The authority citation for 50 CFR part 600 continues to read as follows:

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

4. In § 600.5, a paragraph (c) is added to read as follows:

§ 600.5 Purpose and scope.

* * * * *

(c) This part also governs fishing capacity reduction programs under the Magnuson-Stevens Act.

5. A subpart L is added to read as follows:

50 CFR Chapter VI

PART 600 MAGNUSON-STEVENS ACT PROVISIONS

Subpart L—Fishing Capacity Reduction

Sec.

600.1000 Definitions.
600.1001 Requests.
600.1002 General requirements.
600.1003 Content of a request for a financed program.
600.1004 Accepting a request for, and determinations about initiating, a financed program.
600.1005 Content of a request for a subsidized program.
600.1006 Accepting a request for, and determinations about conducting, a subsidized program.
600.1007 Reduction amendments.
600.1008 Implementation plan and implementation regulations.
600.1009 Bids.
600.1010 Referenda.
600.1011 Reduction methods and other conditions.
600.1012 Reduction loan.
600.1013 Fee payment and collection.
600.1014 Fee collection deposits, disbursements, records, and reports.
600.1015 Late charges.
600.1016 Enforcement.
600.1017 Prohibitions and penalties.
600.1018 Implementation regulations for each program. [Reserved]

Subpart L—Fishing Capacity Reduction

Authority: 16 U.S.C. 1861a(b)–(e).

§ 600.1000 Definitions.

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and in § 600.10 of this title, the terms used in this subpart have the following meanings:

Address of Record means the business address of a person, partnership, or corporation. Addresses listed on permits or other NMFS records are presumed to be business addresses, unless clearly indicated otherwise.

Bid means the price a vessel owner or reduction fishery permit holder requests for reduction of his/her fishing capacity. It is an irrevocable offer in response to the invitation to bid in § 600.1009.

Borrower means, individually and collectively, each post-reduction fishing permit holder and/or fishing vessel owner fishing in the reduction fishery.

Business plan means the document containing the information specified in § 600.1003(n) and required to be submitted with a request for a financed program.

Business week means a 7-day period, Saturday through Friday.

Controlling fishery management plan or program (CFMP) means either any fishery management plan or any state fishery management plan or program, including amendments to the plan or program, pursuant to which a fishery is managed.

Delivery value means:

(1) For unprocessed fish, all compensation that a fish buyer pays to a fish seller in exchange for fee fish; and

(2) For processed fish, all compensation that a fish buyer would have paid to a fish seller in exchange for fee fish if the fee fish had been unprocessed fish instead of processed fish.

Delivery value encompasses fair market value, as defined herein, and includes the value of all in-kind compensation or all other goods or services exchanged in lieu of cash. It is synonymous with the statutory term ''ex-vessel value'' as used in section 312 of the Magnuson Act.

Deposit principal means all collected fee revenue that a fish buyer deposits in a segregated account maintained at a federally insured financial institution for the sole purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying a reduction loan.

Fair market value means the amount that a buyer pays a seller in an arm's length transaction or, alternatively, would pay a seller if the transaction were at arm's length.

Fee means the amount that fish buyers deduct from the delivery value under a financed reduction program. The fee is the delivery value times the reduction fishery's applicable fee rate under section 600.1013.

Fee fish means all fish harvested from a reduction fishery involving a financed program during the period in which any amount of the reduction loan remains unpaid. The term fee fish excludes fish harvested incidentally while fishing for fish not included in the reduction fishery.

Final development plan means the document NMFS prepares, under § 600.1006(b) and based on the preliminary development plan the requester submits, for a subsidized program.

Financed means funded, in any part, by a reduction loan.

Fish buyer means the first ex-vessel party who:

(1) in an arm's—length transaction, purchases fee fish from a fish seller;

(2) takes fish on consignment from a fish seller; or

(3) otherwise receives fish from a fish seller in a non arm's-length transaction.

Fish delivery means the point at which a fish buyer first purchases fee fish or takes possession of fee fish from a fish seller.

Fishing capacity reduction specifications means the minimum amount of fishing capacity reduction and the maximum amount of reduction loan principal specified in a business plan.

Fish seller means the party who harvests and first sells or otherwise delivers fee fish to a fish buyer.

Fishery Management Plan (FMP) means any Federal fishery management plan, including amendments to the plan, that the Secretary of Commerce approves or adopts pursuant to section 303 of the Magnuson-Stevens Act.

Fund means the Fishing Capacity Reduction Fund, and each subaccount for each program, established in the U.S. Treasury for the deposit into, and disbursement from, all funds, including all reduction loan capital and all fee revenue, involving each program.

Implementation plan means the plan in § 600.1008 for carrying out each program.

Implementation regulations mean the regulations in § 600.1008 for carrying out each program.

Net delivery value means the delivery value minus the fee.

Post-bidding referendum means a referendum that follows bidding under § 600.1009.

Post-reduction means after a program reduces fishing capacity in a reduction fishery.

Pre-bidding referendum means a referendum that occurs at any time after a request for a financed program but before a proposal under § 600.1008 of a implementation plan and implementation regulations.

Preliminary development plan means the document specified in § 600.1005(g) and required to be submitted with a request for a subsidized program.

Processed fish means fish in any form different from the form in which the fish existed at the time the fish was first harvested, unless any such difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

Program means each instance of reduction under this subpart, in each reduction fishery—starting with a request and ending, for a financed program, with full reduction loan repayment.

Reduction means the act of reducing fishing capacity under any program.

Reduction amendment means any amendment, or, where appropriate, framework adjustment, to a CFMP that may be necessary for a program to meet the requirements of this subpart.

Reduction amendment specifications mean the reduction amendment to a CFMP specified in a business plan.

Reduction contract means the invitation to bid under § 600.1009, together with each bidder's irrevocable offer and NMFS' conditional or non-conditional acceptance of each such bid under § 600.1009.

Reduction cost means the total dollar amount of all reduction payments to fishing permit owners, fishing vessel owners, or both, in a reduction fishery.

Reduction fishery means the fishery or portion of a fishery to which a program applies. The reduction fishery must specify each included species, as well as any limitations by gear type, fishing vessel size, geographic area, and any other relevant factor(s).

Reduction loan means a loan, under section 1111 and section 1112 of Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1279f and g App.), for financing any portion, or all, of a financed program's reduction cost and repayable by a fee under, and in accordance with, § 600.1012, § 600.1013, and § 600.1014.

Reduction payment means the Federal Government's fishing capacity reduction payment to a fishing permit owner, fishing vessel owner, or both, under a reduction contract. Additionally, it is payment for reduction to each bidder whose bid NMFS accepts under § 600.1009. In a financed program each reduction payment constitutes a disbursement of a reduction loan's proceeds and is for either revoking a fishing permit or both revoking a fishing permit and withdrawing a vessel from fishing either by scrapping or title restriction.

Reduction permit means any fishing permit revoked in a program in exchange for a reduction payment under a reduction contract.

Reduction vessel means any fishing vessel withdrawn from fishing either by scrapping or title restriction in exchange for a reduction payment under a reduction contract.

Referendum means the voting process under § 600.1010 for approving the fee system for repaying a reduction loan.

Request means a request, under § 600.1001, for a program.

Requester means a Council for a fishery identified in § 600.1001(c), a state governor for a fishery identified in § 600.1001(d), or the Secretary for a fishery identified in § 600.1001(e).

Scrap means to completely and permanently reduce a fishing vessel's hull, superstructures, and other fixed structural components to fragments having value, if any, only as raw materials for reprocessing or for other non-fisheries use.

Subsidized means wholly funded by anything other than a reduction loan.

Treasury percentage means the annual percentage rate at which NMFS must pay interest to the U.S. Treasury on any principal amount that NMFS borrows from the U.S. Treasury in order to generate the funds with which to later disburse a reduction loan's principal amount.

Unprocessed fish means fish in the same form as the fish existed at the time the fish was harvested, unless any difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

Vote means a vote in a referendum.

§ 600.1001 Requests.

(a) A Council or the Governor of a State under whose authority a proposed reduction fishery is subject may request that NMFS conduct a program in that fishery. Each request shall be in writing and shall be submitted to the Director, Office of Sustainable Fisheries, NMFS. Each request shall satisfy the requirements of § 600.1003 or § 600.1005, as applicable, and enable NMFS to make the determinations required by § 600.1004 or § 600.1006, as applicable.

(b) NMFS cannot conduct a program in any fishery subject to the jurisdiction of a Council or a state unless NMFS first receives a request from the Council or the governor to whose jurisdiction the fishery is subject.

(c) For a fishery subject to the jurisdiction of a Council, only that Council can or must make the request. If the fishery is subject to the jurisdiction of two or more Councils, those Councils must make a joint request. No Council may make a request, or join in making a request, until after the Council conducts a public hearing about the request.

(d) For a fishery subject to the jurisdiction of a State, only the Governor of that State can make the request. If the fishery is subject to the jurisdiction of two or more states, the Governors of those States shall make a joint request. No Governor of a State may make a request, or join in making a request, until the State conducts a public hearing about the request.

(e) For a fishery under the direct management authority of the Secretary, NMFS may conduct a program on NMFS' own motion by fulfilling the requirements of this subpart that reasonably apply to a program not initiated by a request.

(f) Where necessary to accommodate special circumstances in a particular fishery, NMFS may waive, as NMFS deems necessary and appropriate, compliance with any specific requirements under this subpart not required by statute.

§ 600.1002 General requirements.

(a) Each program must be: (1) Necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the reduction fishery;

(2) Accompanied by the appropriate environmental, economic and/or socioeconomic analyses, in accordance with applicable statutes, regulations, or other authorities; and

(3) Consistent with the CFMP, including any reduction amendment, for the reduction fishery.

(b) Each CFMP for a reduction fishery must: (1) Prevent the replacement of fishing capacity removed by the program through a moratorium on new

entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet;

(2) Establish a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

(3) Include, for a financed program in a reduction fishery involving only a portion of a fishery, appropriate provisions for the post-reduction allocation of fish between the reduction fishery and the rest of the fishery that both protect the borrower's reduction investment in the program and support the borrower's ability to repay the reduction loan.

§ 600.1003 Content of a request for a financed program.

A request for a financed program shall:

(a) Specify the reduction fishery.

(b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.

(c) Specify whether the program is to be wholly or partially financed and, if the latter, specify the amount and describe the availability of all funding from sources other than a reduction loan.

(d) Project the availability of all Federal appropriation authority or other funding, if any, that the financed program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.

(e) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a).

(f) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b).

(g) If a reduction amendment is necessary, include an actual reduction amendment or the requester's endorsement in principle of the reduction amendment specifications in the business plan. Endorsement in principle is non-binding.

(h) Request that NMFS conduct, at the appropriate time, a referendum under § 600.1010 of this subpart.

(i) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester. The list shall take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves. The list may include any relevant information that NMFS may supply to the requester.

(j) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (i) of this section.

(k) Specify the criteria for determining the types and number of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:

(1) The characteristics of the fishery;

(2) Whether the program is limited to a particular gear type within the reduction fishery or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor;

(3) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels;

(4) The reduction amendment required;

(5) The needs of fishing communities;

(6) Minimizing the program's reduction cost; and

(7) All other relevant factors.

(l) Include the requester's assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts.

(m) Include any other information or guidance that would assist NMFS in developing an implementation plan and implementation regulations.

(n) Include a business plan, prepared by, or on behalf of, knowledgeable and concerned harvesters in the reduction fishery, that:

(1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least reduction cost and in the minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:

(i) Establish the appropriate point for NMFS to conduct a pre-bidding referendum and be sufficiently detailed to enable NMFS to readily:

(A) Design, propose, and adopt a timely and reliable implementation plan,

(B) Propose and issue timely and reliable implementation regulations,

(C) Invite bids,

(D) Accept or reject bids, and

(E) Complete a program in accordance with this subpart, and

(ii) Address, consistently with this subpart:

(A) The contents and terms of invitations to bid,

(B) Bidder eligibility,

(C) The type of information that bidders shall supply,

(D) The criteria for accepting or rejecting bids,

(E) The terms of bid acceptances,

(F) Any referendum procedures in addition to, but consistent with, those in § 600.1010, and

(G) All other technical matters necessary to conduct a program;

(2) Projects and supports the reduction fishery's annual delivery value during the reduction loan's repayment period based on documented analysis of actual representative experience for a reasonable number of past years in the reduction fishery;

(3) Includes the fishing capacity reduction specifications upon which both the pre-bidding referendum and the bidding under § 600.1009 will be based. The reduction loan's maximum principal amount cannot, at the interest rate projected to prevail at the time of reduction, exceed the principal amount that can be amortized in 20 years by 5 percent of the projected delivery value;

(4) States the reduction loan's repayment term and the fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over its repayment term;

(5) Analyzes and demonstrates the ability to repay the reduction loan at the minimum reduction level and at various reduction-level increments reasonably greater than the minimum one, based on the:

(i) Best and most representative historical fishing revenue and expense data and any other relevant productivity measures available in the reduction fishery, and

(ii) Projected effect of the program on the post-reduction operating economics of typical harvesters in the reduction fishery, with particular emphasis on the extent to which the reduction increases the ratio of delivery value to fixed cost and improves harvesting's other relevant productivity measures;

(6) Demonstrates how the business plan's proposed program meets, or will

meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(7) Demonstrates how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b);

(8) Includes, if a reduction amendment is necessary, the reduction amendment specifications upon which the pre-bidding referendum will be based;

(9) Includes an assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts;

(10) Specifies the names and addresses of record of all fish buyers who can, after reduction, reasonably be expected to receive deliveries of fee fish. This shall be based on the best information available, including any information that NMFS may be able to supply to the business planners;

(11) Specifies, after full consultation with fish buyers, any special circumstances in the reduction fishery that may require the implementing regulations to contain provisions in addition to, or different from, those contained in § 600.1013 and/or § 600.1014 in order to accommodate the circumstances of, and practices in, the reduction fishery while still fulfilling the intent and purpose of § 600.1013 and/or § 600.1014—including, but not limited to:

(i) In the case of reduction fisheries in which state data confidentiality laws or other impediments may negatively affect the efficient and effective conduct of the same, specification of who needs to take what action to resolve any such impediments, and

(ii) In the case of reduction fisheries in which some fish sellers sell unprocessed, and other fish sellers sell processed fish to fish buyers, specification of an accurate and efficient method of establishing the delivery value of processed fish; and

(12) Demonstrates by a survey of potential voters, or by any other convincing means, a substantial degree of potential voter support for the business plan and confidence in its feasibility.

(o) Include the requester's statement of belief that the business plan, the CFMP, the reduction amendment specifications, and all other request aspects constitute a complete, realistic, and practical prospect for successfully completing a program in accordance with this subpart.

§ 600.1004 Accepting a request for, and determinations about initiating, a financed program.

(a) *Accepting a request.* Once it receives a request, NMFS will review any request for a financed program to determine whether the request conforms with the requirements of § 600.1003. If the request does not conform, NMFS will return the request with guidance on how to make the request conform. If the request conforms, NMFS shall accept it and publish a notice in the **Federal Register** requesting public comments on the request. Such notice shall state the name and address of record of each eligible voter, as well as the basis for having determined the eligibility of those voters. This shall constitute notice and opportunity to respond about adding eligible voters, deleting ineligible voters, and/or correcting any voter's name and address of record. If, in NMFS' discretion, the comments received in response to such notice warrants it, or other good cause warrants it, NMFS may modify such list by publishing another notice in the **Federal Register**.

(b) *Determination about initiating a financed program.* After receipt of a conforming request for a financed program, NMFS will, after reviewing and responding to any public comments received in response to the notice published in the **Federal Register** under paragraph (a) of this section, initiate the program if NMFS determines that: (1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) The CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b);

(3) The program, if successfully implemented, is cost effective;

(4) The reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart and the borrower is capable of repaying the reduction loan. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart; and

(5) The program accords with all other applicable law;

§ 600.1005 Content of a request for a subsidized program.

A request for a subsidized program shall:

(a) Specify the reduction fishery.

(b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.

(c) Project the reduction cost, the amount of reduction cost to be funded by Federal appropriations, and the amount, if any, to be funded by other sources.

(d) Project the availability of Federal appropriations or other funding, if any, that completion of the program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.

(e) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester, including any information that NMFS may supply to the requester, and take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves.

(f) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (e) of this section.

(g) Include a preliminary development plan that: (1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least cost and in a minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:

(i) Be sufficiently detailed to enable NMFS to prepare a final development plan to serve as the basis for NMFS to readily design, propose, and adopt a timely and reliable implementation plan and propose and issue timely and reliable implementation regulations, and

(ii) Include:

(A) The contents and terms of invitations to bid,

(B) Eligible bidders,

(C) The type of information that bidders shall supply,

(D) The criteria for accepting or rejecting bids, and

(E) The terms of bid acceptances;

(2) Specifies the criteria for determining the types and numbers of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:

(i) The characteristics of the fishery,

(ii) Whether the program is limited to a particular gear type within the reduction fishery, or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor,

(iii) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels,

(iv) The reduction amendment required,

(v) The needs of fishing communities, and

(vi) The need to minimize the program's reduction cost; and

(3) Demonstrates the program's cost effectiveness.

(h) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a).

(i) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2).

(j) Specify any other information or guidance that assists NMFS in preparing a final development plan and a proposed implementation plan and proposed implementation regulations.

(k) Include the requester's statement of belief that the program constitutes a reasonably realistic and practical prospect for successfully completing a program in accordance with this subpart.

§ 600.1006 Accepting a request for, and determinations about conducting, a subsidized program.

(a) *Accepting a request.* NMFS will review any request for a subsidized program submitted to NMFS to determine whether the request conforms with the requirements of § 600.1005. If the request does not conform, NMFS will return it with guidance on how to make the request conform. If the request conforms, NMFS shall accept it and publish a notice in the **Federal Register** requesting public comments about the request.

(b) *Final development plan.* After receipt of a conforming request, NMFS will prepare a final development plan if NMFS determines that the reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart. NMFS will, as far as possible, base the final development plan on the requester's preliminary development plan. Before completing the final development plan, NMFS will consult, as NMFS deems necessary, with the requester, Federal agencies, state and regional authorities, affected fishing communities, participants in the reduction fishery, conservation organizations, and other interested parties in preparing the final development plan.

(c) *Reaffirmation of the request.* After completing the final development plan, NMFS will submit the plan to the requester for the requester's reaffirmation of the request. Based on the final development plan, the reaffirmation shall: (1) Certify that the final development plan meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) Certify that the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2); and

(3) Project the date on which the requester will forward any necessary reduction amendment and, if the requester is a Council, proposed regulations to implement the reduction amendment. The requester shall base any necessary reduction amendment on the final development plan.

(d) *Determinations about conducting a subsidized program.* After NMFS' receipt of the requester's reaffirmation, any required reduction amendment, and any proposed regulations required to implement the amendment, NMFS will initiate the program if NMFS determines that: (1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) The CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2); and

(3) The program is reasonably capable of being successfully implemented;

(4) The program, if successfully implemented, will be cost effective; and

(5) The program is in accord with all other applicable provisions of the Magnuson-Stevens Act and this subpart.

§ 600.1007 Reduction amendments.

(a) Each reduction amendment may contain provisions that are either dependent upon or independent of a program. Each provision of a reduction amendment is a dependent provision unless the amendment expressly designates the provision as independent.

(b) Independent provisions are effective without regard to any subsequent program actions.

(c) Dependent provisions are initially effective for the sole limited purpose of enabling initiation and completion of the pre-reduction processing stage of a program.

(d) All dependent provisions of a reduction amendment for a financed program are fully in force and effect for all other purposes only when NMFS either: (1) For bidding results that conform to the fishing capacity reduction specifications and are not subject to any other condition, notifies bidders, under § 600.1009(e)(3), that reduction contracts then exist between the bidders and the United States; or

(2) For bidding results that do not conform to the fishing capacity reduction specifications or are subject to any other condition, notifies bidders whose bids NMFS had conditionally accepted, under § 600.1010 (d)(8)(iii), that the condition pertaining to the reduction contracts between them and the United States is fulfilled.

(e) If NMFS does not, in accordance with this subpart and any special provisions in the implementation regulations, subsequently make all reduction payments that circumstances, in NMFS' judgment, reasonably permit NMFS to make and, thus, complete a program, no dependent provisions shall then have any further force or effect for any purpose and all final regulations involving such dependent provisions shall then be repealed.

§ 600.1008 Implementation plan and implementation regulations.

(a) As soon as practicable after deciding to initiate a program, NMFS will prepare and publish, for a 60-day public comment period, a proposed implementation plan and implementation regulations. During the public comment period, NMFS will conduct a public hearing of the proposed implementation plan and implementation regulations in each state that the program affects.

(b) To the greatest extent practicable, NMFS will base the implementation plan and implementation regulations for a financed program on the business plan. The implementation plan for a financed program will describe in detail

all relevant aspects of implementing the program, including:

(1) The reduction fishery;

(2) The reduction methodology;

(3) The maximum reduction cost;

(4) The maximum reduction loan amount, if different from the maximum reduction cost;

(5) The reduction cost funding, if any, other than a reduction loan;

(6) The minimum acceptable reduction level;

(7) The potential amount of the fee;

(8) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the program;

(9) The invitation to bid and bidding procedures;

(10) The criteria for determining bid acceptance;

(11) The referendum procedures; and

(12) Any relevant post-referendum reduction procedures other than those in the implementation regulations or this subpart.

(c) NMFS will base each implementation plan and implementation regulations for a subsidized program on the final development plan. The implementation plan will describe in detail all relevant aspects of implementing the program, including: (1) The reduction fishery;

(2) The reduction methodology;

(3) The maximum reduction cost;

(4) The reduction-cost funding, if any, other than Federal appropriations;

(5) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the program;

(6) The invitation to bid and bidding procedures;

(7) The criteria for determining bid acceptance; and

(8) Any relevant post-bidding program procedures other than those in the implementation regulations or this subpart.

(d) The implementation regulations will:

(1) Specify, for invitations to bid, bids, and reduction contracts under § 600.1009:

(i) Bidder eligibility,

(ii) Bid submission requirements and procedures,

(iii) A bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,

(iv) A bid expiration date after which the irrevocable offer contained in each bid expires unless NMFS, before that date, accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,

(v) The manner of bid submission and the information each bidder shall supply for NMFS to deem a bid responsive,

(vi) The conditions under which NMFS will accept or reject a bid,

(vii) The manner in which NMFS will accept or reject a bid, and

(viii) The manner in which NMFS will notify each bidder of bid acceptance or rejection;

(2) Specify any other special referendum procedures or criteria; and

(3) Specify such other provisions, in addition to and consistent with those in this subpart, necessary to regulate the individual terms and conditions of each program and reduction loan. This includes, but is not limited to:

(i) Provisions for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with § 600.1013 and § 600.1014,

(ii) Prospective fee rate determinations, and

(iii) Any other aspect of fee payment, collection, deposit, disbursement, accounting, record keeping, and/or reporting.

(e) NMFS will issue final implementation regulations and adopt a final implementation plan within 45 days of the close of the public-comment period.

(f) NMFS may repeal the final implementation regulations for any program if: (1) For a financed program, the bidding results do not conform to the fishing capacity reduction specifications or a post-bidding referendum does not subsequently approve an industry fee system based on the bidding results;

(2) For a subsidized program, NMFS does not accept bids; and

(3) For either a financed program or a subsidized program, if NMFS is unable to make all reduction payments due to a material adverse change.

§ 600.1009 Bids.

(a) Each invitation to bid, bid, bid acceptance, reduction contract, and bidder—or any other party in any way affected by any of the foregoing—under this subpart is subject to the terms and conditions in this section: (1) Each invitation to bid constitutes the entire terms and conditions of a reduction contract under which:

(i) Each bidder makes an irrevocable offer to the United States of fishing capacity for reduction, and

(ii) NMFS accepts or rejects, on behalf of the United States, each bidder's offer;

(2) NMFS may, at any time before the bid expiration date, accept or reject any or all bids;

(3) For a financed program in which bidding results do not conform to the fishing capacity reduction specifications, NMFS' acceptance of any bid is subject to the condition that the industry fee system necessary to repay the reduction loan is subsequently approved by a successful post-bidding referendum conducted under § 600.1010. Approval or disapproval of the industry fee system by post-bidding referendum is an event that neither the United States nor the bidders can control. Disapproval of the industry fee system by an unsuccessful post-bidding referendum fully excuses both parties from any performance and fully discharges all duties under any reduction contract;

(4) For a financed program in one reduction fishery that is being conducted under appropriate implementation regulations simultaneously with another financed program in another reduction fishery, where the acceptance of bids for each financed program is conditional upon successful post-bidding referenda approving industry fee systems for both financed programs, NMFS' acceptance of all bids is, in addition to any condition under paragraph (a)(3) of this section, also subject to the additional conditions that both referenda approve the industry fee systems required for both financed programs—-all as otherwise provided in paragraph (a)(3) of this section;

(5) Upon NMFS' acceptance of the bid and tender of a reduction payment, the bidder consents to:

(i) The revocation, by NMFS, of any reduction permit, and

(ii) Where the program also involves the withdrawal of reduction vessels from fishing:

(A) Title restrictions imposed by the U.S. Coast Guard on any reduction vessel that is federally documented to forever prohibit and effectively prevent any future use of the reduction vessel for fishing in any area subject to the jurisdiction of the United States or any state, territory, commonwealth, or possession of the United States, or

(B) Where reduction vessel scrapping is involved and the reduction vessel's owner does not comply with the owner's obligation under the reduction contract to scrap the reduction vessel, take such measures as necessary to cause the reduction vessel's prompt scrapping. The scrapping will be at the reduction vessel owner's risk and expense. Upon completion of scrapping, NMFS will take such action as may be necessary to recover from the reduction vessel owner any cost or expense NMFS incurred in causing the reduction vessel to be scrapped and any other damages NMFS may have incurred and such

owner shall be liable to the United States for such cost, expenses, and damages;

(6) Money damages not being an adequate remedy for a bidder's breach of a reduction contract, the United States is, in all particulars, entitled to specific performance of each reduction contract. This includes, but is not limited to, the scrapping of a reduction vessel;

(7) Any reduction payment is available, upon timely and adequately documented notice to NMFS, to satisfy liens, as allowed by law, against any reduction permit/and or reduction vessel; provided, however, that:

(i) No reduction payment to any bidder either relieves the bidder of responsibility to discharge the obligation which gives rise to any lien or relieves any lien holder of responsibility to protect the lien holder's interest,

(ii) No reduction payment in any way gives rise to any

liability of the United States for the obligation underlying any lien,

(iii) No lien holder has any right or standing, not otherwise provided by law, against the United States in connection with the revocation of any reduction permit or the title restriction or scrapping of any reduction vessel under this subpart, and

(iv) This subpart does not provide any lien holder with any right or standing to seek to set aside any revocation of any reduction permit or the title restriction or scrapping of any reduction vessel for which the United States made, or has agreed to make, any reduction payment. A lien holder is limited to recovery against the holder of the reduction permit or the owner of the reduction vessel as otherwise provided by law; and

(8) Each invitation to bid may specify such other terms and conditions as NMFS believes necessary to enforce specific performance of each reduction contract or otherwise to ensure completing each program. This includes, but is not limited to, each bidder's certification, subject to the penalties in § 600.1017, of the bidder's full authority to submit each bid and to dispose of the property involved in the bid in the manner contemplated by each invitation to bid.

(b) NMFS will not invite bids for any program until NMFS determines that: (1) Any necessary reduction amendment is fully and finally approved and all provisions except those dependent on the completion of reduction are implemented;

(2) The final implementation plan is adopted and the final implementation regulations are issued;

(3) All required program funding is approved and in place, including all Federal appropriation and apportionment authority;

(4) Any reduction loan involved is fully approved;

(5) Any non-Federal funding involved is fully available at the required time for NMFS disbursement as reduction payments; and

(6) All other actions necessary to disburse reduction payments, except for matters involving bidding and post-bidding referenda, are completed.

(c) After making the affirmative determinations required under paragraph (b) of this section, NMFS will publish a **Federal Register** notice inviting eligible bidders to offer to the United States, under this subpart, fishing capacity for reduction.

(d) NMFS may extend a bid closing date and/or a bid expiration date for a reasonable period. NMFS may also issue serial invitations to bid if the result of previous bidding, in NMFS' judgment, warrant this.

(e) After the bid expiration date, NMFS will: (1) Analyze responsive bids;

(2) Determine which bids, if any, NMFS accepts; and

(3) Notify, by U.S. mail at each bidder's address of

record, those bidders whose bids NMFS accepts that a reduction contract now exists between them and the United States—subject, where appropriate, to the conditions provided for elsewhere in this subpart.

(f) NMFS will keep confidential the identity of all bidders whose bids NMFS does not accept. In financed programs where bidding results do not conform to the fishing capacity reduction specifications, NMFS also will keep confidential the identity of all bidders whose bids NMFS does accept until after completing a successful post-bidding referendum under § 600.1010.

§ 600.1010 Referenda.

(a) *Referendum success.* A referendum is successful if at least two-thirds of the ballots that qualify to be counted as referendum votes under subparagraph (d)(6) of this section are cast in favor of an industry fee system.

(b) *Pre-bidding referendum*—(1) *Initial referendum.* An initial pre-bidding referendum shall be conducted for each financed program. The business plan shall, subject to this subpart, determine the chronological relationship of the initial pre-bidding referendum to other pre-bidding aspects of the reduction process sequence. The initial pre-bidding referendum shall be based on the fishing capacity reduction specifications. If the initial pre-bidding referendum precedes the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the reduction amendment specifications. If the initial pre-bidding referendum follows the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the adopted reduction amendment;

(2) *Successful initial pre-bidding referendum.* If the initial pre-bidding referendum is successful, the reduction process will proceed as follows:

(i) If the initial pre-bidding referendum follows reduction amendment adoption, no second pre-bidding referendum shall be conducted,

(ii) If the initial pre-bidding referendum precedes reduction amendment adoption, a second pre-bidding referendum shall be conducted if, in NMFS' judgment, the reduction amendment subsequently adopted differs, in any respect materially affecting the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan, from the reduction amendment specifications upon which the initial pre-bidding referendum successfully occurred. The sole purpose of any second pre-bidding referendum shall be to determine whether the voters authorize an industry fee system despite any such difference between the reduction amendment specifications and a subsequently adopted reduction amendment.

(3) *Unsuccessful initial pre-bidding referendum.* If the initial pre-bidding referendum is unsuccessful, the reduction process will either cease or NMFS may suspend the process pending an appropriate amendment of the business plan and the request.

(c) *Post-bidding referendum.* A post-bidding referendum shall occur only if, in NMFS' judgment, the result of bidding under § 600.1009 does not conform, in any material respect, to the fishing capacity reduction specifications and such result justifies, in NMFS' judgment, conducting a post-bidding referendum. Bidding that results in reducing fishing capacity in any amount not less than the minimum fishing capacity reduction amount for any reduction loan amount not more than the maximum reduction loan amount, and otherwise achieves all material requirements of the fishing capacity reduction specifications, shall conform to the fishing capacity reduction specifications. The sole purpose of any post-bidding referendum shall be to determine whether voters authorize an industry fee system for bidding that results in reducing fishing capacity in

any amount materially less than the minimum amount in the fishing capacity reduction specifications.

(d) NMFS will conduct referenda in accordance with the following: (1) *Eligible voters*. The parties eligible to vote in each referendum are the parties whose names are listed as being eligible to vote in the notice published in the **Federal Register** under § 600.1004(a);

(2) *Ballot issuance*. NMFS will mail, by U.S. certified mail, return receipt requested, a ballot to each eligible voter. Each ballot will bear a randomly derived, 5-digit number assigned to each eligible voter. Each ballot will contain a place for the voter to vote for or against the proposed industry fee system and a place, adjacent to the 5-digit number, for the signature of the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf. Each ballot will contain a place for the person signing the ballot to print his or her name. NMFS will enclose with each ballot a specially-marked, postage-paid, pre-addressed envelope that each voter shall use to return the ballot to NMFS;

(3) *Voter certification*. Each ballot will contain a certification, subject to the penalties set forth in § 600.1017, that the person signing the ballot is the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf;

(4) *Information included on a ballot*. Each ballot mailing will:

(i) Summarize the referendum's nature and purpose,

(ii) Specify the date by which NMFS must receive a ballot in order for the ballot to be counted as a qualified vote,

(iii) Identify the place on the ballot for the voter to vote for or against the proposed industry fee system, the place on the ballot where the voter shall sign the ballot, and the purpose of the return envelope,

(iv) For each pre-bidding referendum, state:

(A) The fishing capacity reduction specifications,

(B) The reduction loan's repayment term, and

(C) The fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over the loan's term,

(v) For each initial pre-bidding referendum that precedes reduction amendment adoption, state the reduction amendment specifications,

(vi) For each initial pre-bidding referendum that follows reduction amendment adoption, summarize the material aspects of the reduction amendment adopted,

(vii) For each second pre-bidding referendum, summarize how the adopted reduction amendment materially differs from the reduction amendment specifications upon which a successful initial pre-bidding referendum occurred and how this material difference affects the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan,

(viii) For each post-bidding referendum, specify the actual bidding results that do not conform to the fishing capacity reduction specifications, and

(ix) State or include whatever else NMFS deems appropriate;

(5) *Enclosures to accompany a ballot*. Each ballot mailing will include:

(i) A specially-marked, postage-paid, and pre-addressed envelope that a voter must use to return the original of a ballot to NMFS by whatever means of delivery the voter chooses, and

(ii) Such other materials as NMFS deems appropriate;

(6) *Vote qualification*. A completed ballot qualifies to be counted as a vote if the ballot:

(i) Is physically received by NMFS on or before the last day NMFS specifies for receipt of the ballot,

(ii) Is cast for or against the proposed industry fee system,

(iii) Is signed by the voter,

(iv) Is the original ballot NMFS sent to the voter bearing the same 5-digit number that NMFS assigned to the voter, and

(v) Was returned to NMFS in the specially-marked envelope that NMFS provided for the ballot's return;

(6) *Vote tally and notification*. NMFS will:

(i) Tally all ballots qualified to be counted as referendum votes,

(ii) Notify, by U.S. mail at the address of record, all eligible voters who received ballots of:

(A) The number of potential voters,

(B) The number of actual voters who returned a ballot,

(C) The number of returned ballots that qualified to be counted as referendum votes,

(D) The number of votes for and the number of votes against the industry fee system, and

(E) Whether the referendum was successful and approved the industry fee system or unsuccessful and disapproved the industry fee system, and

(iii) If a successful referendum is a post-bidding referendum, NMFS will, at the same time and in the same manner, also notify the bidders whose bids were conditionally accepted that the condition pertaining to the reduction contracts between them and the United States is fulfilled;

(7) *Conclusiveness of referendum determinations*. NMFS' determinations about ballot qualifications and about all other referendum matters, including, but not limited to, eligible voters and their addresses of record, are conclusive and final as of the date NMFS makes such determinations. No matter respecting such determinations shall impair, invalidate, avoid, or otherwise render unenforceable any referendum, reduction contract, reduction loan, or fee payment and collection obligation under § 600.1013 and § 600.1014 necessary to repay any reduction loan;

(8) *Ballot confidentiality*. NMFS will not voluntarily release the name of any party who voted. NMFS will restrict the availability of all voter information to the maximum extent allowed by law; and

(9) *Conclusive authorization of industry fee system*. Each successful referendum conclusively authorizes NMFS' imposition of an industry fee system—including the fee payment, collection, and other provisions regarding fee payment and collection under § 600.1013 and § 600.1014—to repay the reduction loan for each financed program that NMFS conducts under this subpart.

§ 600.1011 Reduction methods and other conditions.

(a) *Reduction permits or reduction permits and reduction vessels*. Each program may involve either the surrender and revocation of reduction permits or both the surrender and revocation of reduction permits and the withdrawal from fishing either by title restriction or by scrapping of reduction vessels. No financed program may, however, require such title restriction or scrapping of reduction vessels unless the business plan voluntarily includes the same.

(b) *Reduction permit revocation and surrender*. Each reduction permit is, upon NMFS' tender of the reduction payment for the reduction permit, forever revoked. Each reduction permit holder shall, upon NMFS' tender of the reduction payment, surrender the original reduction permit to NMFS. The reduction permit holder, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction permit and with the fishing vessel that was used to harvest

fishery resources under the reduction permit that could qualify the reduction permit holder or the fishing vessel owner for any present or future limited access system fishing permit in the reduction fishery.

(c) *Reduction vessel title restriction or scrapping.* For each program that involves reduction vessel title restriction or scrapping: (1) Each reduction vessel that is subject to title restriction only and is thus not required to be scrapped, is, upon NMFS' tender of the reduction payment, forever prohibited from any future use for fishing in any area subject to the jurisdiction of the United States or any State, territory, possession, or commonwealth of the United States. NMFS will request that the U.S. Coast Guard permanently restrict each such reduction vessel's title to exclude the reduction vessel's future use for fishing in any such area;

(2) Each reduction vessel owner whose reduction vessel is required to be scrapped shall, upon NMFS' tender of the reduction payment, immediately cease all further use of the reduction vessel and arrange, without delay and at the reduction vessel owner's expense, to scrap the reduction vessel to NMFS' satisfaction, including adequate provision for NMFS to document the physical act of scrapping; and

(3) Each reduction vessel owner, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction vessel and with the reduction permit that could qualify the reduction vessel owner or the reduction permit holder for any present or future limited access system fishing permit in the reduction fishery.

(d) *Fishing permits in a non-reduction fishery.* A financed program that does not involve the withdrawal from fishing or scrapping of reduction vessels may not require any holder of a reduction permit in a reduction fishery to surrender any fishing permit in any non-reduction fishery or restrict or revoke any fishing permit other than a reduction permit in the reduction fishery, except those fishing permits authorizing the incidental harvesting of species in any non-reduction fishery during, and as a consequence of, directed fishing for species in the reduction fishery.

(e) *Reduction vessels disposition.* Where a business plan requires the withdrawal from fishing of reduction vessels as well as the revocation of reduction permits: (1) Each reduction vessel that is not documented under Federal law must in every case always be scrapped, without regard to whether a program is a financed program or a subsidized program;

(2) No financed program may require any disposition of a reduction vessel documented under Federal law other than the title restriction in paragraph (b) of this section unless the business plan volunteers to do otherwise; and

(3) Any subsidized program may require the scrapping of reduction vessels documented under Federal law.

(f) *Reduction payments.* NMFS will disburse all reduction payments in the amount and in the manner prescribed in reduction contracts, except reduction payments that a bidder's reduction-contract nonperformance prevents NMFS from disbursing. In financed programs, the reduction loan's principal amount is the total amount of all reduction payments that NMFS disburses from the proceeds of a reduction loan. Any reduction payment that NMFS, because of a bidder's reduction-contract nonperformance, disburses but subsequently recovers, shall reduce the principal amount of the reduction loan accordingly.

(g) *Effect of reduction-contract nonperformance.* No referendum, no reduction contract, no reduction loan, and no fee payment and collection obligation under § 600.1013 and § 600.1014 necessary to repay any reduction loan, shall be impaired, invalidated, avoided, or otherwise rendered unenforceable by virtue of any reduction contract's nonperformance. This is without regard to the cause of, or reason for, nonperformance. NMFS shall endeavor to enforce the specific performance of all reduction contracts, but NMFS' inability, for any reason, to enforce specific performance for any portion of such reduction contracts shall not relieve fish sellers of their obligation to pay, and fish buyers of their obligation to collect, the fee necessary to fully repay the full reduction loan balance that results from all reduction payments that NMFS actually makes and does not recover.

(h) *Program completion.* Other than the payment and collection of the fee that repays a reduction loan and any other residual matters regarding reduction payments and the disposition of reduction permits and reduction vessels, a program shall be completed when NMFS tenders or makes all reduction payments under all reduction contracts that circumstances, in NMFS' judgment, reasonably permit NMFS to make.

§ 600.1012 Reduction loan.

(a) *Obligation.* The borrower shall be obligated to repay a reduction loan. The borrower's obligation to repay a reduction loan shall be discharged by fish sellers paying a fee in accordance with § 600.1013. Fish buyers shall be obligated to collect the fee in accordance with § 600.1013 and to deposit and disburse the fee revenue in accordance with § 600.1014.

(b) *Principal amount, interest rate, repayment term, and penalties for non-payment or non-collection.* The reduction loan shall be: (1) In a principal amount that shall be determined by subsequent program events under this subpart, but which shall not exceed the maximum principal amount in the fishing capacity reduction specifications;

(2) At an annual rate, that shall be determined by subsequent events, of simple interest on the reduction loan's principal balance that shall equal 2 percent plus the Treasury percentage;

(3) Repayable over the repayment term specified in the business plan or otherwise determined by subsequent events; and

(4) Subject to such provisions as implementation regulations shall specify for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement in accordance with § 600.1013 and § 600.1014.

(c) *Effect of prospective interest rate.* Any difference between a prospective interest rate projected, for the purpose of any aspect of reduction planning or processing under this subpart, before the U.S. Treasury determines the Treasury percentage and an interest rate first known after the U.S. Treasury determines the Treasury percentage shall not void, invalidate, or otherwise impair any reduction contract, any reduction loan repayment obligation, or any other aspect of the reduction process under this subpart. Should any such difference result in a reduction loan that cannot, at the maximum fee rate allowed by law, be repaid, as previously projected, within the maximum maturity, any amount of the reduction loan remaining unpaid at maturity shall be repaid after maturity by continuing fee payment and collection under this subpart at such maximum fee rate until the reduction loan's unpaid principal balance and accrued interest is fully repaid. The above notwithstanding, at the discretion of the Secretary, the reduction contract can be voided if a material adverse change affects the reduction contract, reduction loan obligation, or any other aspect of the reduction process under this subpart.

§ 600.1013 Fee payment and collection.

(a) *Amount.* The fee amount is the delivery value times the fee rate.

(b) *Rate.* NMFS will establish the fee rate. The fee rate may not exceed 5 percent of the delivery value. NMFS will establish the initial fee rate by calculating the fee revenue annually required to amortize a reduction loan over the reduction loan's term, projecting the annual delivery value, and expressing such fee revenue as a percentage of such delivery value. Before each anniversary of the initial fee rate determination, NMFS will recalculate the fee rate reasonably required to ensure reduction loan repayment. This will include any changed delivery value projections and any adjustment required to correct for previous delivery values higher or lower than projected.

(c) *Payment and collection.* (1) The full fee is due and payable at the time of fish delivery. Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying, or promising to pay, the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value, or the fish buyer's promise to pay the net delivery value, rather than the delivery value. Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery;

(2) In the event of any post-delivery payment for fee fish— including, but not limited to bonuses—whose amount depends on conditions that cannot be known until after fish delivery, that either first determines the delivery value or later increases the previous delivery value, the fish seller shall pay, and the fish buyer shall collect, at the time the amount of such post-delivery payment first becomes known, the fee that would otherwise have been due and payable as if the amount of the post-delivery payment had been known, and as if the post-delivery payment had consequently occurred, at the time of initial fish delivery;

(3)(i) Each fish seller shall be deemed to be, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, both the fish seller and the fish buyer, and shall be responsible for all requirements and liable for any penalties under this subpart applicable to fish sellers and/or fish buyers, each time that a fish seller sells fee fish to:

(A) Any party whose place of business is not located in the United States, who does not take delivery or possession of the fee fish in the United States, who is not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(B) Any party who is a general food-service wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other party not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish, either with or without processing the fish, or

(C) Any other party who the fish seller has good reason to believe is a party not subject to this subpart or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(ii) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge, in addition to the fee payment requirements of this subpart, all the fee collection, deposit, disbursement, accounting, record keeping, and reporting requirements that this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for a fish buyer's failure to discharge such requirements;

(4) Fee payment begins on the date NMFS specifies under the notification procedures of paragraph (d) of this section and continues without interruption at the fee rates NMFS specifies in accordance this subpart until NMFS determines that the reduction loan is fully repaid. If a reduction loan is, for any reason, not fully repaid at the maturity of the reduction loan's original amortization period, fee payment and collection shall continue until the reduction loan is fully repaid, notwithstanding that the time required to fully repay the reduction loan exceeds the reduction loan's initially permissible maturity.

(d) *Notification.* (1) At least 30 days before the effective date of any fee or of any fee rate change, NMFS will publish a **Federal Register** notice establishing the date from and after which the fee or fee rate change is effective. NMFS will then also send, by U.S. mail, an appropriate notification to each affected fish seller and fish buyer of whom NMFS has notice;

(2) When NMFS determines that a reduction loan is fully repaid, NMFS will publish a **Federal Register** notice that the fee is no longer in effect and should no longer be either paid or collected. NMFS will then also send, by U.S. mail, notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

(3) If NMFS fails to notify a fish seller or a fish buyer by U.S. mail, or if the fish seller or fish buyer otherwise does not receive the notice, of the date fee payments start or of the fee rate in effect, each fish seller is, nevertheless, obligated to pay the fee at the fee rate in effect and each fish buyer is, nevertheless, obligated to collect the fee at the fee rate in effect.

(e) *Failure to pay or collect.* (1) If a fish buyer refuses to collect the fee in the amount and manner that this subpart requires, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to properly collect the fee, the fish seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(iii) The quantity and delivery value of each species of fee fish that the fish seller delivered, and

(iv) The fish buyer's reason, if known, for refusing to collect the fee in accordance with this subpart;

(2) If a fish seller refuses to pay the fee in the amount and manner that this subpart requires, the fish buyer shall then advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer shall then either deduct the fee from the delivery value over the fish seller's protest or refuse to buy the fee fish. The fish buyer shall also, within the next 7 calendar days, advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,

(iii) The quantity and delivery value of each species of fee fish the fish seller delivered or attempted to deliver,

(iv) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and

(v) The fish seller's reason, if known, for refusing to pay the fee in accordance with this subpart.

(f) *Implementation regulations at variance with this section.* If any special circumstances in a reduction fishery require, in NMFS's judgment, fee payment and/or collection provisions in addition to, or different from, those in this section in order to accommodate the circumstances of, and practices in, a reduction fishery while still fulfilling the intent and purpose of this section,

NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

§ 600.1014 Fee collection deposits, disbursements, records, and reports.

(a) *Deposit accounts.* Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

(b) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each business week, shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the Fund in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(c) *Deposit principal disbursement.* On the last business day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to the Fund subaccount to which the deposit principal relates. The fish buyer shall mail each such check to the Fund subaccount lockbox that NMFS establishes for the receipt of the disbursements for each program. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the Fund subaccount lockbox and the manner and form of settlement sheet by means of the notification in § 600.1013(d).

(d) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information: (1) For all deliveries of fee fish that the fish buyer buys from each fish seller:

(i) The date of delivery,

(ii) The seller's identity,

(iii) The weight, number, or volume of each species of fee fish delivered,

(iv) The identity of the fishing vessel that delivered the fee fish,

(v) The delivery value of each species of fee fish,

(vi) The net delivery value,

(vii) The identity of the party to whom the net delivery value is paid, if other than the fish seller,

(viii) The date the net delivery value was paid, and

(ix) The total fee amount collected;

(2) For all fee collection deposits to and disbursements from the deposit account:

(i) The dates and amounts of deposits,

(ii) The dates and amounts of disbursements to the Fund's lockbox account, and

(iii) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(e) *Annual report.* In each year, on the date to be specified in each implementation regulation, succeeding the year during which NMFS first implemented a fee, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year, or whatever longer period may be involved in the first annual report, for all fee fish each fish buyer purchases from fish sellers: (1) Total weight, number, or volume bought;

(2) Total delivery value paid;

(3) Total fee amounts collected;

(4) Total fee collection amounts deposited by month;

(5) Dates and amounts of monthly disbursements to each Fund lockbox account;

(6) Total amount of interest earned on deposits; and

(7) Depository account balance at year-end.

(f) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and state confidentiality laws or regulations do not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality laws or regulations make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section. If any state law or regulation prohibits fish buyers, or fish sellers where appropriate, from keeping, for the purpose of complying with any requirement of this section, separate records that involve some or all of the same data elements as the landing records that the fish buyers also keep, for state purposes and under state law or regulation, then a financed reduction program will not be possible.

(g) *Audits.* NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of reduction loans, the financial records of fish buyers and fish sellers in each reduction fishery in order to ensure proper fee payment, collection, deposit, disbursement, accounting, record keeping, and reporting. Fish buyers and fish sellers shall make all records of all program transactions involving post-reduction fish harvests, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, record keeping, and reporting available to NMFS or NMFS' agents at reasonable times and places and promptly provide all requested information reasonably related to these records that such fish sellers and fish buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the pounds of fee fish that each fish buyer buys from each fish seller each time that each fish buyer does so and each price that each fish buyer then pays to each fish seller for the fee fish) are essential audit documentation.

(h) *Confidentiality of records.* NMFS and NMFS' auditing agents shall maintain the confidentiality of all data to which NMFS has access under this section and shall neither release the data nor allow the data's use for any purpose other than the purpose of this subpart; provided, however, that NMFS may aggregate such data so as to preclude their identification with any fish buyer or any fish seller and use them in the aggregate for other purposes).

(i) *Refunds.* When NMFS determines that a reduction loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

(j) *Implementation regulations at variance with this section.* If any special circumstances in a reduction fishery require, in NMFS's judgment, fee collection deposit, disbursement, or records provisions in addition to, or different from, those in this section in order to accommodate the circumstances of, and practices in, a reduction fishery while still fulfilling the intent and purpose of this section, NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

§ 600.1015 Late charges.

The late charge to fish buyers for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month, or the maximum rate permitted by state law, for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undisbursed.

§ 600.1016 Enforcement.

In accordance with applicable law or other authority, NMFS may take appropriate action against each fish seller and/or fish buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with this subpart to enforce the collection from such fish seller and/or fish buyer of any fee (including penalties and all costs of collection) due and owing the United States on account of the loan that such fish seller and/or fish buyer should have, but did not, pay, collect, deposit, and/or disburse in accordance with this subpart. All such loan recoveries shall be applied to reduce the unpaid balance of the loan.

§ 600.1017 Prohibitions and penalties.

(a) The following activities are prohibited, and it is unlawful for any party to: (1) Vote in any referendum under this subpart if the party is ineligible to do so;

(2) Vote more than once in any referendum under this subpart;

(3) Sign or otherwise cast a ballot on behalf of a voter in any referendum under this subpart unless the voter has fully authorized the party to do so and doing so otherwise comports with this subpart;

(4) Interfere with or attempt to hinder, delay, buy, or otherwise unduly or unlawfully influence any eligible voter's vote in any referendum under this subpart;

(5) Submit a fraudulent, unauthorized, incomplete, misleading, unenforceable by specific performance, or inaccurate bid in response to an invitation to bid under this subpart or, in any other way, interfere with or attempt to interfere with, hinder, or delay, any invitation to bid, any bid submitted under any invitation to bid, any reduction contract, or any other reduction process in connection with any invitation to bid;

(6) Revoke or attempt to revoke any bid under this subpart;

(7) Fail to comply with the terms and conditions of any invitation to bid, bid, or reduction contract under this subpart, including NMFS' right under such reduction contracts to specific performance;

(8) Fail to fully and properly pay and collect any fee due payable, and collectible under this subpart or otherwise avoid, decrease, interfere with, hinder, or delay any such payment and collection,

(9) Convert, or otherwise use for any purpose other than the purpose this subpart intends, any paid or collected fee;

(10) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full amount of all deposit principal to the Fund's lockbox account—all as this subpart requires;

(11) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or make full, timely, and proper reports of such information to NMFS–-all as this subpart requires;

(12) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(13) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or it agents in the course of their activities under this subpart;

(14) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;

(15) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or

(16) Otherwise materially interfere with the efficient and effective conduct of reduction and the repayment of reduction loans under this subpart.

(b) Any party who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide—including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses—and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

(c) Additionally, NMFS may take any and all appropriate actions, including the communication of action at law, against each party responsible for the non-payment, non-collection, non-deposit, and/or non-disbursement in accordance with § 600.1013 and/or § 600.1014 to enforce the United States' receipt from such party of any fee—including penalties and all costs of collection—due and owing the United States on account of the reduction loan that such party should have, but did not, pay, collect, deposit, and/or disburse in accordance with § 600.1013 and/or § 600.1014. All such reduction loan recoveries shall be applied to reduce the unpaid balances of reduction loans.

§ 600.1018 Implementation regulations for each program. [Reserved]

[FR Doc. 00–12159 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 99N–1309]

Obstetrical and Gynecological Devices; Classification of Female Condoms

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the preamendments female condom intended for contraceptive and prophylactic purposes. Under this rule, the preamendments female condom is being classified into class III (premarket approval). This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, and the FDA Modernization Act of 1997.

DATES: This rule is effective June 19, 2000.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background

In a proposal published in the **Federal Register** of June 10, 1999 (64 FR 31164)

(hereinafter referred to as the June 10, 1999, proposal), FDA solicited comments regarding the proposed classification of female condoms. The June 10, 1999, proposal provided the regulatory history of female condoms, as well as the recommendation of the Obstetrical and Gynecological Device Classification Panel (the Panel) that this particular device be classified into class III. Specifically, the Panel recommended that this device be classified into class III because no published laboratory or clinical study data could be found that demonstrate its safety and effectiveness. Also, the Panel believed that general controls and special controls would not provide reasonable assurance of the safety and effectiveness of the device and the device is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury. FDA agreed with the Panel's recommended classification.

The Panel also recommended that the device be identified as an intravaginal pouch because it is a sheath-like device that lines the vaginal wall and is inserted into the vagina prior to the initiation of coitus. FDA proposed to change the name of the generic type of the device to female condom.

The 90-day comment period ended September 8, 1999, and FDA stated that upon consideration of public comment it would issue a final rule classifying this device. FDA received one comment endorsing the June 10, 1999, proposal.

II. Conclusion

FDA has concluded that the female condom be classified into class III because general controls and special controls do not provide reasonable assurance of the safety and effectiveness of the device, and the device is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury. FDA has further concluded that the generic type of this device be identified as ''female condom.'' FDA intends to issue a call for premarket approval applications (PMA's) for these devices.

III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impacts of the rule under Executive Order 12866, Executive Order 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so it is not subject to review under the Executive Order.

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies 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. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA believes that there is no interest at this time in marketing the device to be classified by this rule. FDA is taking this action because it has determined that premarket approval is necessary to provide reasonable assurance of the safety and effectiveness of the device, if there is any interest in marketing one in the future. Without this rule (and a subsequent requirement for PMA's), a person could market a device by claiming substantial equivalence to the Gee Bee Ring. All premarket submissions for ''female condom'' type devices that FDA has received to date have been for devices that have been found to be not substantially equivalent to the Gee Bee Ring and, therefore, those devices are not preamendments devices and are not to be classified by this rule. Under section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)), a rule requiring PMA's for this device could not take effect any sooner than 30 months after the effective date of a final rule classifying the device or 90 days after publication of the final rule requiring the PMA's, whichever is later.

The agency therefore certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and, therefore, a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this rule requires no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 884 is amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 884.5330 is added to subpart F to read as follows:

§ 884.5330 Female condom.

(a) *Identification.* A female condom is a sheath-like device that lines the vaginal wall and is inserted into the vagina prior to the initiation of coitus. It is indicated for contraceptive and prophylactic (preventing the transmission of sexually transmitted diseases) purposes.

(b) *Classification.* Class III (premarket approval).

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* No effective date has been established of the requirement for premarket approval for the devices described in paragraph (b) of this section. See § 884.3 for effective

dates of requirement for premarket approval.

Dated: May 9, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–12526 Filed 5–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

Department of the Navy Privacy Act Program

AGENCY: Department of the Navy.

ACTION: Final rule.

SUMMARY: On September 14, 1999, at 64 FR 49850, the Department of the Navy unintentionally deleted subparts F and G to 32 CFR part 701. These subparts provide the policies and procedures for the Department of the Navy Privacy Program and are still current and relevant to the Navy's Privacy Program. Therefore, this final rule adds subparts F and G to 32 CFR part 701.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685-6545.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, 'Regulatory Planning and Review'

It has been determined that 32 CFR part 701, subparts F and G are not significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more; or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96–354, 'Regulatory Flexibility Act' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96–511, 'Paperwork Reduction Act' (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 701

Privacy.

Accordingly, Chapter I, 32 CFR part 701, is amended by adding subparts F and G to read as follows:

Subpart F—Department of the Navy Privacy Act Program

Sec.
701.100 Purpose.
701.101 Applicability.
701.102 Definitions.
701.103 Policy.
701.104 Responsibility and authority.
701.105 Systems of records.
701.106 Safeguarding records in systems of records.
701.107 Criteria for creating, altering, amending and deleting Privacy Act systems of records.
701.108 Collecting information about individuals.
701.109 Access to records.
701.110 Amendment of records.
701.111 Privacy Act appeals.
701.112 Disclosure of records.
701.113 Exemptions.
701.114 Enforcement actions.
701.115 Computer matching program.

Subpart G—Privacy Act Exemptions

701.116 Purpose.
701.117 Exemption for classified records.
701.118 Exemptions for specific Navy record systems.
701.119 Exemptions for specific Marine Corps records systems.

Subpart F—Department of the Navy Privacy Act Program

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

§ 701.100 Purpose.

Subparts F and G of this part implement the Privacy Act (5 U.S.C. 552a), and DoD Directive 5400.11,[1] and DoD 5400.11–R,[2] (32 CFR part 310) and provides Department of the Navy policies and procedures for:

(a) Governing the collection, safeguarding, maintenance, use, access, amendment, and dissemination of personal information kept by Department of the Navy in systems of records;

(b) Notifying individuals if any systems of records contain a record pertaining to them;

(c) Verifying the identity of individuals who request their records before the records are made available to them;

(d) Notifying the public of the existence and character of each system of records.

(e) Exempting systems of records from certain requirements of the Privacy Act; and

(f) Governing the Privacy Act rules of conduct for Department of the Navy personnel, who will be subject to criminal penalties for noncompliance with 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988.

§ 701.101 Applicability.

This subpart and subpart G of this part apply throughout the Department of the Navy. It is also applicable to contractors by contract or other legally binding action, whenever a Department of the Navy contract provides for the operation of a system of records or portion of a system of records to accomplish a Department of the Navy function. For the purposes of any criminal liabilities adjudged, any contractor or any employee of such contractor is considered to be an employee of Department of the Navy. In case of a conflict, this subpart and subpart G of this part take precedence over any existing Department of the Navy directive that deals with the personal privacy and rights of individuals regarding their personal records, except for disclosure of personal information required by 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act and implemented by Secretary of the Navy Instruction 5720.42F,[3] 'Department of the Navy Freedom of Information Act Program.'

§ 701.102 Definitions.

For the purposes of this subpart and subpart G of this part, the following meanings apply.

Access. The review or copying of a record or parts thereof contained in a system of records by any individual.

Agency. For the purposes of disclosing records subject to the Privacy Act between or among Department of Defense (DoD) components, the Department of Defense is considered a single agency. For all other purposes, Department of the Navy is considered an agency within the meaning of Privacy Act.

[1] Copies may be obtained: http://www.whs.osd.mil/corres.htm.

[2] See footnote 1 to § 701.100.

[3] Copies may be obtained: Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

Confidential source. A person or organization who has furnished information to the Federal Government either under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

Defense Data Integrity Board. Consists of members of the Defense Privacy Board, as outlined in DoD Directive 5400.11 and, in addition, the DoD Inspector General or the designee, when convened to oversee, coordinate and approve or disapprove all DoD component computer matching covered by the Privacy Act.

Disclosure. The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review), to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

Federal personnel. Officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals or survivors thereof, entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

Individual. A living citizen of the United States or alien lawfully admitted to the U.S. for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf. No rights are vested in the representative of a deceased person under this instruction and the term ''individual'' does not embrace an individual acting in a non-personal capacity (for example, sole proprietorship or partnership).

Individual access. Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

Maintain. Includes maintain, collect, use, or disseminate.

Member of the public. Any individual or party acting in a private capacity.

Minor. Under this subpart and subpart G of this part, a minor is an individual under 18 years of age, who is not a member of the U.S. Navy or Marine Corps, nor married.

Official use. Under this subpart and subpart G of this part, this term is used when Department of the Navy officials and employees have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties.

Personal information. Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

Privacy Act (PA) request. A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

Record. Any item, collection, or grouping of information about an individual that is maintained by a naval activity including, but not limited to, the individual's education, financial transactions, and medical, criminal, or employment history, and that contains the individual's name or other identifying particulars assigned to the individual, such as a finger or voice print or a photograph.

Review authority. An official charged with the responsibility to rule on administrative appeals of initial denials of requests for notification, access, or amendment of records. The Secretary of the Navy has delegated his review authority to the Assistant Secretary of the Navy (Manpower and Reserve Affairs (ASN(MRA)), the General Counsel (OGC), and the Judge Advocate General (NJAG). Additionally, the Office of Personnel Management (OPM) is the review authority for civilian official personnel folders or records contained in any other OPM record.

Risk assessment. An analysis which considers information sensitivity, vulnerability, and cost to a computer facility or word processing center in safeguarding personal information processed or stored in the facility or center.

Routine use. Disclosure of a record outside the Department of Defense for a purpose that is compatible with the purpose for which the record was collected and maintained by the Department of Defense. The routine use must have been included in the notice for the system of records published in the **Federal Register**.

Statistical record. A record maintained only for statistical research, or reporting purposes, and not used in whole or in part in making any determination about a specific individual.

System manager. An official who has overall responsibility for a system of records. He or she may serve at any level in Department of the Navy. Systems managers are indicated in the published record systems notices. If more than one official is indicated as a system manager, initial responsibility resides with the manager at the appropriate level (i.e., for local records, at the local activity).

System of records. A group of records under the control of a Department of the Navy activity from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all Privacy Act systems of records must be published in the **Federal Register** and are also published in periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211.[4]

Word processing equipment. Any combination of electronic hardware and computer software integrated in a variety of forms (firmware, programmable software, hard wiring, or similar equipment) that permits the processing of textual data. Generally, the equipment contains a device to receive information, a computer-like processor with various capabilities to manipulate the information, a storage medium, and an output device.

Word processing system. A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written communications into a form suitable to the originator. The results are written or graphic presentations intended to communicate verbally or visually with another individual.

Working day. All days excluding Saturday, Sunday, and legal holidays.

§ 701.103 Policy.

It is the policy of Department of the Navy to:

(a) Ensure that all its personnel comply fully with 5 U.S.C. 552a, DoD Directive 5400.11 and DoD 5400.11–R, to protect individuals from unwarranted invasions of privacy. Individuals covered by this protection are living citizens of the U.S. or aliens lawfully admitted for permanent residence. A legal guardian of an individual or parent of a minor when acting on the individual's or minor's behalf, has the same rights as the individual or minor. (A member of the Armed Forces is not a minor for the purposes of this subpart and subpart G of this part).

(b) Collect, maintain, and use only that personal information needed to support a Navy function or program as authorized by law or E.O., and disclose this information only as authorized by 5 U.S.C. 552a and this subpart and subpart G of this part. In assessing need, consideration shall be given to alternatives, such as use of information

[4] See footnote 3 to § 701.101.

not individually identifiable or use of sampling of certain data for certain individuals only. Additionally, consideration is to be given to the length of time information is needed, and the cost of maintaining the information compared to the risks and adverse consequences of not maintaining the information.

(c) Keep only personal information that is timely, accurate, complete, and relevant to the purpose for which it was collected.

(d) Let individuals have access to, and obtain copies of, all or portions of their records, subject to exemption procedures authorized by law and this subpart and subpart G of this part.

(e) Let individuals request amendment of their records when discrepancies proven to be erroneous, untimely, incomplete, or irrelevant are noted.

(f) Let individuals request an administrative review of decisions that deny them access, or refuse to amend their records.

(g) Ensure that adequate safeguards are enforced to prevent misuse, unauthorized disclosure, alteration, or destruction of personal information in records.

(h) Maintain no records describing how an individual exercises his or her rights guaranteed by the First Amendment (freedom of religion, political beliefs, speech, and press; peaceful assemblage; and petition for redress of grievances), unless they are:

(1) Expressly authorized by statute;

(2) Authorized by the individual;

(3) Within the scope of an authorized law enforcement activity; or

(4) For the maintenance of certain items of information relating to religious affiliation for members of the naval service who are chaplains. This should not be construed, however, as restricting or excluding solicitation of information which the individual is willing to have in his or her record concerning religious preference, particularly that required in emergency situations.

(5) Maintain only systems of records which have been published in the **Federal Register**, in accordance with periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211 and § 701.105. These OPNAVNOTEs 5211 provide a listing of all Department of the Navy Privacy Act systems of records and identify the Office of Personnel Management (OPM) government-wide systems containing information on Department of the Navy civilian employees, even though technically, Department of the Navy does not have cognizance over them. A Privacy Act systems notice outlines what kinds of information may be collected and maintained by naval activities. When collecting/maintaining information in a Privacy Act system of records, review the systems notice to ensure activity compliance is within the scope of the system. If you determine the systems notice does not meet your needs, contact the systems manager or Chief of Naval Operations (N09B30) with your concerns so that amendment of the system may be considered.

§ 701.104 Responsibility and authority.

(a) *Chief of Naval Operations (CNO).* CNO is designated as the official responsible for administering and supervising the execution of 5 U.S.C. 552a, DoD Directive 5400.11, and DoD 5400.11–R. CNO has designated the Assistant Vice Chief of Naval Operations (N09B30) as principal Privacy Act Coordinator for the Department of the Navy to:

(1) Set Department of the Navy policy on the provisions of the Privacy Act.

(2) Serve as principal advisor on all Privacy Act matters.

(3) Oversee the administration of the Privacy Act program, which includes preparing the Department of the Navy Privacy Act report for submission to Congress.

(4) Develop Navy-wide Privacy Act training program and serve as training-oversight manager.

(5) Conduct staff assistance visits within Department of the Navy to review compliance with 5 U.S.C. 552a and this subpart and subpart G of this part.

(6) Coordinate and prepare responses for Privacy Act requests received for Office of the Secretary of the Navy records.

(b) *Commandant of the Marine Corps (CMC).* CMC is responsible for administering and supervising the execution of this subpart and subpart G of this part within the Marine Corps. The Commandant has designated the Director, Manpower Management Information Systems Division (HQMC (Code ARAD)) as the Privacy Act coordinator for Headquarters, U.S. Marine Corps.

(c) *Privacy Act Coordinator.* Each addressee is responsible for implementing and administering a Privacy Act program under this subpart and subpart G of this part. Each addressee shall designate a Privacy Act Coordinator to:

(1) Serve as principal point of contact on Privacy Act matters.

(2) Provide training for activity/command personnel on the provisions of 5 U.S.C. 552a and this subpart and subpart G of this part.

(3) Issue implementing instruction which designates the activity's Privacy Act Coordinator, Privacy Act records disposition, Privacy Act processing procedures, identification of Privacy Act systems of records under their cognizance, and training aids for those personnel involved with systems of records.

(4) Review internal directives, practices, and procedures, including those having Privacy Act implications and where Privacy Act Statements (PASs) are needed.

(5) Compile input and submit consolidated Privacy Act report to Echelon 2 Privacy Act Coordinator, who, in turn, will provide consolidated report to CNO (N09B30).

(6) Maintain liaison with records management officials (i.e., maintenance and disposal procedures and standards, forms, and reports), as appropriate.

(7) Provide guidance on handling Privacy Act requests and scope of Privacy Act exemptions.

(8) Conduct staff assistance visits within command and lower echelon commands to ensure compliance with the Privacy Act.

(9) Echelon 2 Privacy Act Coordinators shall provide CNO (N09B30) with a complete listing of all Privacy Act Coordinators under their jurisdiction. Such information should include activity name and address, office code, name of Privacy Act Coordinator, commercial and DSN telephone number, and FAX number, if applicable.

(d) *Release authority.* Officials having cognizance over the requested subject matter are authorized to respond to requests for notification, access, and/or amendment of records. These officials could also be systems managers (see § 701.104(g)).

(e) *Denial authority.* Within the Department of the Navy, the following chief officials, their respective vice commanders, deputies, principal assistants, and those officials specifically designated by the chief official are authorized to deny requests, either in whole or in part, for notification, access and amendment, made under this subpart and subpart G of this part, when the records relate to matters within their respective areas of responsibility or chain of command:

(1) Department of the Navy. Civilian Executive Assistants; CNO; CMC; Chief of Naval Personnel; Commanders of the Naval Systems Commands, Office of Naval Intelligence, Naval Security Group Command, Naval Imaging Command, and Naval Computer and Telecommunications Command; Chief, Bureau of Medicine and Surgery;

Auditor General of the Navy; Naval Inspector General; Director, Office of Civilian Personnel Management; Chief of Naval Education and Training; Commander, Naval Reserve Force; Chief of Naval Research; Commander, Naval Oceanography Command; heads of Department of the Navy Staff Offices, Boards, and Councils; Flag Officers and General Officers. NJAG and his Deputy, and OGC and his Deputies are excluded from this grant of authorization. While NJAG and OGC are not denial authorities, they are authorized to further delegate the authority conferred here to other senior officers/officials within NJAG and OGC.

(2) For the shore establishment.(i) All officers authorized under Article 22, Uniform Code of Military Justice (UCMJ) or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C),[5] to convene general courts-martial.

(ii) Commander, Naval Investigative Service Command.

(iii) Deputy Commander, Naval Legal Service Command.

(3) In the Operating Forces. All officers authorized by Article 22, Uniform Code of Military Justice (UCMJ), or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C), to convene general courts-martial.

(f) *Review authority.* (1) The Assistant Secretary of the Navy (Manpower and Reserve Affairs), is the Secretary's designee, and shall act upon requests for administrative review of initial denials of requests for amendment of records related to fitness reports and performance evaluations of military personnel (see § 701.111(c)(3)).

(2) The Judge Advocate General and General Counsel, as the Secretary's designees, shall act upon requests for administrative review of initial denials of records for notification, access, or amendment of records, as set forth in § 701.111(c)(2) and (4).

(3) The authority of the Secretary of the Navy (SECNAV), as the head of an agency, to request records subject to the Privacy Act from an agency external to the Department of Defense for civil or criminal law enforcement purposes, under subsection (b)(7) of 5 U.S.C. 552a, is delegated to the Commandant of the Marine Corps, the Director of Naval Intelligence, the Judge Advocate General, and the General Counsel.

(g) *Systems manager.* Systems managers, as designated in Department of the Navy's compilation of systems notices (periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211,[6] ''Current Privacy Act Issuances'') shall:

(1) Ensure the system has been published in the **Federal Register** and that any additions or significant changes are submitted to CNO (N09B30) for approval and publication. The systems of records should be maintained in accordance with the systems notices as published in the periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, ''Current Privacy Act Issuances.''

(2) Maintain accountability records of disclosures.

(h) *Department of the Navy employees.* Each employee of the Department of the Navy has certain responsibilities for safeguarding the rights of others. These include:

(1) Not disclosing any information contained in a system of records by any means of communication to any person or agency, except as authorized by this subpart and subpart G of this part.

(2) Not maintaining unpublished official files which would fall under the provisions of 5 U.S.C. 552a.

(3) Safeguarding the privacy of individuals and confidentiality of personal information contained in a system of records.

§ 701.105 Systems of records.

To be subject to this subpart and subpart G of this part, a ''system of records'' must consist of ''records'' that are retrieved by the name, or some other personal identifier, of an individual and be under the control of Department of the Navy.

(a) *Retrieval practices.* (1) Records in a group of records that are not retrieved by personal identifiers are not covered by this subpart and subpart G of this part, even if the records contain information about individuals and are under the control of Department of the Navy. The records must be retrieved by personal identifiers to become a system of records.

(2) If records previously not retrieved by personal identifiers are rearranged so they are retrieved by personal identifiers, a new system notice must be submitted in accordance with § 701.107.

(3) If records in a system of records are rearranged so retrieval is no longer by personal identifiers, the records are no longer subject to this subpart and subpart G of this part and the records system notice should be deleted in accordance with § 701.107.

(b) *Recordkeeping standards.* A record maintained in a system of records subject to this subpart and subpart G of this part must meet the following criteria:

(1) Be accurate. All information in the record must be factually correct.

(2) Be relevant. All information contained in the record must be related to the individual who is the record subject and also must be related to a lawful purpose or mission of the Department of the Navy activity maintaining the record.

(3) Be timely. All information in the record must be reviewed periodically to ensure that it has not changed due to time or later events.

(4) Be complete. It must be able to stand alone in accomplishing the purpose for which it is maintained.

(5) Be necessary. All information in the record must be needed to accomplish a Department of the Navy mission or purpose established by Federal Law or E.O. of the President.

(c) *Authority to establish systems of records.* Identify the specific Federal statute or E.O. of the President that authorizes maintaining each system of records. When a naval activity uses its ''internal housekeeping'' statute, i.e., 5 U.S.C. 301, Departmental Regulations, the naval instruction that implements the statute should also be identified. A statute or E.O. authorizing a system of records does not negate the responsibility to ensure the information in the system of records is relevant and necessary.

(d) *Exercise of First Amendment rights.* (1) Do not maintain any records describing how an individual exercises rights guaranteed by the First Amendment of the U.S. Constitution unless expressly authorized by Federal law; the individual; or pertinent to and within the scope of an authorized law enforcement activity.

(2) First amendment rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(e) *System manager's evaluations and reviews.* (1) Evaluate each new system of records. Before establishing a system of records, evaluate the information to be included and consider the following:

(i) The relationship of each item of information to be collected and retained to the purpose for which the system is maintained (all information must be relevant to the purpose);

(ii) The specific impact on the purpose or mission if each category of information is not collected (all information must be necessary to accomplish a lawful purpose or mission.);

[5] Copies may be obtained: Judge Advocate General, Navy Department, 1322 Patterson Avenue, SE, Suite 3000, Washington Navy Yard, Washington, DC 20374-5066.

[6] See footnote 3 to § 701.101.

(iii) The ability to meet the informational needs without using personal identifiers (will anonymous statistical records meet the needs?);

(iv) The length of time each item of information must be kept;

(v) The methods of disposal;

(vi) The cost of maintaining the information; and

(vii) Whether a system already exists that serves the purpose of the new system.

(2) Evaluate and review all existing systems of records.

(i) When an alteration or amendment of an existing system is prepared pursuant to § 701.107(b) and (c), do the evaluation described in paragraph (e) of this section.

(ii) Conduct the following reviews annually and be prepared to report, in accordance with § 701.104(c)(8), the results and corrective actions taken to resolve problems uncovered.

(A) Training practices to ensure all personnel are familiar with the requirements of 5 U.S.C. 552a, and DoD Directive 5400.11, ''DoD Privacy Program'', this subpart and subpart G of this part, and any special needs their specific jobs entail.

(B) Recordkeeping and disposal practices to ensure compliance with this subpart and subpart G of this part.

(C) Ongoing computer matching programs in which records from the system have been matched with non-DoD records to ensure that the requirements of § 701.115 have been met.

(D) Actions of Department of the Navy personnel that resulted in either Department of the Navy being found civilly liable or a person being found criminally liable under 5 U.S.C. 552a, to determine the extent of the problem and find the most effective way of preventing the problem from occurring in the future.

(E) Each system of records notice to ensure it accurately describes the system. Where major changes are needed, alter the system notice in accordance with § 701.107(b). If minor changes are needed, amend the system notice pursuant to § 701.107(c).

(iii) Every even-numbered year, review a random sample of Department of the Navy contracts that provide for the operation of a system of records to accomplish a Department of the Navy function, to ensure the wording of each contract complies with the provisions of 5 U.S.C. 552a and paragraph (h) of this section.

(iv) Every three years, beginning in 1992, review the routine use disclosures associated with each system of records to ensure the recipient's use of the records continues to be compatible with the purpose for which the information was originally collected.

(v) Every three years, beginning in 1993, review each system of records for which exemption rules have been established to determine whether each exemption is still needed.

(vi) When directed, send the reports through proper channels to the CNO (N09B30).

(f) *Discontinued information requirements.* (1) Immediately stop collecting any category or item of information about individuals that is no longer justified, and when feasible, remove the information from existing records.

(2) Do not destroy records that must be kept in accordance with retention and disposal requirements established under SECNAVINST 5212.5,[7] ''Disposal of Navy and Marine Corps Records.''

(g) *Review records before disclosing outside the Federal government.* Before disclosing a record from a system of records to anyone outside the Federal government, take reasonable steps to ensure the record which is being disclosed is accurate, relevant, timely, and complete for the purposes it is being maintained.

(h) *Federal government contractors.*—(1) *Applicability to Federal government contractors.* (i) When a naval activity contracts for the operation of a system of records to accomplish its function, the activity must ensure compliance with this subpart and subpart G of this part and 5 U.S.C. 552a. For the purposes of the criminal penalties described in 5 U.S.C. 552a, the contractor and its employees shall be considered employees of the agency during the performance of the contract.

(ii) Consistent with parts 24 and 52 of the Federal Acquisition Regulation (FAR), contracts for the operation of a system of records shall identify specifically the record system and the work to be performed, and shall include in the solicitations and resulting contract the terms as prescribed by the FAR.

(iii) If the contractor must use records that are subject to this subpart and subpart G of this part to perform any part of a contract, the contractor activities are subject to this subpart and subpart G of this part.

(iv) This subpart and subpart G of this part do not apply to records of a contractor that are:

(A) Established and maintained solely to assist the contractor in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract;

(B) Maintained as internal contractor employee records, even when used in conjunction with providing goods or services to the naval activity;

(C) Maintained as training records by an educational organization contracted by a naval activity to provide training when the records of the contract students are similar to and commingled with training records of other students, such as admission forms, transcripts, and academic counseling and similar records; or

(D) Maintained by a consumer reporting agency to which records have been disclosed under contract in accordance with 31 U.S.C. 952d.

(v) For contracting that is subject to this subpart and subpart G of this part, naval activities shall publish instructions that:

(A) Furnish Privacy Act guidance to personnel who solicit, award, or administer Government contracts;

(B) Inform prospective contractors of their responsibilities under this subpart and subpart G of this part and the Department of the Navy Privacy Program;

(C) Establish an internal system for reviewing contractor's performance for compliance with the Privacy Act; and

(D) Provide for the biennial review of a random sample of contracts that are subject to this subpart and subpart G of this part.

(2) *Contracting procedures.* The Defense Acquisition Regulatory (DAR) Council, which oversees the implementation of the FAR within the Department of Defense, is responsible for developing the specific policies and procedures for soliciting, awarding, and administering contracts that are subject to this subpart and subpart G of this part and 5 U.S.C. 552a.

(3) *Contractor compliance.* Naval activities shall establish contract surveillance programs to ensure contractors comply with the procedures established by the DAR Council under the preceding subparagraph.

(4) *Disclosing records to contractors.* Disclosing records to a contractor for use in performing a contract let by a naval activity is considered a disclosure within Department of the Navy. The contractor is considered the agent of Department of the Navy when receiving and maintaining the records for that activity.

§ 701.106 Safeguarding records in systems of records.

Establish appropriate administrative, technical, and physical safeguards to

[7] Copies may be obtained: OPNAV/SECNAV Directives Control Office, Washington Navy Yard, Building 200, Washington, DC 20350–2000.

ensure the records in every system of records are protected from unauthorized alteration, destruction, or disclosure. Protect the records from reasonably anticipated threats or hazards that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(a) *Minimum standards.* (1) Conduct risk analysis and management planning for each system of records. Consider sensitivity and use of the records, present and projected threats and vulnerabilities, and present and projected cost-effectiveness of safeguards. The risk analysis may vary from an informal review of a small, relatively insensitive system to a formal, fully quantified risk analysis of a large, complex, and highly sensitive system.

(2) Train all personnel operating a system of records or using records from a system of records in proper record security procedures.

(3) Label information exempt from disclosure under this subpart and subpart G of this part to reflect their sensitivity, such as ''FOR OFFICIAL USE ONLY,'' ''PRIVACY ACT SENSITIVE: DISCLOSE ON A NEED-TO-KNOW BASIS ONLY,'' or some other statement that alerts individuals of the sensitivity to the records.

(4) Administer special administrative, physical, and technical safeguards to protect records processed or stored in an automated data processing or word processing system to protect them from threats unique to those environments.

(b) *Records disposal.* (1) Dispose of records from systems of records so as to prevent inadvertent disclosure. Disposal methods are considered adequate if the records are rendered unrecognizable or beyond reconstruction (*i.e.,* such as tearing, burning, melting, chemical decomposition, burying, pulping, pulverizing, shredding, or mutilation). Magnetic media may be cleared by completely erasing, overwriting, or degaussing the tape.

(2) The transfer of large volumes of records (*e.g.,* printouts and computer cards) in bulk to a disposal activity such as a Defense Reutilization and Marketing Office for authorized disposal is not a disclosure of records, if the volume of records, coding of the information, or some other factor render it impossible to recognize any personal information about a specific individual.

(3) When disposing or destroying large quantities of records from a system of records, care must be taken to ensure that the bulk of the records is maintained to prevent easy identification of specific records. If such bulk is maintained, no special procedures are required. If bulk is not maintained, or if the form of the records makes individually identifiable information easily discernable, dispose of the records in accordance with paragraph (b)(1) of this section.

§ 701.107 Criteria for creating, altering, amending and deleting Privacy Act systems of records.

(a) *Criteria for a new system of records.* A new system of records is one for which no existing system notice has been published in the **Federal Register**. If a notice for a system of records has been canceled or deleted, and it is determined that it should be reinstated or reused, a new system notice must be published in the **Federal Register**. Advance public notice must be given before a naval activity may begin to collect information for or use a new system of records. The following procedures apply:

(1) Describe in the record system notice the contents of the record system and the purposes and routine uses for which the information will be used and disclosed.

(2) The public shall be given 30 days to comment on any proposed routine uses before the routine uses are implemented.

(3) The notice shall contain the date the system of records will become effective.

(b) *Criteria for an alteration to a system of records notice.* A system is considered altered when any one of the following actions occur or is proposed:

(1) A significant increase or change in the number or types of individuals about whom records are maintained. For example, a decision to expand a system of records that originally covered personnel assigned to only one naval activity to cover personnel at several installations would constitute an altered system. An increase or decrease in the number of individuals covered due to normal growth or decrease is not an alteration.

(2) A change that expands the types or categories of information maintained. For example, a personnel file that has been expanded to include medical records would be an alteration.

(3) A change that alters the purpose for which the information is used. In order to be an alteration, the change must be one that is not reasonably inferred from any of the existing purposes.

(4) A change to equipment configuration (either hardware or software) that creates substantially greater use of records in the system. For example, placing interactive computer terminals at regional offices when the system was formerly used only at the headquarters would be an alteration.

(5) A change in the manner in which records are organized or in the method by which records are retrieved.

(6) Combining record systems due to a reorganization within Department of the Navy.

(7) Retrieving by Social Security Numbers (SSNs), records that previously were retrieved only by names would be an alteration if the present notice failed to indicate retrieval by SSNs. An altered system of records must be published in the **Federal Register**. Submission for an alteration must contain a narrative statement, the specific changes altering the system, and the system of records notice.

(c) *Criteria for amending a systems of records notice.* Minor changes to published system of records notices are considered amendments. All amendments should be forwarded to CNO (N09B30) for publication in the **Federal Register**. When submitting an amendment to a system of records notice, the naval activity must include a description of the specific changes proposed and the system of records notice.

(d) *Criteria for deleting a system of records notice.* When a system of records is discontinued, incorporated into another system, or determined to be no longer subject to this subpart and subpart G of this part, a deletion notice must be published in the *Federal Register.* The deletion notice shall include the system identification number, system name, and the reason for deleting it. If a system is deleted through incorporation into or merger with another system, identify the successor system in the deletion notice.

§ 701.108 Collecting information about individuals.

(a) *Collecting directly from the individual.* To the greatest extent practicable, collect information for systems of records directly from the individual to whom the record pertains if the record may be used to make an adverse determination about the individual's rights, benefits, or privileges under the Federal programs.

(b) *Collecting information about individuals from third persons.* It might not always be practical to collect all information about an individual directly from that person, such as verifying information through other sources for security or employment suitability determinations; seeking other opinions, such as a supervisor's comments on past performance or other evaluations; obtaining the necessary information directly from the individual would be

exceptionally difficult or would result in unreasonable costs or delays; or, the individual requests or consents to contacting another person to obtain the information.

(c) *Soliciting the social security number (SSN).* (1) It is unlawful for any Federal, State, or local government agency to deny an individual a right, benefit, or privilege provided by law because the individual refuses to provide his or her SSN. However, this prohibition does not apply if a Federal law requires that the SSN be provided, or the SSN is required by a law or regulation adopted before January 1, 1975, to verify the individual's identity for a system of records established and in use before that date.

(2) Before requesting an individual to provide the SSN, the individual must be advised whether providing the SSN is mandatory or voluntary; by what law or other authority the SSN is solicited; and what uses will be made of the SSN.

(3) The preceding advice relates only to the SSN. If other information about the individual is solicited for a system of records, a Privacy Act statement (PAS) also must be provided to him/her.

(4) The notice published in the **Federal Register** for each system of records containing SSNs solicited from individuals must indicate the authority for soliciting the SSNs and whether it is mandatory for the individuals to provide their SSNs. E.O. 9397 requires federal agencies to use SSNs as numerical identifiers for individuals in most federal records systems, however, it does not make it mandatory for individuals to provide their SSNs.

(5) When entering military service or civilian employment with the Department of the Navy, individuals must provide their SSNs. This is then the individual's numerical identifier and is used to establish personnel, financial, medical, and other official records (as authorized by E.O. 9397). The individuals must be given the notification described above. Once the individual has provided his or her SSN to establish the records, a notification is not required when the SSN is requested only for identification or to locate the records.

(6) The Federal Personnel Manual [8] must be consulted when soliciting SSNs for use in systems of records maintained by the Office of Personnel Management.

(7) A Department of the Navy activity may request an individual's SSN even though it is not required by Federal statute, or is not for a system of records in existence and operating prior to January 1, 1975. However, the separate Privacy Act Statement for the SSN, alone, or a merged Privacy Act Statement covering both the SSN and other items of personal information, must make clear that disclosure of the number is voluntary. If the individual refuses to disclose his or her SSN, the activity must be prepared to identify the individual by alternate means.

(d) *Contents of Privacy Act Statement.* (1) When an individual is requested to furnish information about himself/herself for a system of records, a Privacy Act Statement must be provided to the individual, regardless of the method used to collect the information (*i.e.,* forms, personal or telephonic interview, etc). If the information requested will not be included in a system of records, a Privacy Act Statement is not required.

(2) The Privacy Act Statement shall include the following:

(i) The Federal law or E.O. that authorizes collecting the information (*i.e.,* E.O. 9397 authorizes collection of SSNs);

(ii) Whether or not it is mandatory for the individual to provide the requested information (It is only mandatory when a Federal law or E.O. of the President specifically imposes a requirement to furnish the information and provides a penalty for failure to do so. If furnishing information is a condition for granting a benefit or privilege voluntarily sought by the individual, it is voluntary for the individual to give the information.);

(iii) The principle purposes for collecting the information;

(iv) The routine uses that will be made of the information (*i.e.,* to whom and why it will be disclosed outside the Department of Defense); and

(v) The possible effects on the individual if the requested information is not provided.

(3) The Privacy Act Statement must appear on the form used to collect the information or on a separate form that can be retained by the individual collecting the information. If the information is collected by means other than a form completed by the individual, *i.e.,* solicited over the telephone, the Privacy Act Statement should be read to the individual and if requested by the individual, a copy sent to him/her. There is no requirement that the individual sign the Privacy Act Statement.

(e) *Format for Privacy Act Statement.* When forms are used to collect information about individuals for a system of records, the Privacy Act Statement shall appear as follows (listed in the order of preference):

(1) Immediately below the title of the form,

(2) Elsewhere on the front page of the form (clearly indicating it is the Privacy Act Statement),

(3) On the back of the form with a notation of its location below the title of the form, or

(4) On a separate form which the individual may keep.

§ 701.109 Access to records.

(a) *Individual access to records.* (1) *Right of access.* Only individuals who are subjects of records maintained in systems of records and by whose personal identifiers the records are retrieved have the right of individual access under this subpart and subpart G of this part, unless they provide written authorization for their representative to act on their behalf. Legal guardians or parents acting on behalf of a minor child also have the right of individual access under this subpart and subpart G of this part.

(2) *Notification of record's existence.* Each naval activity shall establish procedures for notifying an individual, in response to his or her request, if a system of records identified by him/her contains a record pertaining to the individual.

(3) *Individual request for access.* Individuals shall address requests for access to records in systems of records to the system manager or the office designated in the Department of the Navy compilation of system notices (periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, ''Current Privacy Act Issuances'').

(4) *Verifying identity.* (i) An individual shall provide reasonable verification of identity before obtaining access to records.

(ii) When requesting records in writing, naval activities may not insist that a requester submit a notarized signature. The courts have ruled that an alternative method of verifying identity must be established for individuals who do not have access to notary services. This alternative permits requesters to provide an unsworn declaration that states ''I declare under perjury or penalty under the laws of the United States of America that the foregoing is true and correct.''

(iii) When an individual seeks access in person, identification can be verified by documents normally carried by the individual (*i.e.,* identification card, driver's license, or other license, permit or pass normally used for identification purposes).

(iv) When access is requested other than in writing, identity may be verified by the individual's providing minimum identifying data such as full name, date and place of birth, or other information

[8] Copies may be obtained: Office of Personnel Management, 1900 E Street, Washington, DC 20415.

necessary to locate the record sought. If the information sought is sensitive, additional identifying data may be required. Telephonic requests should not be honored.

(v) Allow an individual to be accompanied by a person of his or her choice when viewing the record; however, require the individual to provide written authorization to have the record discussed in front of the other person.

(vi) Do not deny access to an individual who is the subject of the record solely for refusing to divulge his or her SSN, unless it is the only means of retrieving the record or verifying identity.

(vii) Do not require the individual to explain why he or she is seeking access to a record under this subpart and subpart G of this part.

(viii) Only a designated denial authority may deny access. The denial must be in writing and contain the information required by paragraph (d) of this section.

(5) *Blanket requests not honored.* Do not honor requests from individuals for notification and/or access concerning all Department of the Navy systems of records. In these instances, notify the individual that requests for notification and/or access must be directed to the appropriate system manager for the particular record system being requested, as indicated in the periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, ''Current Privacy Act Issuances''; and the request must either designate the particular system of records to be searched, or provide sufficient information for the system manager to identify the appropriate system. Also, provide the individual with any other information needed for obtaining consideration of his or her request.

(6) *Granting individual access to records.* (i) Grant the individual access to the original record (or exact copy) without any changes or deletions, other than those made in accordance with § 701.113.

(ii) Grant the individual's request for an exact copy of the record, upon the signed authorization of the individual, and provide a copy to anyone designated by the individual. In either case, the copying fees may be assessed to the individual pursuant to § 701.109(b).

(iii) If requested, explain any record or portion of a record that is not understood, as well as any changes or deletions.

(7) *Illegible or incomplete records.* Do not deny an individual access solely because the physical condition or format of the record does not make it readily available (*i.e.,* when the record is in a deteriorated state or on magnetic tape). Either prepare an extract or recopy the document exactly.

(8) *Access by parents and legal guardians.* (i) The parent of any minor, or the legal guardian of any individual declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, may obtain access to the record of the minor or incompetent individual if the parent or legal guardian is acting on behalf or for the benefit of the minor or incompetent. However, with respect to access by parents and legal guardians to medical records and medical determinations about minors, use the following procedures:

(A) In the United States, the laws of the state where the records are located might afford special protection to certain medical records (*i.e.,* drug and alcohol abuse treatment, and psychiatric records). The state statutes might apply even if the records are maintained by a naval medical facility.

(B) For installations located outside the U.S., the parent or legal guardian of a minor shall be denied access if all four of the following conditions are met:

(1) The minor at the time of the treatment or consultation was 15, 16, or 17 years old;

(2) The treatment or consultation was within a program authorized by law or regulation to provide confidentiality to the minor;

(3) The minor indicated a desire that the treatment or consultation record be handled in confidence and not disclosed to a parent or guardian; and

(4) The parent or legal guardian does not have the written authorization of the minor or a valid court order granting access.

(ii) A minor or incompetent has the same right of access as any other individual under this subpart and subpart G of this part. The right of access of the parent or legal guardian is in addition to that of the minor or incompetent.

(9) *Access to information compiled in reasonable anticipation of a civil proceeding.* (i) An individual is not entitled under this subpart and subpart G of this part to access information compiled in reasonable anticipation of a civil action or proceeding.

(ii) The term ''civil action or proceeding'' includes quasi-judicial and pre-trial judicial proceedings, as well as formal litigation.

(iii) Paragraphs (a)(9)(i) and (ii) of this section do not prohibit access to records compiled or used for purposes other than litigation, nor prohibit access to systems of records solely because they are frequently subject to litigation. The information must have been compiled for the primary purpose of litigation.

(10) *Personal notes or records not under the control of the Department of the Navy.* (i) Certain documents under the control of a Department of the Navy employee and used to assist him/her in performing official functions are not considered Department of the Navy records within the meaning of this subpart and subpart G of this part. These documents are not systems of records that are subject to this subpart and subpart G of this part, if they are:

(A) Maintained and discarded solely at the discretion of the author;

(B) Created only for the author's personal convenience;

(C) Not the result of official direction or encouragement, whether oral or written; and

(D) Not shown to other persons for any reason or filed in agency files.

(11) *Relationship between the Privacy Act and FOIA.* In some instances, individuals requesting access to records pertaining to themselves may not know which Act to cite as the appropriate statutory authority. The following guidelines are to ensure that the individuals receive the greatest degree of access under both Acts:

(i) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, are processed under Secretary of the Navy Instruction 5720.42F, ''Department of the Navy Freedom of Information Act Program.''

(ii) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552a are processed under this subpart and subpart G of this part.

(iii) Access requests that cite both 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988 and 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act are processed under the Act that provides the greater degree of access. Inform the requester which instruction was used in granting or denying access.

(iv) Do not penalize the individual access to his or her records otherwise releasable under 5 U.S.C. 552a and periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, ''Current Privacy Act Issuances'', simply because he or she failed to cite the appropriate statute or instruction.

(12) *Time limits.* Acknowledge requests for access made under Privacy Act or this subpart and subpart G of this part within 10 working days after receipt, and advise the requester of your

decision to grant/deny access within 30 working days.

(b) *Reproduction fees.* Normally, only one copy of any record or document will be provided. Checks or money orders for fees should be made payable to the Treasurer of the United States and deposited to the miscellaneous receipts of the treasury account maintained at the finance office servicing the activity.

(1) Fee schedules shall include only the direct cost of reproduction and shall not include costs of:

(i) Time or effort devoted to searching for or reviewing the record by naval personnel;

(ii) Fees not associated with the actual cost of reproduction;

(iii) Producing a copy when it must be provided to the individual without cost under another regulation, directive, or law;

(iv) Normal postage;

(v) Transportation of records or personnel; or

(vi) Producing a copy when the individual has requested only to review the record and has not requested a copy to keep, and the only means of allowing review is to make a copy (*e.g.,* the record is stored in a computer and a copy must be printed to provide individual access, or the naval activity does not wish to surrender temporarily the original record for the individual to review).

(2) Fee schedules.

(i) Office copy (per page).....$.10

(ii) Microfiche (per fiche).....$.25

(3) Fee waivers. Waive fees automatically if the direct cost of reproduction is less than $15, unless the individual is seeking an obvious extension or duplication of a previous request for which he or she was granted a waiver. Decisions to waive or reduce fees that exceed $15 are made on a case-by-case basis.

(c) *Denying individual access.* (1) Deny the record subject access to requested record only if it was compiled in reasonable anticipation of a civil action or proceeding or is in a system of records that has been exempt from the access provisions of § 701.113.

(2) Deny the individual access only to those portions of the record for which the denial will serve a legitimate government purpose. An individual may be refused access for failure to comply with established procedural requirements, but must be told the specific reason for the refusal and the proper access procedures.

(3) Deny the individual access to his or her medical and psychological records if it is determined that access could have an adverse affect on the mental or physical health of the individual. This determination normally should be made in consultation with a medical practitioner. If it is medically indicated that access could have an adverse mental or physical effect on the individual, provide the record to a medical practitioner named by the individual, along with an explanation of why access without medical supervision could be harmful to the individual. In any case, do not require the named medical practitioner to request the record for the individual. If, however, the individual refuses or fails to designate a medical practitioner, access shall be refused. The refusal is not considered a denial for reporting purposes under the Privacy Act.

(d) Notifying the individual. Written denial of access must be given to the individual. The denial letter shall include:

(1) The name, title, and signature of a designated denial authority;

(2) The date of the denial;

(3) The specific reason for the denial, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part authorizing the denial;

(4) The individual's right to appeal the denial within 60 calendar days of the date the notice is mailed; and

(5) The title and address of the review authority.

§ 701.110 Amendment of records.

(a) *Individual review and amendment.* Encourage individuals to review periodically, the information maintained about them in systems of records, and to avail themselves of the amendment procedures established by this subpart and subpart G of this part.

(1) *Right to amend.* An individual may request to amend any record retrieved by his or her personal identifier from a system of records, unless the system has been exempt from the amendment procedures under this subpart. Amendments under this subpart and subpart G of this part are limited to correcting factual matters, not matters of opinion (*i.e.,* information contained in evaluations of promotion potential or performance appraisals). When records sought to be amended are covered by another issuance, the administrative procedures under that issuance must be exhausted before using the Privacy Act. In other words, the Privacy Act may not be used to avoid the administrative procedures required by the issuance actually covering the records in question.

(2) *In writing.* Amendment requests shall be in writing, except for routine administrative changes, such as change of address.

(3) *Content of amendment request.* An amendment request must include a description of the information to be amended; the reason for the amendment; the type of amendment action sought (*i.e.,* deletion, correction, or addition); and copies of available documentary evidence supporting the request.

(b) *Burden of proof.* The individual must provide adequate support for the request.

(c) *Verifying identity.* The individual may be required to provide identification to prevent the inadvertent or intentional amendment of another's record. Use the verification guidelines provided in § 701.109(a)(4).

(d) *Limits on amending judicial and quasi-judicial evidence and findings.* This subpart and subpart G of this part do not permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Amendments to such records must be made in accordance with procedures established for such proceedings. This subpart and subpart G of this part do not permit a collateral attack on a judicial or quasi-judicial finding; however, this subpart and subpart G of this part may be used to challenge the accuracy of recording the finding in a system of records.

(e) *Standards for amendment request determinations.* The record which the individual requests to be amended must meet the recordkeeping standards established in § 701.105. The record must be accurate, relevant, timely, complete, and necessary. If the record in its present state does not meet each of the criteria, grant the amendment request to the extent necessary to meet them.

(f) *Time limits.* Within 10 working days of receiving an amendment request, the systems manager shall provide the individual a written acknowledgement of the request. If action on the amendment request is completed within the 10 working days and the individual is so informed, no separate acknowledgment is necessary. The acknowledgment must clearly identify the request and advise the individual when to expect notification of the completed action. Only under exceptional circumstances should more than 30 working days be required to complete the action on an amendment request.

(g) *Granting an amendment request in whole or in part.*—(1) *Notify the requester.* To the extent the amendment request is granted, the systems manager shall notify the individual and make the appropriate amendment.

(2) *Notify previous recipients.* Notify all previous recipients of the information (as reflected in the disclosure accounting record) that the amendment has been made and provide each a copy of the amended record. Recipients who are known to be no longer retaining the record need not be advised of the amendment. If it is known that other naval activities, DoD components, or Federal agencies have been provided the information that now requires amendment, or if the individual requests that these agencies be notified, provide the notification of amendment even if those activities or agencies are not listed on the disclosure accounting form.

(h) *Denying an amendment request in whole or in part.* If the amendment request is denied in whole or in part, promptly notify the individual in writing. Include in the notification to the individual the following:

(1) Those sections of 5 U.S.C. 552a or this subpart and subpart G of this part upon which the denial is based;

(2) His or her right to appeal to the head of the activity for an independent review of the initial denial;

(3) The procedures for requesting an appeal, including the title and address of the official to whom the appeal should be sent; and

(4) Where the individual can receive assistance in filing the appeal.

(i) *Requests for amending OPM records.* The records in an OPM government-wide system of records are only temporarily in the custody of naval activities. Requests for amendment of these records must be processed in accordance with OPM Regulations and the Federal Personnel Manual. The denial authority may deny a request, but all denials are subject to review by the Assistant Director for Workforce Information, Personnel Systems Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

(j) *Individual's statement of disagreement.* (1) If the review authority refuses to amend the record as requested, the individual may submit a concise statement of disagreement listing the reasons for disagreeing with the refusal to amend.

(2) If possible, incorporate the statement of disagreement into the record. If that is not possible, annotate the record to reflect that the statement was filed and maintain the statement so that it can be readily obtained when the disputed information is used or disclosed.

(3) Furnish copies of the statement of disagreement to all individuals listed on the disclosure accounting form (except those known to be no longer retaining the record), as well as to all other known holders of copies of the record.

(4) Whenever the disputed information is disclosed for any purpose, ensure that the statement of disagreement also is used or disclosed.

(k) *Department of the Navy statement of reasons.* (1) If the individual files a statement of disagreement, the naval activity may file a statement of reasons containing a concise summary of the activity's reasons for denying the amendment request.

(2) The statement of reasons shall contain only those reasons given to the individual by the appellate official and shall not contain any comments on the individual's statement of disagreement.

(3) At the discretion of the naval activity, the statement of reasons may be disclosed to those individuals, activities, and agencies that receive the statement of disagreement.

§ 701.111 Privacy Act appeals.

(a) *How to file an appeal.* The following guidelines shall be followed by individuals wishing to appeal a denial of notification, access, or amendment of records.

(1) The appeal must be received by the cognizant review authority (*i.e.,* ASN (MRA), NJAG, OGC, or OPM) within 60 calendar days of the date of the response.

(2) The appeal must be in writing and requesters should provide a copy of the denial letter and a statement of their reasons for seeking review.

(b) *Time of receipt.* The time limits for responding to an appeal commence when the appeal reaches the office of the review authority having jurisdiction over the record. Misdirected appeals should be referred expeditiously to the proper review authority.

(c) *Review authorities.* ASN (MRA), NJAG, and OGC are authorized to adjudicate appeals made to SECNAV. NJAG and OGC are further authorized to delegate this authority to a designated Assistant NJAG and the Principal Deputy General or Deputy General Counsel, respectively, under such terms and conditions as they deem appropriate.

(1) If the record is from a civilian Official Personnel Folder or is contained on any other OPM forms, send the appeal to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415. Records in all systems of records maintained in accordance with the OPM government-wide systems notices are only in the temporary custody of the Department of the Navy.

(2) If the record pertains to the employment of a present or former Navy and Marine Corps civilian employee, such as Navy or Marine Corps civilian personnel records or an employee's grievance or appeal file, to the General Counsel, Navy Department, 720 Kennon Street, SE, Washington Navy Yard, Building 36, Washington, DC 20374–5012.

(3) If the record pertains to a present or former military member's fitness reports or performance evaluations to the Assistant Secretary of the Navy (Manpower and Reserve Affairs), Navy Department, Washington, DC 20350–1000.

(4) All other records dealing with present or former military members to the Judge Advocate General, Navy Department, 1322 Patterson Avenue, SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

(d) *Appeal procedures.* (1) If the appeal is granted, the review authority shall advise the individual that his or her appeal has been granted and provide access to the record being sought.

(2) If the appeal is denied totally or in part, the appellate authority shall advise the reason(s) for denying the appeal, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part that apply; the date of the appeal determination; the name, title, and signature of the appellate authority; and a statement informing the requester of his or her right to seek judicial relief in the Federal District Court.

(e) *Final action, time limits and documentation.* (1) The written appeal notification granting or denying access is the final naval activity action on the initial request for access.

(2) All appeals shall be processed within 30 working days of receipt, unless the appellate authority finds that an adequate review cannot be completed within that period. If additional time is needed, notify the applicant in writing, explaining the reason for the delay and when the appeal will be completed.

(f) *Denial of appeal by activity's failure to act.* An individual may consider his or her appeal denied if the appellate authority fails to:

(1) Take final action on the appeal within 30 working days of receipt when no extension of time notice was given; or

(2) Take final action within the period established by the notice to the appellate authority of the need for an extension of time to complete action on the appeal.

§ 701.112 Disclosure of records.

(a) *Conditions of disclosure.* (1) 5 U.S.C. 552a prohibits an agency from disclosing any record contained in a system of records to any person or agency, except when the record subject gives written consent for the disclosure or when one of the 12 conditions listed below in this subsection applies.

(2) Except for disclosures made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986 and Secretary of the Navy Instruction 5720.42F, ''Department of the Navy Freedom of Information Act Program,'' before disclosing any record from a system of records to any recipient other than a Federal agency, make reasonable efforts to ensure the record is accurate, relevant, timely, and complete for Department of the Navy purposes. Records discovered to have been improperly filed in the system of records should be removed before disclosure.

(i) If validation cannot be obtained from the record itself, the naval activity may contact the record subject (if reasonably available) to verify the accuracy, timeliness, completeness, and relevancy of the information.

(ii) If validation cannot be obtained from the record and the record subject is not reasonably available, advise the recipient that the information is believed to be valid as of a specific date and reveal any factors bearing on the validity of the information.

(b) *Nonconsensual disclosures.* 5 U.S.C. 552a provides 12 instances when a record in a system of records may be disclosed without the written consent of the record subject:

(1) *Disclosures within the Department of Defense.* For purposes of disclosing records, the Department of Defense is considered a single agency; hence, a record may be disclosed to any officer or employee in the Department of Defense (including private contractor personnel who are engaged to perform services needed in connection with the operation of a system of records for a DoD component), who have a need for the record in the performance of their duties, provided this use is compatible with the purpose for which the record is maintained. This provision is based on the ''need to know'' concept.

(i) For example, this may include disclosure to personnel managers, review boards, discipline officers, courts-martial personnel, medical officers, investigating officers, and representatives of the Judge Advocate General, Auditor General, Naval Inspector General, or the Naval Investigative Service, who require the information in order to discharge their official duties. Examples of personnel outside the Department of the Navy who may be included are: Personnel of the Joint Staff, Armed Forces Entrance and Examining Stations, Defense Investigative Service, or the other military departments, who require the information in order to discharge an official duty.

(ii) It may also include the transfer of records between naval components and non-DoD agencies in connection with the Personnel Exchange Program (PEP) and interagency support agreements. Disclosure accountings are not required for intra-agency disclosure and disclosures made in connection with interagency support agreements or the PEP. Although some disclosures authorized by this paragraph might also meet the criteria for disclosure under other exceptions specified in the following paragraphs of this section, they should be treated under this paragraph for disclosure accounting purposes.

(2) *Disclosures required by the FOIA.* (i) A record must be disclosed if required by 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, which is implemented by Secretary of the Navy Instruction 5720.42F, ''Department of the Navy Freedom of Information Act Program.''

(ii) 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986 and Secretary of the Navy Instruction 5720.42F, ''Department of the Navy Freedom of Information Act Program'' require that records be made available to any person requesting them in writing, unless the record is exempt from disclosure under one of the nine FOIA exemptions. Therefore, if a record is not exempt from disclosure, it must be provided to the requester.

(iii) Certain records, such as personnel, medical, and similar files, are exempt from disclosure under exemption (b)(6) of 5 U.S.C. 552 (1988) as amended by the Freedom of Information Act Reform Act of 1986. Under that exemption, disclosure of information pertaining to an individual can be denied only when the disclosure would be a clearly unwarranted invasion of personal privacy. The first step is to determine whether a viable personal privacy interest exists in these records involving an identifiable living person. The second step is to consider how disclosure would benefit the general public in light of the content and context of the information in question. The third step is to determine whether the identified public interests qualify for consideration. The fourth step is to balance the personal privacy interests against the qualifying public interest. Numerous factors must be considered such as: The nature of the information to be disclosed (*i.e.,* Do individuals normally have an expectation of privacy in the type of information to be disclosed?); importance of the public interest served by the disclosure and probability of further disclosure which may result in an unwarranted invasion of privacy; relationship of the requester to the public interest being served; newsworthiness of the individual to whom the information pertains (*i.e.,* high ranking officer, public figure); degree of sensitivity of the information from the standpoint of the individual or the individual's family, and its potential for being misused to the harm, embarrassment, or inconvenience of the individual or the individual's family; the passage of time since the event which is the topic of the record (*i.e.,* to disclose that an individual has been arrested and is being held for trial by court-martial is normally permitted, while to disclose an arrest which did not result in conviction might not be permitted after the passage of time); and the degree to which the information is already in the public domain or is already known by the particular requester.

(iv) Records or information from investigatory records, including personnel security investigatory records, are exempt from disclosure under the broader standard of ''an unwarranted invasion of personal privacy'' found in exemption (b)(7)(C) of 5 U.S.C. 552. This broader standard applies only to records or information compiled for law enforcement purposes.

(v) A disclosure under 5 U.S.C. 552 about military members must be in accordance with Secretary of the Navy Instruction 5720.42F, ''Department of the Navy Freedom of Information Act Program'', but the following information normally may be disclosed from military personnel records (except for those personnel assigned to sensitive or routinely deployable units, or located in a foreign territory), without a clearly unwarranted invasion of personal privacy: Full name, rank, date of rank, base pay, past duty stations, present duty station and future duty station (if finalized), unless the stations have been determined by the Department of the Navy to be sensitive, routinely deployable, or located in a foreign territory, office or duty telephone number, source of commission, promotion sequence number, awards and decorations, attendance at professional military schools, and duty status at any given time.

(vi) The following information normally may be disclosed from civilian employee records about CONUS employees: Full name, present and past position titles and occupational series, present and past grades, present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious and Distinguished Executive Ranks, and allowances and differentials), past duty stations, present duty station and future duty station (if finalized), including room numbers, shop designations, or other identifying information regarding buildings or places of employment, unless the duty stations have been determined by the Department of the Navy to be sensitive, routinely deployable, or located in a foreign territory, position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the disclosure of which would not interfere with law enforcement programs or severely inhibit Department of the Navy effectiveness.

(viii) Disclosure of home addresses and home telephone numbers normally is considered a clearly unwarranted invasion of personal privacy and is prohibited. However, they may be disclosed if the individual has consented to the disclosure; the disclosure is required by the FOIA; the disclosure is required by another law, such as 42 U.S.C. 653, which provides assistance to states in locating parents who have defaulted on child support payments, or the collection of alimony, and to state and local tax authorities for the purpose of enforcing tax laws. However, care must be taken prior to release to ensure that a written record is prepared to document the reasons for the release determination.

(A) When compiling home addresses and telephone numbers, the individual may be offered the option of authorizing disclosure of the information without further consent for specific purposes, such as locator services. In that case, the information may be disclosed for the stated purpose without further consent. If the information is to be disclosed for any other purpose, a signed consent permitting the additional disclosure must be obtained from the individual.

(B) Before listing home addresses and telephone numbers in Department of the Navy telephone directories, give the individual the opportunity to refuse such a listing. If the individual requests that the home address or telephone number not be listed in the directory, do not assess any additional fee associated with maintaining an unlisted number for government-owned telephone services.

(C) The sale or rental of lists of names and addresses is prohibited unless such action is specifically authorized by Federal law. This does not prohibit the disclosure of names and addresses made under Secretary of the Navy Instruction 5720.42F, ''Department of the Navy Freedom of Information Act Program.''

(D) In response to FOIA requests, information concerning special and general courts-martial results (*e.g.,* records of trial) are releasable. However, information regarding summary courts-martial and non-judicial punishment are generally not releasable. The balancing of interests must be done. It is possible that in a particular case, information regarding non-judicial punishment should be disclosed pursuant to a FOIA request (*i.e.,* the facts leading to a nonjudicial punishment are particularly newsworthy or the case involves a senior official abusing the public trust through office-related misconduct, such as embezzlement). Announcement of nonjudicial punishment dispositions under JAGMAN, subsection 0107, is a proper exercise of command authority and not a release of information under FOIA or this subpart and subpart G of this part. Exceptions to this policy must be coordinated with CNO (N09B30) or CMC (ARAD) prior to responding to requesters, including all requests for this type of information from members of Congress.

(3) *Disclosures for established routine uses.* (i) Records may be disclosed outside the Department of the Navy if the disclosure is for an established routine use.

(ii) A routine use shall:

(A) Be compatible with and related to the purpose for which the record was created;

(B) Identify the persons or organizations to whom the record may be disclosed;

(C) Identify specifically the uses for which the information may be employed by the receiving person or organization; and

(D) Have been published previously in the **Federal Register**.

(iii) A routine use shall be established for each user of the information outside the Department of the Navy who needs the information for an official purpose.

(iv) Routine uses may be established, discontinued, or amended without the consent of the individuals to whom the records pertain. However, new and amended routine uses must be published in the **Federal Register** at least 30 days before the information may be disclosed under their provisions.

(v) In addition to the routine uses established by the Department of the Navy for each system of records, common ''Blanket Routine Uses,'' applicable to all record systems maintained with the Department of the Navy, have been established. These ''Blanket Routine Uses'' are published at the beginning of the Department of the Navy's **Federal Register** compilation of record systems notices rather than at each system notice and are also reflected in periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, ''Current Privacy Act Issuances.'' Unless a system notice specifically excludes a system of records from a ''Blanket Routine Use,'' all ''Blanket Routine Uses'' apply to that system.

(vi) If the recipient has not been identified in the **Federal Register** or if the recipient, though identified, intends to employ the information for a purpose not published in the **Federal Register,** the written consent of the individual is required before the disclosure can be made.

(4) *Disclosures to the Bureau of the Census.* Records may be disclosed to the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activities authorized by 13 U.S.C. 8.

(5) *Disclosures for statistical research or reporting.* Records may be disclosed to a recipient for statistical research or reporting if:

(i) Prior to the disclosure, the recipient has provided adequate written assurance that the records shall be used solely for statistical research or reporting; and

(ii) The records are transferred in a form that does not identify individuals.

(6) *Disclosures to the National Archives and Records Administration.* (i) Records may be disclosed to the National Archives and Records Administration for evaluation to determine whether the records have sufficient historical or other value to warrant preservation by the Federal government. If preservation is warranted, the records will be retained by the National Archives and Record Administration, which becomes the official owner of the records.

(ii) Records may be disclosed to the National Archives and Records Administration to carry out records management inspections required by Federal law.

(iii) Records transferred to a Federal Records Center operated by the National Archives and Records Administration for storage are not within this category. Those records continue to be maintained and controlled by the transferring naval activity. The Federal

Records Center is considered the agent of Department of the Navy and the disclosure is made under paragraph (b)(1) of this section.

(7) *Disclosures when requested for law enforcement purposes.* (i) A record may be disclosed to another agency or an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity if:

(A) The civil or criminal law enforcement activity is authorized by law (federal, state or local); and

(B) The head of the agency (or his or her designee) has made a written request to the naval activity specifying the particular record or portion desired and the law enforcement purpose for which it is sought.

(ii) Blanket requests for any and all records pertaining to an individual shall not be honored. The requesting agency must specify each record or portion desired and how each relates to the authorized law enforcement activity.

(iii) If a naval activity discloses a record outside the Department of Defense for law enforcement purposes without the individual's consent and without an adequate written request, the disclosure must be under an established routine use, such as the ''Blanket Routine Use'' for law enforcement.

(iv) Disclosure to foreign law enforcement agencies is not governed by the provisions of 5 U.S.C. 552a and this paragraph, but may be made only under established ''Blanket Routine Uses,'' routine uses published in the individual record system notice, or to other governing authority.

(8) *Disclosure to protect the health or safety of an individual.* Disclosure may be made under emergency conditions involving circumstances affecting the health and safety of an individual (*i.e.,* when the time required to obtain the consent of the individual to whom the records pertain might result in a delay which could impair the health or safety of a person) provided notification of the disclosure is sent to the record subject. Sending the notification to the last known address is sufficient. In instances where information is requested by telephone, an attempt will be made to verify the inquirer's and medical facility's identities and the caller's telephone number. The requested information, if then considered appropriate and of an emergency nature, may be provided by return call.

(9) *Disclosures to Congress.* (i) A record may be disclosed to either House of Congress at the request of either the Senate or House of Representatives as a whole.

(ii) A record also may be disclosed to any committee, subcommittee, or joint committee of Congress if the disclosure pertains to a matter within the legislative or investigative jurisdiction of the committee, subcommittee, or joint committee.

(iii) Disclosure may not be made to a Member of Congress requesting in his or her individual capacity. However, for Members of Congress making inquiries on behalf of individuals who are subjects of records, a ''Blanket Routine Use'' has been established to permit disclosures to individual Members of Congress.

(A) When responding to a congressional inquiry made on behalf of a constituent by whose identifier the record is retrieved, there is no need to verify that the individual has authorized the disclosure to the Member of Congress.

(B) The oral or written statement of a Congressional staff member is sufficient to establish that a request has been received from the individual to whom the record pertains.

(C) If the constituent inquiry is made on behalf of an individual other than the record subject, provide the Member of Congress only that information releasable under 5 U.S.C. 552. Advise the Member of Congress that the written consent of the record subject is required before additional information may be disclosed. Do not contact the record subject to obtain consent for the disclosure to the Member of Congress unless the Congressional office specifically requests it be done.

(10) *Disclosures to the Comptroller General for the General Accounting Office (GAO).* Records may be disclosed to the Comptroller General of the U.S., or authorized representative, in the course of the performance of the duties of the GAO.

(11) *Disclosures under court orders.* (i) Records may be disclosed under the order of a court of competent jurisdiction.

(ii) When a record is disclosed under this provision and the compulsory legal process becomes a matter of public record, make reasonable efforts to notify the individual to whom the record pertains. Notification sent to the last known address of the individual is sufficient. If the order has not yet become a matter of public record, seek to be advised as to when it will become public. Neither the identity or the party to whom the disclosure was made nor the purpose of the disclosure shall be made available to the record subject unless the court order has become a matter of public record.

(iii) The court order must bear the signature of a federal, state, or local judge. Orders signed by court clerks or attorneys are not deemed to be orders of a court of competent jurisdiction. A photocopy of the order, regular on its face, will be sufficient evidence of the court's exercise of its authority of the minimal requirements of SECNAVINST 5820.8A,[9] ''Release of Official Information for Litigation Purposes and Testimony by Department of the Navy Personnel.''

(12) *Disclosures to consumer reporting agencies.* Certain information may be disclosed to consumer reporting agencies (i.e., credit reference companies such as TRW and Equifax, etc.) as defined by the Federal Claims Collection Act of 1966 (31 U.S.C. 952d). Under the provisions of that Act, the following information may be disclosed to a consumer reporting agency:

(i) Name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual;

(ii) The amount, status, and history of the claim; and

(iii) The agency or program under which the claim arose. 31 U.S.C. 952d specifically requires that the **Federal Register** notice for the system of records from which the information will be disclosed indicate that the information may be disclosed to a consumer reporting agency.

(c) *Disclosures to commercial enterprises.* Records may be disclosed to commercial enterprises only under the criteria established by Secretary of the Navy Instruction 5720.42F and 42 U.S.C. 653, Parent Locator Service for Enforcement of Child Support.

(1) Any information required to be disclosed by Secretary of the Navy Instruction 5720.42F and 42 U.S.C. 653, Parent Locator Service for Enforcement of Child Support may be disclosed to a requesting commercial enterprise.

(2) Commercial enterprises may present a consent statement signed by the individual indicating specific conditions for disclosing information from a record. Statements such as the following, if signed by the individual, are considered sufficient to authorize the disclosure: I hereby authorize the Department of the Navy to verify my SSN or other identifying information and to disclose my home address and telephone number to authorized representatives of (name of commercial enterprise) to be used in connection

[9] Copies may be obtained: Judge Advocate General, Navy Department, (Code 34), 1322 Patterson Avenue, SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

with my commercial dealings with that enterprise. All information furnished will be used in connection with my financial relationship with (name of commercial enterprise).

(3) When a consent statement as described in the preceding subsection is presented, provide the information to the commercial enterprise, unless the disclosure is prohibited by another regulation or Federal law.

(4) Blanket consent statements that do not identify the Department of Defense or Department of the Navy, or that do not specify exactly the information to be disclosed, may be honored if it is clear that the individual, in signing the consent statement, was seeking a personal benefit (i.e., loan for a house or automobile) and was aware of the type of information necessary to obtain the benefit sought.

(5) Do not honor requests from commercial enterprises for official evaluations of personal characteristics such as personal financial habits.

(d) *Disclosure of health care records to the public.* This paragraph applies to disclosure of information to the news media and the public concerning individuals treated or hospitalized in Department of the Navy medical facilities and, when the cost of care is paid by the Department of the Navy, in non-Federal facilities.

(1) *Disclosures without the individual's consent.* Normally, the following information may be disclosed without the individual's consent:

(i) Information required to be released by Secretary of the Navy Instruction 5720.42F and OPM Regulations and the Federal Personnel Manual, as well as the information listed in paragraphs (b)(2)(v) (for military personnel) and (b)(2) of this section.

(ii) For civilian employees; and

(iii) General information concerning medical conditions, i.e., date of admission or disposition; present medical assessment of the individual's condition if the medical practitioner has volunteered the information, i.e., the individual's condition presently is (stable) (good) (fair) (serious) (critical), and the patient is (conscious) (semi-conscious) (unconscious).

(2) *Disclosures with the individual's consent.* With the individual's informed consent, any information about the individual may be disclosed. If the individual is a minor or has been declared incompetent by a court of competent jurisdiction, the parent of the minor or appointed legal guardian of the incompetent may give consent on behalf of the individual.

(e) Disclosure of Personal Information on Group/Bulk Orders. Do not use personal information including complete SSNs, home addresses and phone numbers, dates of birth, etc., on group/bulk orders. This personal information should not be posted on lists that everyone listed on the orders sees. Such a disclosure of personal information violates the Privacy Act and this subpart and subpart G of this part.

(f) *Disclosure accounting.* Keep an accurate record of all disclosures made from a record (including those made with the consent of the individual) except those made to DoD personnel for use in performing their official duties; and those made under the FOIA. Disclosure accounting is to permit the individual to determine what agencies or persons have been provided information from the record, enable Department of the Navy activities to advise prior recipients of the record of any subsequent amendments or statements of dispute concerning the record, and provide an audit trial of Department of the Navy's compliance with 5 U.S.C. 552a.

(1) Disclosure accountings shall contain the date of the disclosure; a description of the information disclosed; the purpose of the disclosure; and the name and address of the person or agency to whom the disclosure was made.

(2) The record subject has the right of access to the disclosure accounting except when the disclosure was made at the request of a civil or criminal law enforcement agency under paragraph (b)(7) of this section; or when the system of records has been exempted from the requirement to provide access to the disclosure accounting.

(g) *Methods of disclosure accounting.* Since the characteristics of various records maintained within the Department of the Navy vary widely, no uniform method for keeping disclosure accountings is prescribed. The primary criteria are that the selected method be one which will:

(1) Enable an individual to ascertain what persons or agencies have received disclosures pertaining to him/her;

(2) Provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record; and

(3) Provide a means to prove, if necessary that the activity has complied with the requirements of 5 U.S.C. 552a and this subpart and subpart G of this part.

(h) *Retention of disclosure accounting.* Maintain a disclosure accounting of the life of the record to which the disclosure pertains, or 5 years after the date of the disclosure, whichever is longer. Disclosure accounting records are normally maintained with the record, as this will ensure compliance with paragraph (f) of this section.

§ 701.113 Exemptions.

(a) *Using exemptions.* No system of records is automatically exempt from all provisions of 5 U.S.C. 552a. A system of records is exempt from only those provisions of 5 U.S.C. 552a that are identified specifically in the exemption rule for the system. Subpart G of this part contains the systems designated as exempt, the types of exemptions claimed, the authority and reasons for invoking the exemptions and the provisions of 5 U.S.C. 552a from which each system has been exempt. Exemptions are discretionary on the part of Department of the Navy and are not effective until published as a final rule in the **Federal Register**. The naval activity maintaining the system of records shall make a determination that the system is one for which an exemption may be established and then propose an exemption rule for the system. Submit the proposal to CNO (N09B30) for approval and publication in the **Federal Register**.

(b) *Types of exemptions.* There are two types of exemptions permitted by 5 U.S.C. 552a.

(1) *General exemptions.* Those that authorize the exemption of a system of records from all but specifically identified provisions of 5 U.S.C. 552a.

(2) *Specific exemptions.* Those that allow a system of records to be exempt from only a few designated provisions of 5 U.S.C. 552a.

(c) *Establishing exemptions.* (1) 5 U.S.C. 552a authorizes the Secretary of the Navy to adopt rules designating eligible systems of records as exempt from certain requirements. The Secretary of the Navy has delegated the CNO (N09B30) to make a determination that the system is one for which an exemption may be established and then propose and establish an exemption rule for the system. No system of records within Department of the Navy shall be considered exempt until the CNO (N09B30) has approved the exemption and an exemption rule has been published as a final rule in the **Federal Register**. A system of records is exempt from only those provisions of 5 U.S.C. 552a that are identified specifically in the Department of the Navy exemption rule for the system.

(2) No exemption may be established for a system of records until the system itself has been established by publishing a notice in the **Federal Register**, at least 30 days prior to the effective date, describing the system. This allows

interested persons an opportunity to comment. An exemption may not be used to deny an individual access to information that he or she can obtain under Secretary of the Navy Instruction 5720.42F, ''Department of the Navy Freedom of Information Act Program.''

(d) *Exemption for classified material.* All systems of records maintained by the Department of the Navy shall be exempt under section (k)(1) of 5 U.S.C. 552a, to the extent that the systems contains any information properly classified under E.O. 12958 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

Note: Department of the Navy Privacy Act systems of records which contain classified information automatically qualify for a (k)(1) exemption, without establishing an exemption rule.

(e) *Exempt records in nonexempt systems.* (1) An exemption rule applies to the system of records for which it was established. If a record from an exempt system is incorporated intentionally into a system that has not been exempt, the published notice and rules for the nonexempt system will apply to the record and it will not be exempt from any provisions of 5 U.S.C. 552a.

(2) A record from one component's (i.e., Department of the Navy) exempted system that is temporarily in the possession of another component (i.e., Army) remains subject to the published system notice and rules of the originating component's (i.e., Department of the Navy). However, if the non-originating component incorporates the record into its own system of records, the published notice and rules for the system into which it is incorporated shall apply. If that system of records has not been exempted, the record shall not be exempt from any provisions of 5 U.S.C. 552a.

(3) A record accidentally misfiled into a system of records is governed by the published notice and rules for the system of records in which it actually should have been filed.

(f) *General exemptions.* (1)*Central Intelligence Agency (CIA).* The Department of the Navy is not authorized to establish an exemption for records maintained by the CIA under subsection (j)(1) of 5 U.S.C. 552a.

(2) *Law enforcement.* (i) The general exemption provided by subsection (j)(2) of 5 U.S.C. 552a may be established to protect criminal law enforcement records maintained by Department of the Navy.

(ii) To be eligible for the (j)(2) exemption, the system of records must be maintained by an element that performs, as one of its principal functions, the enforcement of criminal laws. The Naval Investigative Service, Naval Inspector General, and military police activities qualify for this exemption.

(iii) Criminal law enforcement includes police efforts to detect, prevent, control, or reduce crime, or to apprehend criminals, and the activities of prosecution, court, correctional, probation, pardon, or parole authorities.

(iv) Information that may be protected under the (j)(2) exemption includes:

(A) Information compiled for the purpose of identifying criminal offenders and alleged criminal offenders consisting of only identifying data and notations of arrests; the nature and disposition of criminal charges; and sentencing, confinement, release, parole, and probation status;

(B) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; and

(C) Reports identifiable to an individual, compiled at any stage of the enforcement process, from arrest, apprehension, indictment, or preferral of charges through final release from the supervision that resulted from the commission of a crime.

(v) The (j)(2) exemption does not apply to:

(A) Investigative records maintained by a naval activity having no criminal law enforcement duties as one of its principle functions, or

(B) Investigative records compiled by any element concerning individual's suitability, eligibility, or qualification for duty, employment, or access to classified information, regardless of the principle functions of the naval activity that compiled them.

(vi) The (j)(2) exemption established for a system of records maintained by a criminal law enforcement activity cannot protect law enforcement records incorporated into a nonexempt system of records or any system of records maintained by an activity not principally tasked with enforcing criminal laws. All system managers, therefore, are cautioned to comply strictly with Department of the Navy regulations or instructions prohibiting or limiting the incorporation of criminal law enforcement records into systems other than those maintained by criminal law enforcement activities.

(g) *Specific exemptions.* Specific exemptions permit certain categories of records to be exempted from specific provisions of 5 U.S.C. 552a. Subsections (k)(1)–(k)(7) of 5 U.S.C. 552a allow exemptions for seven categories of records. To be eligible for a specific exemption, the record must meet the corresponding criteria.

Note: Department of the Navy Privacy Act systems of records which contain classified information automatically qualify for a (k)(1) exemption, without an established exemption rule.

(1) *(k)(1) exemption:* Information properly classified under Secretary of the Navy Instruction 5720.42F, ''Department of the Navy Freedom of Information Act Program'' and E.O. 12958, in the interest of national defense or foreign policy.

(2) *(k)(2) exemption:* Investigatory information (other than that information within the scope of paragraph (f)(2) of this section) compiled for law enforcement purposes. If maintaining the information causes an individual to be ineligible for or denied any right, benefit, or privilege that he or she would otherwise be eligible for or entitled to under Federal law, then he or she shall be given access to the information, except for the information that would identify a confidential source (see paragraph (h) of this section, ''confidential source''). The (k)(2) exemption, when established, allows limited protection on investigative records maintained for use in personnel and administrative actions.

(3) *(k)(3) exemption:* Records maintained in connection with providing protective services to the President of the United States and other individuals under 18 U.S.C. 3056.

(4) *(k)(4) exemption:* Records required by Federal law to be maintained and used solely as statistical records that are not used to make any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(5) *(k)(5) exemption:* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source (see paragraph (h) of this section, ''confidential source''). This exemption allows protection of confidential sources in background investigations, employment inquiries, and similar inquiries used in personnel screening to determine suitability, eligibility, or qualifications.

(6) *(k)(6) exemption:* Testing or examination material used solely to

determine individual qualifications for appointment or promotion in the Federal or military service if the disclosure would compromise the objectivity or fairness of the testing or examination process.

(7) *(k)(7) exemption:* Evaluation material used to determine potential for promotion in the military services, but only to the extent that disclosure would reveal the identity of a confidential source (see paragraph (h) of this section, ''confidential source''.)

(h) *Confidential source.* Promises of confidentiality are to be given on a limited basis and only when essential to obtain the information sought. Establish appropriate procedures for granting confidentiality and designate those categories of individuals authorized to make such promises.

§ 701.114 Enforcement actions.

(a) *Administrative remedies.* An individual who alleges he or she has been affected adversely by a naval activity's violation of 5 U.S.C. 552a or this subpart and subpart G of this part shall be permitted to seek relief from SECNAV through proper administrative channels.

(b) *Civil court actions.* After exhausting all administrative remedies, an individual may file suit in Federal court against a naval activity for any of the following acts:

(1) *Denial of an amendment request.* The activity head, or his or her designee wrongfully refuses the individual's request for review of the initial denial of an amendment or, after review, wrongfully refuses to amend the record;

(2) *Denial of access.* The activity wrongfully refuses to allow the individual to review the record or wrongfully denies his or her request for a copy of the record;

(3) *Failure to meet recordkeeping standards.* The activity fails to maintain an individual's record with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination about the individual's rights, benefits, or privileges and, in fact, makes an adverse determination based on the record; or

(4) *Failure to comply with Privacy Act.* The activity fails to comply with any other provision of 5 U.S.C. 552a or any rule or regulation promulgated under 5 U.S.C. 552a and thereby causes the individual to be adversely affected.

(c) *Criminal penalties.* Subsection (i)(1) of 5 U.S.C. 552a authorizes three criminal penalties against individuals for violations of its provisions. All three are misdemeanors punishable by fines of $5,000.

(1) *Wrongful disclosure.* Any member or employee of Department of the Navy who, by virtue of his or her employment or position, has possession of or access to records and willfully makes a disclosure knowing that disclosure is in violation of 5 U.S.C. 552a or this subpart and subpart G of this part.

(2) *Maintaining unauthorized records.* Any member or employee of Department of the Navy who willfully maintains a system of records for which a notice has not been published under periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, ''Current Privacy Act Issuances.''

(3) *Wrongful requesting or obtaining records.* Any person who knowingly and willfully requests or obtains information concerning an individual under false pretenses.

§ 701.115 Computer matching program.

(a) *General.* 5 U.S.C. 552a and this subpart and subpart G of this part are applicable to certain types of computer matching, i.e., the computer comparison of automated systems of records. There are two specific kinds of matching programs that are fully governed by 5 U.S.C. 552a and this subpart and subpart G of this part:

(1) Matches using records from Federal personnel or payroll systems of records;

(2) Matches involving Federal benefit programs to accomplish one or more of the following purposes:

(i) To determine eligibility for a Federal benefit.

(ii) To comply with benefit program requirements.

(iii) To effect recovery of improper payments or delinquent debts from current or former beneficiaries.

(b) *The record comparison must be a computerized one.* Manual comparisons are not covered, involving records from two or more automated systems of records (i.e., systems of records maintained by Federal agencies that are subject to 5 U.S.C. 552a); or a Department of the Navy automated systems of records and automated records maintained by a non-Federal agency (i.e., State or local government or agent thereof). A covered computer matching program entails not only the actual computerized comparison, but also preparing and executing a written agreement between the participants, securing approval of the Defense Data Integrity Board, publishing a matching notice in the **Federal Register** before the match begins, ensuring that investigation and due process are completed, and taking ultimate action, if any.

Subpart G—Privacy Act Exemptions

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

§ 701.116 Purpose.

Subparts F and G of this part contain rules promulgated by the Secretary of the Navy, pursuant to 5 U.S.C. 552a (j) and (k), and subpart F, § 701.113, to exempt certain systems of Department of the Navy records from specified provisions of 5 U.S.C. 552a.

§ 701.117 Exemption for classified records.

All systems of records maintained by the Department of the Navy shall be exempt from the requirements of the access provision of the Privacy Act (5 U.S.C. 552a(d)) under the (k)(1) exemption, to the extent that the system contains information properly classified under E.O. 12958 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

§ 701.118 Exemptions for specific Navy record systems.

(a) *System identifier and name:*

(1) *N01070–9, White House Support Program.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iv) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5),

but only to the extent that such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), and (k)(5).

(4) *Reasons:* (i) Exempted portions of this system contain information which has been properly classified under E.O. 12958, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of this system may also contain investigative records compiled for law enforcement purposes, the disclosure of which could reveal the identity of sources who provide information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law-enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

(b) *System identifier and name:*

(1) *N01131–1, Officer Selection and Appointment System.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iv) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(5), (k)(6), and (k)(7).

(4) *Reasons:* (i) Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(c) *System identifier and name:*

(1) *N01133–2, Recruiting Enlisted Selection System.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iv) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(5), (k)(6), and (k)(7).

(4) *Reasons:* Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(d) *System identifier and name:*

(1) *N01640–1, Individual Correctional Records.*

(2) *Exemption:* (i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reason:* (i) Granting individuals access to portions of these records pertaining to or consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(e) *System identifier and name:*

(1) *N01754–3, Navy Child Development Services Program.*

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

(3) *Authority:* 5 U.S.C. 552a(k)(2).

(4) *Reasons:* (i) Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recrimination, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

(f) *System identifier and name:*

(1) *N03834–1, Special Intelligence Personnel Access File.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1) and (k)(5).

(4) *Reasons:* (i) Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

(ii) Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(g) *System identifier and name:*

(1) *N04060–1, Navy and Marine Corps Exchange Security Files.*

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4) (G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2).

(4) *Reasons:* (i) Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by these activities.

(h) [Reserved]

(i) *System identifier and name:*

(1) *N05041–1, Inspector General (IG) Records.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1) and (k)(2).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would permit individuals to obtain valuable information concerning the nature of the investigation and would present a serious impediment to the orderly conduct of any investigative activities. Such accounting could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(ii) From subsections (d) and (f) because access to the records would inform individuals of the existence and nature of the investigation; provide information that might result in the concealment, destruction, or fabrication of evidence; possibly jeopardize the safety and well-being of informants, witnesses and their families; likely reveal and render ineffectual investigatory techniques and methods and sources of information; and possibly result in the invasion of the personal privacy of third parties. Access could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with the ongoing investigation and impose an impossible administrative burden by requiring investigations to be continually reinvestigated.

(iii) From subsection (e)(1) because in the course of the investigation it is not always possible, at least in the early stages of the inquiry, to determine relevance and or necessity as such determinations may only occur after the information has been evaluated. Information may be obtained concerning the actual or potential violation of laws or regulations other than those relating to the ongoing investigation. Such information should be retained as it can aid in establishing patterns of improper activity and can provide valuable leads in the conduct of other investigations.

(iv) From subsection (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (k)(1) and (k)(2) of the Privacy Act of 1974.

(v) From subsection (e)(4)(I) because it is necessary to protect the confidentiality of sources and to protect the privacy and physical safety of witnesses. Although the system is exempt from this requirement, the Department of the Navy has published a notice in broad, generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires.

(j) *System identifier and name:*

(1) *N05300–3, Faculty Professional Files.*

(2) *Exemption:* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian

employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4) (G) and (H), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(5).

(4) *Reasons:* Exempted portions of this system contain information considered relevant and necessary to make a release determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(k) *System identifier and name:*

(1) *N05354–1, Equal Opportunity Information Management System.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1) and (k)(5).

(4) *Reasons:* Granting access to information in this system of records could result in the disclosure of classified material, or reveal the identity of a source who furnished information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that will not disclose the identity of a confidential source.

(l) *System identifier and name:*

(1) *N05520–1, Personnel Security Eligibility Information System.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) and (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(7).

(4) *Reasons:* Granting individuals access to information collected and maintained in this system of records could interfere with orderly investigations; result in the disclosure of classified material; jeopardize the safety of informants, witnesses, and their families; disclose investigative techniques; and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified information that will not disclose the identity of sources who provide the information to the government under an express or implied promise of confidentiality.

(m) *System identifier and name:*

(1) *N05520–4, NCIS Investigative Files System.*

(2) *Exemption:* (i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reason:*

(i) Granting individuals access to information collected and maintained by this activity relating to the enforcement of criminal laws could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(5) *Exemption:*

(i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(iv) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(v) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(vi) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(6) *Authority:* 5 U.S.C. 552a(k)(1), (k)(3), (k)(4), (k)(5) and (k)(6).

(7) *Reason:*

(i) The release of disclosure accountings would permit the subject of

an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, would therefor present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record.

(ii) Access to the records contained in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation, and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony. Exempt portions of this system also contain information that has been properly classified under E.O. 12958, and that is required to be kept secret in the interest of national defense or foreign policy.

(iii) Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(iv) The notice of this system of records published in the **Federal Register** sets forth the basic statutory or related authority for maintenance of the system.

(v) The categories of sources of records in this system have been published in the **Federal Register** in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source, of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(vi) This system of records is exempted from procedures for notice to an individual as to the existence of records pertaining to him/her dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of, an investigation. This could enable the subjects to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

(vii) Exempt portions of this system containing screening board reports.

(viii) Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigation Service Command. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standard of the Special Agent Corps., *i.e.,* those records constituting examination material used solely to determine individual qualifications for appointment in the Federal service.

(n) *System identifier and name:*

(1) *N05520–5, Personnel Security Program Management Records System.*

(2) *Exemption:*

(i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (d)(1–5).

(3) *Authority:* 5 U.S.C. 552a(k)(1) and (k)(5).

(4) *Reasons:*

(i) Granting individuals access to information collected and maintained in this system of records could result in the disclosure of classified material; and jeopardize the safety of informants, and their families. Further, the integrity of the system must be ensured so that complete and accurate records of all adjudications are maintained. Amendment could cause alteration of the record of adjudication.

(o) *System identifier and name:*

(1) *N05527–1, Security Incident System.*

(2) *Exemption:*

(i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), and (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reasons:*

(i) Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and of law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation.The exemption of the individual's right of access to his or her records, and the reason therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(p) *System identifier and name:*

(1) *N05527–4, Naval Security Group Personnel Security/Access Files.*

(2) *Exemption:*

(i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iv) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(v) Investigatory material compiled solely for the purpose of determining

suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(vi) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1) through (k)(5).

(4) *Reasons:*

(i) Exempt portions of this system contain information that has been properly classified under E.O. 12958, and that is required to be kept secret in the interest of national defense or foreign policy.

(ii) Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualification, eligibility or suitability for access to classified special intelligence information, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(q) *System identifier and name:*

(1) *N05800–1, Legal Office Litigation/ Correspondence Files.*

(2) *Exemption:*

(i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(v) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(vi) Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(1), and (f)(2), (3), and (4).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7).

(4) *Reasons:*

(i) Subsection (d) because granting individuals access to information relating to the preparation and conduct of litigation would impair the development and implementation of legal strategy. Accordingly, such records are exempt under the attorney-client privilege. Disclosure might also compromise on-going investigations and reveal confidential informants. Additionally, granting access to the record subject would seriously impair the Navy's ability to negotiate settlements or pursue other civil remedies. Amendment is inappropriate because the litigation files contain official records including transcripts, court orders, investigatory materials, evidentiary materials such as exhibits, decisional memorandum and other case-related papers. Administrative due process could not be achieved by the ''exparte'' correction of such materials.

(ii) Subsection (e)(1) because it is not possible in all instances to determine relevancy or necessity of specific information in the early stages of case development. What appeared relevant and necessary when collected, ultimately may be deemed unnecessary upon assessment in the context of devising legal strategy. Information collected during civil litigation investigations which is not used during subject case is often retained to provide leads in other cases or to establish patterns of activity.

(iii) Subsections (f)(2), (3), and (4) because this record system is exempt from the individual access provisions of subsection (d).

(r) *System identifier and name:*

(1) *N01000–5, Naval Clemency and Parole Board Files.*

(2) *Exemption:*

(i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(4), (d), (e)(4)(G), and (f).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reasons:*

(i) Granting individuals access to records maintained by this Board could interfere with internal processes by which Board personnel are able to formulate decisions and policies with regard to clemency and parole in cases involving naval prisoners and other persons under the jurisdiction of the Board. Material will be screened to permit access to all material except such records or documents as reflecting items of opinion, conclusion, or recommendation expressed by individual board members or by the board as a whole.

(ii) The exemption of the individual's right to access to portions of these records, and the reasons therefore, necessitate the partial exemption of this system of records from the requirements of the other cited provisions.

(s) *System identifier and name:*

(1) *N06320–2, Family Advocacy Program System.*

(2) *Exemption:*

(i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(4) *Reasons:*

(i) Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all

individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accounting, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

(ii) Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(t) *System identifier and name:*

(1) *N12930–1, Human Resources Group Personnel Records.*

(2) *Exemption:*

(i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(4)(G) and (H), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(5) and (k)(6).

(4) *Reasons:*

(i) Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(ii) Exempted portions of this system also contain test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would comprise the objectivity or fairness of the testing or examination process.

§ 701.119 Exemptions for specific Marine Corps record systems.

(a) *System identifier and name:*

(1) *MMN00018, Base Security Incident Reporting System.*

(2) *Exemption:*

(i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e) (2) and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reasons:*

(i) Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and might enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his or her records, and the reasons therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(b) *System identifier and name:*

(1) *MIN00001, Personnel and Security Eligibility and Access Information System.*

(2) *Exemption:*

(i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) Portions of this system of records are exempt for the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(3) *Authority: 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5), as applicable.*

(4) *Reasons:*

(i) Exempt portions of this system contain information that has been properly classified under E.O. 12958, and that is required to be kept secret in the interest of national defense or foreign policy.

(ii) Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified, compartmented, or otherwise sensitive information, and was obtained by providing an expressed or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(iii) Exempt portions of this system further contain information that identifies sources whose confidentiality must be protected to ensure that the privacy and physical safety of these witnesses and informants are protected.

Dated: May 12, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–12465 Filed 5–17–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

(CGD08–00–011)

RIN 2115–AE47

Drawbridge Operating Regulation; Massalina Bayou, Florida

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Commander, Eighth Coast Guard District has temporarily changed the regulation governing the operation of the Tarpon Dock bascule span drawbridge across Massalina Bayou, mile 0.0, at Panama City, Bay County, Florida. The draw of the bridge may remain closed to navigation from 9 p.m. until 11 p.m. on July 4, 2000. This temporary rule is issued to facilitate movement of vehicular traffic associated with a fireworks display. Presently the draw opens on signal at all times.

DATES: This rule is effective from 9 p.m. to 11 p.m. on July 4, 2000.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD08–00–011 and are available for inspection or copying at the Bridge Administration Branch, Eighth Coast Guard District, 501 Magazine Street, Room 1313, New Orleans, Louisiana, 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, at the address given above. Telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. This temporary bridge closure has become an annual event in conjunction with the 4th of July fireworks celebration. The closure is for two hours and does not significantly affect marine traffic.

Background and Purpose

The City of Panama City, Florida requested a temporary rule, changing the operation of the Tarpon Dock bascule span drawbridge. The rule is needed to accommodate the additional volume of vehicular traffic that the fireworks display is expected to generate. The Tarpon Dock bascule span drawbridge across Massalina Bayou has a vertical clearance of 7 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists primarily of commercial fishing vessels, sailing vessels and other recreational craft.

Regulatory Evaluation

This temporary 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 temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This is because the number of vessels impaired by the closed-to-navigation period is minimal. All commercial vessels still have ample opportunity to transit this waterway before and after the two-hour closure on July 4, 2000.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

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 Tarpon dock bridge across Massalina Bayou from 9 p.m. to 11 p.m. on July 4, 2000.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the temporary rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Eighth Coast Guard District at the address above.

Collection of Information

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

Federalism

We have analyzed this temporary rule under E.O. 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 costs. This temporary rule would not impose an unfunded mandate.

Taking of Private Property

This temporary rule would 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 temporary 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 temporary 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.

Environmental

The Coast Guard considered the environmental impact of this temporary rule and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this temporary rule is categorically excluded from further environmental documentation. Bridge Administration Program actions that can be categorically excluded include promulgation of operating

regulations or procedures for drawbridges. A ''Categorical Exclusion Determination'' is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations, 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. From 9 p.m. until 11 p.m. on July 4, 2000, a new temporary § 117.T301 is added to read as follows:

§ 117.T301 Massalina Bayou.

The draw of the Tarpon Dock bascule span bridge, Massalina Bayou, mile 0.0 at Panama City, shall open on signal; except that from 9 p.m. until 11 p.m. on July 4, 2000, the draw need not open for the passage of vessels.

Dated: May 5, 2000.

K.J. Eldridge,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 00–12571 Filed 5–17–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska 00–003]

RIN 2115–AA97

Safety Zone; Port Graham, Cook Inlet, Alaska

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary 250-yard radius safety zone on the navigable waters located in Port Graham, Cook Inlet, Alaska. The Derrick Barge LOS ANGELES will anchor in this position and assemble the Exploratory Drilling Structure ''OSPREY''. This safety zone is implemented to ensure the safe and timely anchoring of the Derrick Barge LOS ANGELES and the safe assembly of the Drilling Structure OSPREY in Port Graham, Cook Inlet, Alaska. This safety zone is necessary because the operation requires the LOS ANGELES to remain in the anchoring position until the assembly of the OSPREY is complete. Vessels or personnel not engaged in the anchoring and assembly operation, and operating within the 250-yard radius may place themselves at risk to injury.

DATES: This temporary final rule is effective from 12:01 a.m. on June 16, 2000, until 11:59 p.m. on July 10, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Rodriguez, Chief of Port Operations, USCG Marine Safety Office, Anchorage, at (907) 271–6724.

SUPPLEMENTARY INFORMATION:

Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM and delaying the effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public. The OSPREY platform is a large structure that is difficult to maneuver, and will be towed in the strong currents of Cook Inlet, Alaska and vessels or personnel not engaged in the towing or setting down operation operating within the 600-yard radius may place themselves at risk of injury. The event is scheduled for June 16, 2000 and the permit request was only recently received.

Background and Purpose

The Coast Guard is establishing a temporary 250-yard radius safety zone on the navigable waters of the United States around the position Latitude 59–21.40 N, Longitude 151–49.50 W. The Derrick Barge LOS ANGELES will anchor in this position and assemble the tower to the tower legs of the Exploratory Drilling Structure ''OSPREY'' in Port Graham, Cook Inlet, Alaska. The safety zone is designed to permit the safe and timely anchoring and assembly of this structure in the narrow timeframe in which this can be safely done. The safety zone's 250-yard standoff also aids the safety of these evolutions by minimizing conflicts and hazards that might otherwise occur with other transiting vessels. The limited size of the zone is designed to minimize impact on other mariners transiting through the area.

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 cost and benefits under section 6(a)(3) of that order. It has not been reviewed 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 (DOT) (44 FR 11040; February 26, 1979). 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 DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule will have significant economic impacts 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. Because this safety zone is very small, will only be in effect for twenty five days, and does not impede access to other maritime facilities in the area, the Coast Guard believes there will be no impact to small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because it establishes a safety zone

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern 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 costs. This rule will not impose an unfunded mandate.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Temporary Final Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. From 12:01 a.m. on June 16, 2000, until 11:59 p.m. on July 10, 2000, § 165.T17–003 is temporarily added to read as follows:

§ 165.T17–003 Safety Zone; Port Graham, Cook Inlet, Alaska.

(a) *Description.* The following area is a Safety Zone: All navigable waters within a 250-yard radius of the Derrick Barge LOS ANGELES, located in Port Graham, Cook Inlet, Alaska.

(b) *Effective Dates.* This section is effective from 12:01 a.m. on June 16, 2000, until 11:59 p.m. on July 10, 2000.

(c) *Regulations.*

(1) The Captain of the Port means the Captain of the Port, Western Alaska. The Captain of the Port may authorize or designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf as his representative.

(2) The general regulations governing safety zones contained in Title 33 Code of Federal Regulations, part 165.23 apply. No person or vessel may enter, transit through, anchor or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port, Western Alaska, or his representative. The Captain of the Port or his representative may be contacted in the vicinity of the SWAN via marine VHF channel 16. The Captain of the Port's representative can also be contacted by telephone at (907) 271–6700.

Dated: April 14, 2000.

W. J. Hutmacher,

Captain, U.S. Coast Guard Captain of the Port, Western Alaska.

[FR Doc. 00–12461 Filed 5–17–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 096–1096b; FRL–6701–6]

Approval and Promulgation of Implementation Plans: State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final rule, we (EPA) are announcing approval of a revision to Missouri's State Implementation Plan (SIP) for air pollution control. This action approves the inspection and maintenance (I/M) program which is applicable to the St. Louis nonattainment area as a revision to the SIP. The state program requires the implementation of a motor vehicle I/M program containing many of the features of an enhanced I/M program in Jefferson, St. Louis, and St. Charles counties and St. Louis City. We proposed approval of this program in the **Federal Register** on February 17, 2000. This final action is being published to meet our statutory obligation under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on June 19, 2000.

ADDRESSES: A copy of the state submittal is available at the following address for inspection during normal business hours: EPA, Region 7, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Leland Daniels at (913) 551–7651.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards that we established. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP. Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding our proposed action on the state submission. If adverse comments are received, we must address them prior to taking any final action.

All state regulations and supporting information that we approve under section 110 of the CAA are incorporated into the Federally approved SIP. The record of such SIP approvals is maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR but are ''incorporated by reference,'' which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take an enforcement action to return a violator to compliance. Citizens are also offered legal recourse to address violations as described in section 304 the CAA.

What Is Being Addressed in This Document?

In a letter of November 10, 1999 to Dennis Grams, Regional Administrator, Stephen Mahfood, Director, Missouri Department of Natural Resources (MDNR), submitted a revised I/M program as an amendment to the SIP. The submittal included the SIP revision and a number of attachments including the adopted state statute and regulation, the signed I/M contract, a memorandum of understanding with the Missouri Highway Patrol, an interagency agreement with the Missouri Department of Revenue (MDOR), the I/M budget, modeling input and output files, sample calculations, a table showing the number of vehicles in the I/M program, procedures and specifications, a list of zip codes for the I/M program, the public education program, and an example of the MDOR contract with fee offices. The Missouri rule being approved is 10 CSR 10–5.380, Motor Vehicle Emissions Inspection, with a state effective date of December 30, 1999.

On February 17, 2000 we proposed to approve this SIP revision. The proposal stated that the state I/M regulations established pass/fail exhaust standards for hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen. Missouri neither passes nor fails vehicles based on carbon dioxide readings, nor do we require states to base compliance on carbon dioxide measurements, anywhere. Carbon dioxide is measured but only as a quality control process.

The public comment period was open through March 20, 2000. No comments were received. In the February 17, 2000, proposal, we noted that comments had been received on a prior proposal (64 FR 9460 on February 26, 1999) on a previous submission of the I/M program. The comments asserted deficiencies in the previous state submission. We also noted that the submission on which the February 17 proposal was based contained substantial revisions to the prior submittal, and encouraged comments relevant to the revised submittal. No comments were forthcoming, and we have determined that the prior comments are not relevant to the state's November 1999 submittal and our February 17, 2000 proposal.

On April 5, 2000 MDNR began implementation of the I/M program in the St. Louis nonattainment area.

This **Federal Register** notice takes final action to fully approve the I/M program, including the state's I/M rule, as it relates to the Missouri portion of the St. Louis nonattainment area.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR section 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in our proposal published February 17, 2000, the revision meets the substantive SIP requirements of the CAA, including section 110, Part D of Title I, and implementing regulations in 40 CFR part 51, subpart S (the ''I/M rule''). In the February 17 proposal, we discussed in detail how the state's submittal meets each of the relevant requirements of the I/M rule and EPA's rationale for approval. The reader is referred to that discussion for the rationale for this final action.

What Action Is EPA Taking?

Section 182(b) of the Act requires states with moderate ozone nonattainment areas to implement a ''basic'' I/M program. The state's plan relies on the I/M program and other specific control measures to achieve the necessary emission reductions so that the National Ambient Air Quality Standards are met. The I/M rule strengthens the SIP by obtaining needed emission reductions. Today's final action incorporates the St. Louis I/M program into the SIP.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This 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 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), 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. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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 Comptroller

General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

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 July 17, 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 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: May 8, 2000.

Dennis Grams,

Regional Administrator, Region 7.

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 AA—Missouri

2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for 10–5.380, under Chapter 5, to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
*	*	*	*	*
10–5.380	Motor vehicle emissions inspection.	12/30/99	[insert FR cite] May 18, 2000.	
*	*	*	*	*

3. In § 52.1320 the table in paragraph (e) is amended by adding an entry at the end of the table in the Nonregulatory SIP Provisions for the inspection/maintenance program, to read as follows:

* * * * *

(e) * * *

EPA-APPROVED MISSOURI NONREGULATIONS SIP PROVISIONS

Name of nonregulatory SIP Provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Implementation plan for the Missouri inspection/. maintenance program	St. Louis	11/12/99	[insert FR cite] May 18, 2000.	

[FR Doc. 00–12395 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 7 Tracking No. MO 102–1102; FRL–6701–5]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a nitrogen oxides (NO_X) reasonably available control technology (RACT) rule which is applicable to the St. Louis, Missouri, ozone nonattainment area. This rule reduces NO_X emissions in the St. Louis area by requiring major sources to install or comply with RACT as required by the Clean Air Act (CAA).

DATES: This rule is effective on June 19, 2000.

ADDRESSES: Copies of the state submittal are available at the following address for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551–7975.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we, us, or our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?
What is being addressed in this action?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What is the Federal approval process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What does Federal approval of a state regulation mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What is being addressed in this document?

NO_X emissions combine with volatile organic compound emissions on hot, sunny days to form ground level ozone, commonly known as smog. The purpose of the following rule is to establish RACT requirements in Missouri for major sources of NO_X emissions. These requirements will result in reductions of NO_X emissions which will help achieve reductions in ozone levels in the St. Louis ozone nonattainment area. The St. Louis ozone nonattainment area includes Franklin, Jefferson, St. Charles, and St. Louis counties, and St. Louis City in Missouri and Madison, St. Clair and Monroe counties in Illinois.

We are taking final action to approve as an amendment to the Missouri SIP, rule 10 CSR 10–5.510, ''Control of Emissions of Nitrogen Oxides,'' submitted to us on November 12, 1999. This NO_X RACT rule is applicable to all sources with the potential to emit 100 tons per year or more of nitrogen oxides in the Missouri portion of the St. Louis nonattainment area. The rule establishes emission limits, work practices, monitoring, testing, and recordkeeping and reporting requirements for boilers, stationary internal combustion (IC) turbines, stationary IC engines, incinerators, regenerative container melting glass furnaces, and portland cement kilns.

The rule also requires any other stationary source, which has the potential to emit NO_X in amounts greater than the major stationary source threshold, to undertake a ''case-by-case'' RACT study to evaluate controls to minimize NO_X emissions. This ''case-by-case'' analysis establishes a procedure for identifying all available control technologies and selecting the technology that provides the most effective, cost reasonable reduction technique.

For those units subject to a NO_X emission limitation, the final compliance deadline is May 1, 2002. An extension of the compliance deadline may be granted by the director, if the affected installation submits a plan no later than January 1, 2001. This plan, which is subject to approval by the Missouri Department of Natural Resources, must include a detailed analysis of the air quality benefit that will occur if the compliance date is extended, a detailed explanation of why the compliance date should be extended, and a proposed schedule for meeting compliance.

As required by 40 CFR 51.261(a)(2), no extension of the compliance date can be approved if it extends final compliance beyond the attainment date in the approved SIP.

We have reviewed the NO_X controls and averaging provisions in this rule and have determined that they are consistent with relevant EPA guidance and with NO_X controls approved as RACT for other states.

No comments were received in response to the public comment period regarding this rule action.

For more background information, the reader is referred to the proposal for this rulemaking published on February 17, 2000, at 65 FR 8092.

Have the requirements for approval of a SIP revision been met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR Part 51, Appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations and part D of Title I of the CAA.

What action is EPA taking?

We are taking final action to approve as an amendment to the Missouri SIP rule 10 CSR 10–5.510, ''Control of Emissions of Nitrogen Oxides,'' as meeting the requirement for NO_X RACT which is applicable to the Missouri portions of the St. Louis ozone nonattainment area.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant

economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This 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 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

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 July 17, 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: May 4, 2000

Dennis Grams,

Regional Administrator, Region 7.

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 AA—Missouri

2. § 52.1320 is amended by:

a. In the table to paragraph (c), Chapter 5, adding in numerical order entry ''10–5.510.''

The addition reads as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA—APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area				
*	*	*	*	*
10–5.510	Control of Emissions of Nitrogen Oxides.	February 29, 2000	[insert FR cite and May 18, 2000].	
*	*	*	*	*

[FR Doc. 00–12387 Filed 5–17–00; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 103–1103; FRL–6701–3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving Missouri's 15% Rate-of-Progress Plan (ROPP), and Missouri rule 10–CSR 10–5.300, ''Control of Emissions From Solvent Metal Cleaning.'' This Plan is intended to fulfill the requirements of section 182(b)(1)(A) of the Clean Air Act (CAA or Act).

DATES: This rule is effective on June 19, 2000.

ADDRESSES: Copies of the state submittals are available at the following address for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Royan Teter at (913) 551–7609.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever ''we, us, or our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a State Implementation Plan (SIP)?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this action?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

On November 12, 1999, Missouri submitted a revised ROPP. The plan established the 1996 target level of volatile organic compound (VOC) emissions for the Missouri portion of the St. Louis ozone nonattainment area. Missouri achieves the required reductions through a combination of 19 state and 9 Federal measures.

On February 17, 2000, (65 FR 8083) EPA proposed to approve Missouri's ROPP and VOC rule 10 CSR 10–10.300. The public provided comments on the proposed action. We are responding to those comments below.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, Appendix V. In addition, as explained above and in more detail in the technical support document which was part of the proposed action, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

Response to Comments

The Missouri Coalition for the Environment and the Sierra Club submitted jointly written comments regarding our February 17, 2000 proposal (65 FR 8083) to approve Missouri's 15% ROPP, and Missouri rule 10–CSR 10–5.300, ''Control of Emissions From Solvent Metal Cleaning.'' Their paraphrased comments and EPA's responses follow.

1. Comments Relating to the Statutory Requirements for Review of the ROPP

Comment: The commenters stated that the ROPP should be disapproved because it fails to show reasonable further progress ''as a matter of law.'' The commenters argue that the St. Louis nonattainment area is currently classified as ''serious'' under section 181 of the Act, and is therefore subject to the reasonable further progress (RFP) requirements of section 182(c) rather than 182(b).

In addition, they argue section 182(b) is no longer relevant for purposes of determining RFP because it governs RFP toward the goal of attainment by 1996 whereas it is now 2000. They contend the plan should be disapproved based on the premise that section 182(c) is the applicable CAA requirement and their conclusion that Missouri's plan does not purport to satisfy the RFP requirements of section 182(c).

Response: The St. Louis area is classified under section 181(a) of the Act as a moderate ozone nonattainment area, and has not been reclassified under section 181(b) as suggested by the commenters. In any event, the RFP requirements of section 182(b)(1) are applicable to all areas classified as

moderate or higher, and must be met regardless of an area's classification and attainment date.

The RFP requirements of the CAA are structured in an additive fashion. For example, section 182(c) states that serious areas must meet the requirements of both subsections (b) and (c). As stated in the proposal on Missouri's submission, the scope of this rulemaking is limited to determining whether the submission meets the RFP requirements in section 182(b)(1). Whether it also meets additional requirements of the Act, even if such requirements were relevant, is beyond the scope of the rulemaking.

2. Comments on the Adequacy of EPA's Notice of Its Statutory Authority for the Rule

Comment: The commenters argue that EPA failed to give notice of its statutory authority to approve a 15% Plan which relies on reductions in VOC emissions achieved after November 15, 1996 (the date specified in section 182(b)(1)(A)(i) for achieving the reductions). The commenters state that EPA has not met the notice requirements of section 307(d)(3)(C) of the Act, or section 553 of the Administrative Procedure Act (APA).

Response: As a preliminary matter, EPA notes that section 307(d) is not applicable to this rulemaking. Section 307(d)(1) lists the actions to which section 307(d) applies, and the list does not include approval of SIP submissions. *See, e.g., Missouri Limestone Producers* v. *Browner,* 165 F. 3d 619, 621 (8th Cir. 1999). Therefore, the rulemaking is governed by the provisions of section 553 of the APA, which requires, in relevant part, that a notice of proposed rulemaking include ''reference to the legal authority'' for the proposed rule, and ''a description of the subjects and issues involved'' in the proposed rule. APA, section 553(b). In general, the notice must be sufficient to allow for ''informed public comment.'' *Id.* at 623.

EPA believes that the notice criteria in section 553(b) were met in the notice of proposed rulemaking on the ROPP. The notice contained a description of the statutory requirements in section 182(b)(1) of the Act against which submission was evaluated and a description of how the submission meets those requirements. The notice contains a description of the issues involving the November 15, 1996 deadline, and a discussion of the rationale for approving a ROPP extending beyond that date. See 65 FR 8089–8091.

EPA notes that the commenters submitted extensive comments which took issue with EPA's stated legal basis for proposing to approve the ROPP. Therefore, EPA believes that the notice of proposed rulemaking provided sufficient notice to allow for ''informed public comment'' and to satisfy the requirements of the APA. The fact that the commenters disagree with EPA's basis for approval, to which EPA is responding below, does not mean that EPA failed to provide adequate notice of the basis for the proposed approval.

3. Comments Relating to the ROPP's Sufficiency With Respect to the Statutory Requirements

Comment: In general, the commenters assert that since section 182(b)(1) requires that the plan include a 15% decrease in baseline emissions by November 15, 1996, EPA cannot approve a plan which includes reductions occurring after 1996.

Response: This assertion is contrary to relevant case law and would provide a disincentive for states to continue to achieve emission reductions in an area once a statutory date is missed, thus defeating the purpose of section 182(b)(1). As EPA explained in the proposal, even after the November 15, 1996 deadline for demonstrating the 15% VOC reduction has passed, the requirement to achieve the emission reduction remains, and the reduction must be demonstrated as soon as practicable. This is based on the ruling in *Delaney* v. *EPA,* 898 F. 2d 687, 691 (9th Cir. 1990), stating that once a statutory deadline has passed and has not been replaced by a later one, the deadline then becomes as soon as possible, which EPA has interpreted to be as soon as practicable. The Missouri submission indicates, and EPA agrees, that this date is 2003, when the full reductions from the second phase of Missouri's motor vehicle inspection and maintenance program will be realized. As indicated in EPA's proposal, neither Missouri nor EPA has been able to identify any practicable measures which are not included in the plan and which could accelerate this demonstration date.

EPA also notes that the commenters do not take issue with the analysis of other measures, but only with the determination that a plan with a demonstration date after 1996 can be approved. For the reasons stated above and in the proposal, EPA believes that the Missouri submission can be approved even though the demonstration date is after 1996.

EPA also notes that, under the commenters' view that a 15% ROPP with a post-1996 demonstration date cannot be approved, there would be a disincentive for a state to adopt and implement a plan for achieving the 15% ROPP reductions, since EPA would be required to disapprove any post-1996 plan submitted by a state. In addition, EPA would be unable to promulgate a Federal plan after 1996, since it would also be unable to achieve emission reductions by 1996. EPA's approach keeps the requirement for emission reductions in place after 1996, and ensures that the reductions will be achieved as soon as practicable after that date.

Comment: Referring to language in section 182(b)(1)(A) of the CAA the commenters assert that Missouri's ROPP falls short of achieving the required VOC emissions reductions. They note that Missouri's plan only accounts for emissions growth between 1990 and 1996 and contend that the plan should also account for growth that occurred between 1996 and the time the state's plan was submitted. They further contend that Missouri's use of 1996 emissions projections (developed by applying economic growth factors to emissions estimates from previous years), is arbitrary and capricious for two reasons: (1) Their belief that there is no basis for relying on emissions projections at this late date, asserting that 1996 actual emissions should be inventories instead; and (2) the ROPP does not account for growth after 1996.

Response: Section 182(b)(1)(A)(i) reads, ''By no later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990, the state shall submit a revision to the applicable implementation plan to provide for volatile organic compound emission reductions within 6 years after the enactment of the Clean Air Act Amendments of 1990, of at least 15 percent from baseline emissions accounting for any growth in emissions after the year in which the Clean Air Act Amendments are enacted.'' As acknowledged by the commenters, the statute clearly contemplated that states would submit their ROPP by 1993 and implement them by 1996. The growth for which they must account is clearly tied to 1996.

The 1993 due date leads to a reasonable conclusion that Congress intended for the states to determine the required level of emissions reductions based on *projected* as opposed to actual emissions. Such an approach provides for equitable treatment of the states. It ensures there is no advantage gained from delayed implementation of emission control measures until after the compliance date has passed and

actual emissions can be estimated, rather than risk implementing a control plan designed around emission projections that are too high.

Though not directly relevant to this rulemaking, but nonetheless important to achieving the air quality standards, EPA notes that neither Missouri nor EPA intends to ignore post-1996 changes in the area's emissions inventory. Appropriate consideration of such changes is paramount to ensuring that ozone levels in the St. Louis area are reduced to acceptable levels. Missouri has accounted for such changes in its attainment demonstration upon which EPA proposed action on April 17, 2000 (65 FR 20404).

Comment: The commenters stated that, even if a plan could be submitted after the statutory deadline for achieving the 15% reductions, most of the reductions included in the Missouri submission are not creditable because they did not occur prior to November 15, 1996.

Response: As stated previously, once the statutory deadline for demonstrating the 15% ROPP reductions has passed, the requirement remains in effect, and the new deadline is a date which is as expeditious as practicable. Similarly, ROPP reductions are creditable if the state shows that the reduction will occur by the new ROPP demonstration date. Because Missouri has shown that the remaining reductions will occur by the 2003 demonstration date, EPA believes that the reductions are creditable under section 182(b)(1).

4. Comments Relating to the Absence of Contingency Measures in the 15% Plan

Comment: The commenters argue that Missouri's submission should not be approved because it does not include ''any specific contingency measures,'' and EPA's proposal makes no reference to the contingency measures to be approved as part of the 15% ROPP. The commenters assert that section 172(c)(9) of the Act requires that contingency measures meeting the requirements of that section must be included in any ROPP, and that failure to do so must result in disapproval of the plan. The commenters argue that this view linking the requirements of section 172(c)(9) with the requirements for ROPP was announced as an EPA interpretation of section 172(c)(9) in the April 16, 1992, General Preamble (57 FR 13,498).

Response: EPA does not agree that the contingency measure requirement in section 172(c)(9) must be met in order to meet the requirements for an approvable 15% ROPP. The Act requires contingency measures as part of the overall SIP and not as feature of each component of that plan, such as the 15% ROPP. Contrary to the commenters' contention, our position is supported by the plain language of section 172(c)(9). While the other subsections in section 172(c) begin with ''such plan provisions shall * * * ,'' section 172(c)(9) begins with ''such plan shall * * *.'' ''Such plan'' refers to the overall nonattainment plan rather than an individual element or provision of it. The difference in language between the contingency measures requirement and the other requirement in section 172(c) emphasizes that the contingency measures serve to backstop the entire nonattainment plan and not just particular elements of it.

This interpretation is consistent with the statement in the General Preamble cited by the commenters which, contrary to their characterization, did not state that contingency measures must be included in the ROPP. In the General Preamble, EPA stated the Act's requirements for nonattainment plan submittals for moderate nonattainment areas. these included the requirement for a 15% ROPP (discussed in section III.A.3.(a)), an attainment demonstration (discussed in section III.A.3.(b)), and contingency measures (discussed in section III.A.3.(c)), see 57 FR 13,498, 13507–13,512, as well as other requirements for moderate areas.

EPA stated that it expected the contingency measures would be submitted at the same time as these other plan elements, but did not state that the 15% ROPP or any other specific submittals were required to include contingency measures. Logically, had EPA intended to assert that contingency measures are required in 15% Plans, it would have said so in the General Preamble discussion of the requirements for 15% ROPP (section III.A.3.(a)), which contained a lengthy discussion of the contents of 15% Plans.

The commenters correctly note that EPA's proposal did not address the issue of whether the various VOC rule submittals, including rule 10 CSR 10–5.300 (which EPA proposed to approve into the SIP in the February 17, 2000, proposed rulemaking), were adequate to meet the contingency measure requirements of section 172(c)(9). The issue was not addressed because the proposal related only to whether Missouri met the 15% ROPP requirements in section 182(b)(1).

In the proposal (65 FR 8083, 8088), EPA noted that rule 10–5.300 had been submitted as part of the state's 1998 contingency measure SIP, and that a small fraction of the VOC reductions (0.64 tons per day out of an approximate total of 9 tons per day) was included in the state's 15% Plan demonstration. EPA has not determined whether the 1998 submittal meets the requirements of section 172(c)(9), and, as explained above, can approve Missouri's ROPP demonstration without making that determination. EPA will address the SIP's adequacy with respect to contingency measures in a separate rulemaking.

5. Comments Relating to EPA's Authority to Engage in Retroactive Rulemaking

Comment: Finally, the commenters object to EPA's proposed action as ''retroactive'' rulemaking which is not authorized under the Act. This comment is based on their assertion that EPA is proposing ''to give legal effect as of 1996 to events potentially occurring in 2000 and beyond.''

Response: This comment is based on an incorrect characterization of EPA's proposal. Although not stated, this comment appears to be based on the commenters' view, addressed above, that EPA cannot approve a 15% ROPP which relies on reductions occurring after 1996, and that to approve such a plan we are making it ''retroactive'' to 1996. However, this is not what EPA has done. Rather, EPA has explained the legal and policy basis for approving a ROPP demonstration which extends beyond 1966.

In addition, EPA's approval of the state plan does not take effect until the future effective date specified in this notice, and EPA's approval of the plan does not alter the effective dates (which were established by Missouri during its rulemaking process) of the rules on which the plan relies. For these reasons, EPA is not engaged in ''retroactive'' rulemaking and is authorized under the Act to take this final action.

What Action Is EPA Taking?

We are taking final action to approve Missouri's 15% ROPP for the St. Louis area and VOC rule 10 CSR 10–5.300. In separate actions published in today's **Federal Register**, we are approving several other VOC regulations which are elements of the ROPP.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant

economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998).

This 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 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirement of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859), March 15, 1988) by examining the takings implications of the 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*).

The Congressional Review Act, 5 U.S.C. section 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. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by July 17, 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 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: May 8, 2000.

Dennis Grams,

Regional Administrator, Region 7.

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 AA—Missouri

2. In § 52.1320, the table in paragraph (c) is amended by revising the entry for 10–5.300, under Chapter 5, to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA–APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	DPA approval date	Explanation
	Missouri Department of Natural Resources			
*	*	*	*	*
	Chapter 5—Air Quality Standards and Pollution Control Regulations for the St. Louis Metropolitan Area			
*	*	*	*	*
10–5.300	Control of Emissions From Solvent Metal Cleaning.	May 30, 1998	May 18, 2000.	
*	*	*	*	*

3. In § 52.1320, the table in paragraph (e) is amended by adding the following entry at the end of the table: ''15% Rate-of-Progress Plan.''

§ 52.1320 Identification of plan.

* * * * *

(e) * * *

EPA–APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State Submittal date	EPA approval date	Explanation
*	*	*	*	*
15% Rate-of-Progress Plan.	St. Louis	11/12/99	May 18, 2000	

[FR Doc. 00–12385 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 7 Tracking No. MO 101–1101; FRL–6701–4]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a set of volatile organic compound (VOC) rules for the St. Louis, Missouri, nonattainment area. These rules are intended to satisfy the reasonably available control technology (RACT) requirements of section 182(b)(2) of the Clean Air Act (Act) Amendments of 1990. The VOC reductions achieved by the implementation of these rules will be accounted for in the 15% Rate-of-Progress Plan (ROPP) and the attainment demonstration for the St. Louis nonattainment area as required in section 182(b)(1)(A) of the Act. EPA is addressing the reductions as part of the 15% ROPP and the attainment demonstration in separate rulemaking actions.

DATES: This rule is effective on June 19, 2000.

ADDRESSES: Copies of the state submittals are available at the following address for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Kim Johnson at (913) 551–7975.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we, us, or our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this action?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

VOC emissions combine with nitrogen oxide emissions on hot, sunny days to form ground level ozone, commonly known as smog. The purpose of the following rules is to establish RACT requirements for major sources of VOC emissions to help reduce ozone concentrations in the St. Louis ozone nonattainment area. The St. Louis ozone nonattainment area includes Franklin, Jefferson, St. Charles, and St. Louis counties, and St. Louis City in Missouri.

We are taking final action to approve as an amendment to the Missouri SIP the following rules:

10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading, and Transfer

Missouri has updated its existing rule 10 CSR 10–5.220 to improve the clarity of the regulation and generally strengthen the SIP. This rule restricts VOC emissions from the handling of petroleum liquids in five specific areas.

These areas include petroleum storage tanks with a capacity greater than 40,000 gallons, the loading of gasoline into delivery vessels, the transfer of gasoline from delivery vessels into storage containers, gasoline delivery vessels, and the fueling of motor vehicles from storage containers.

10 CSR 10–5.295 Control of Emissions From Aerospace Manufacture and Rework Facilities

This new rule requires all aerospace manufacture and rework facilities in the St. Louis nonattainment area, which emit greater than 25 tons per year, to use low VOC coatings and cleaning solvents.

10 CSR 10–5.500 Control of Emissions From Volatile Organic Liquid Storage

This rule limits the VOC emissions from installations storing large volumes of volatile organic liquids. The control requirements apply to all 40,000 gallon or larger volatile organic liquid storage containers storing liquid with a maximum true vapor pressure of one-half pound per square inch or greater.

10 CSR 10–5.520 Control of Volatile Organic Compound Emissions From Existing Major Sources

This new rule requires major facilities that are not regulated by current category-specific RACT regulations to conduct a RACT study and implement the RACT level controls defined by the study as approved by Missouri. Major facilities are defined as having the potential to emit 100 tons per year or more of VOCs.

10 CSR 10–5.530 Control of Volatile Organic Compound Emissions From Wood Furniture Manufacturing Operations

This rule limits the VOC emissions from wood furniture manufacturing operations that have the potential to emit equal to or greater than 25 tons per year of VOC emissions.

10 CSR 10–5.540 Control of Emissions From Batch Process Operations

This rule establishes RACT controls to limit the VOC emissions from batch process operations. The control requirements apply to batch operation sources that have the potential to emit equal to or greater than 100 tons per year of VOC emissions and that are identified by one of seven different four digit standard industrial classification codes under the chemical manufacturing category.

10 CSR 10–5.550 Control of Volatile Organic Compound Emissions From Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry

This new rule implements RACT control of VOC emissions from the synthetic organic chemical manufacturing industry. Specifically, this rule requires RACT for control of VOC emissions from any vent stream originating from a process unit in which a reactor process or distillation operation is located.

Summary

These new VOC RACT rules are consistent with Federal regulations and are consistent with the appropriate EPA control techniques guidelines or alternative control techniques documents. The rules contain enforceable emission limits, appropriate compliance methods, require recordkeeping to determine compliance, and meet all applicable enforceability requirements.

No comments were received in response to the public comment period regarding this rule action.

For more background information and a more detailed description of EPA's rationale for approval, the reader is referred to the proposal for this rulemaking published on February 17, 2000, at 65 FR 8094.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, Appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations and Part D of Title I of the Act.

What Action Is EPA Taking?

We are taking final action to approve as an amendment to the Missouri SIP the following rules applicable to the St. Louis nonattainment area:

10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading, and Transfer
10 CSR 10–5.295 Control of Emissions From Aerospace Manufacture and Rework Facilities
10 CSR 10–5.500 Control of Emissions from Volatile Organic Liquid Storage
10 CSR 10–5.520 Control of Volatile Organic Compound Emissions From Existing Major Sources
10 CSR 10–5.530 Control of Volatile Organic Compound Emissions From Wood Furniture Manufacturing Operations
10 CSR 10–5.540 Control of Emissions from Batch Process Operations
10 CSR 10–5.550 Control of Volatile Organic Compound Emissions From Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry

These rules will reduce VOC emissions in the St. Louis area and meet the RACT requirements of section 182(b)(2) of the Act as amended in 1990.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This 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 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the 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. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 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. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. section 804(2).

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 July 17, 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 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: May 2, 2000

Dennis Grams,

Regional Administrator, Region 7.

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 AA—Missouri

2. § 52.1320 is amended by:

a. In the table to paragraph (c), Chapter 5, revising the entry for ''10–5.220'';

b. In the table to paragraph (c), Chapter 5, adding in numerical order entries ''10–5.295,'' ''10–5.500,'' ''10–5.520,'' ''10–5.530,'' ''10–5.540,'' and ''10–5.550.''

The revision and additions read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
	Missouri Department of Natural Resources			
*	*	*	*	*
	Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area			
*	*	*	*	*
10–5.220	Control of Petroleum Liquid Storage, Loading, and Transfer.	August 30, 1999	May 18, 2000.	
*	*	*	*	*
10–5.295	Control of Emissions From Aerospace Manufacturing and Rework Facilities.	February 29, 2000	May 18, 2000.	
*	*	*	*	*
10–5.500	Control of Emissions From Volatile Organic Liquid Storage.	February 29, 2000	May 18, 2000.	
10–5.520	Control of Volatile Organic Compound Emissions From Existing Major Sources.	February 29, 2000	May 18, 2000.	
10–5.530	Control of Volatile Organic Compound Emissions From Wood Furniture Manufacturing Operations.	February 29, 2000	May 18, 2000.	
10–5.540	Control of Emissions From Batch Process Operations.	February 29, 2000	May 18, 2000.	
10–5.550	Control of Volatile Organic Compound Emissions From Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry.	February 29, 2000	May 18, 2000.	

EPA-APPROVED MISSOURI REGULATIONS—Continued

Missouri citation	Title	State effective date	EPA approval date	Explanation
* *	* *	*	*	*

[FR Doc. 00–12384 Filed 5–17–00; 8:45am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–6702–1]

Ocean Dumping: Designation of Site

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) designates an existing dredged material disposal site located in the Gulf of Mexico at the mouth of Atchafalaya Bay for the continued disposal of dredged material removed from the bar channel of the Atchafalaya River and Bayous Chene, Boeuf, and Black, Louisiana. This action is necessary to provide an acceptable ocean dumping site for current and future disposal of this material. This final site designation is for an indefinite period and is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATES: This rule is effective on June 19, 2000.

ADDRESSES: Monica Young (6WQ–EM), EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733.

Information supporting this designation is available for review at the following location: EPA, Region 6, 1445 Ross Ave, 9th floor file room, Dallas, TX 75202.

FOR FURTHER INFORMATION CONTACT: Monica Young 214–665–7349.

SUPPLEMENTARY INFORMATION:

Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), as amended, (33 U.S.C. 1401 *et seq.*), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

EPA's Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by promulgation in Part 228. A list of ''Approved Interim and Final Ocean Dumping Sites'' was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the Atchafalaya River Bar Channel ocean dredged material disposal site (ODMDS) on an interim basis.

The interim designation of the Atchafalaya River Bar Channel ODMDS was extended indefinitely in January 1980. However, Section 506 of the Water Resources Development Act (WRDA) of 1992, amended MPRSA such that beginning January 1, 1997, open water offshore disposal could only be into ODMDSs either designated by EPA under § 102(c) of the Act or selected by the Corps of Engineers (COE) under § 103(b) as an alternative site. Since EPA had not ruled on final designation by January 1, 1997, the Atchafalaya River Bar Channel ODMDS was selected by the New Orleans District COE as a § 103(b) alternative to accommodate annual channel maintenance dredging beyond 1996. Recognizing a five (5) year extension of the COE's § 103(b) selection allowed the continued use of the Atchafalaya River Bar Channel ODMDS through the year 2006, EPA was to designate the Atchafalaya River Bar Channel ODMDS site pursuant to § 102(c) of MPRSA, or to find that the site is inappropriate for final designation. This site designation is being published as final rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

Regulated Entities

Entities potentially regulated by this action are persons, organizations, or government bodies seeking to dispose of dredged material in ocean waters at the Atchafalaya River Bar Channel ODMDS, under the MPRSA, 33 U.S.C. 1401 *et seq.* The Rule would be primarily of relevance to parties in the Morgan City area seeking permits from the COE to transport dredged material for the purpose of disposal into ocean waters at the Atchafalaya River Bar Channel ODMDS, as well as the COE itself (when proposing to dispose of dredged material at the ODMDS). Potentially regulated categories and entities seeking to use the ODMDS and thus subject to this Rule include:

Category	Examples of regulated entities
Federal Government	U.S. Army Corps of Engineers Civil Works Projects. Other Federal Agencies, including the Department of Defense.
Industry and General Public	Port Authorities. Marinas and Harbors. Shipyards and Marine Repair Facilities. Berth Owners.
State, local and tribal governments	Governments owning and/or responsible for ports, harbors, and/or berths. Government agencies requiring disposal of dredged material associated with public works projects.

This table lists the types of entities that EPA is now aware could potentially be regulated. EPA notes, however, that nothing in this final ruling alters in any way, the jurisdiction of EPA, or the types of entities regulated under the MPRSA. To determine if you or your organization is potentially regulated by this action, you should carefully consider whether you expect to propose ocean disposal of dredged material, in accordance with the Purpose and Scope provisions of 40 CFR 220.1, and if you wish to use the Atchafalaya River Bar Channel ODMDS. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. Since ODMDS use is restricted to dredged material removed from the bar channel of the Atchafalaya River, EPA anticipates that the COE will be the only user of the ODMDS.

EIS Development

Section 102 (2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended (Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*), requires that

Federal agencies prepare Environmental Impact Statements (EISs) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. NEPA does not apply to ODMDS designations, however EPA voluntarily prepared an EIS in connection with this designation action.

EPA prepared a Draft EIS on the designation of the Atchafalaya River Bar Channel ODMDS in November, 1983. Six comment letters were received on the Draft EIS. Based on the comments received, EPA determined that a Supplemental Draft EIS was appropriate to correct information deficiencies and include more recent data in response to the commenting agencies. EPA and the COE jointly prepared the Supplemental Draft EIS, which was distributed to interested agencies, environmental groups and individuals for review in December, 1990. Five comments letters were received on the Supplemental Draft EIS. Responses to these comments were included in EPA's Final EIS, which was completed and distributed to interested agencies, environmental groups and individuals in November, 1998. The 30-day comment period on EPA's Final EIS closed on January 11, 1999.

Only one comment letter, from the State of Louisiana, Department of Culture, Recreation and Tourism, Office of Cultural Development, was received on the Final EIS. The Louisiana Office of Cultural Development found the document to be thorough and well written, and concurred with the evaluation that there would be no effect on significant cultural resources, and as such, had no objections to the proposal.

EPA's NEPA review included coordination with the State of Louisiana under requirements of the Coastal Zone Management Act. The State of Louisiana concurred with EPA's determination that final designation of the Atchafalaya River Bar Channel ODMDS is consistent, to the maximum extent practicable, with the Louisiana Coastal Resources Program.

This final rulemaking document fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

Site Designation

EPA's proposal to designate the Atchafalaya River Bar Channel ODMDS was published in the **Federal Register** on February 6, 1991 (pages 4777–4781). The public comment period on this proposed rule closed on March 25, 1991. One comment letter was received on the proposed rule from the U.S. Department of the Interior (DOI), Office of the Secretary, in Washington, D.C. The DOI recommended: (1) That dredged material be used for beneficial purposes (e.g., to rebuild eroded shoreline and increase marsh habitats); (2) that the final rule include a requirement for dredged material to be used to build bird islands and avoid shell reefs, in consultation with the U.S. Fish and Wildlife Service and the Louisiana Department of Wildlife and Fisheries; and (3) that the final rule require, prior to each dredging event, an interagency evaluation of the feasibility of using the dredged material to create marsh, reduce shoreline erosion, or build bird nesting/roosting islands.

In response to DOI's comments on the proposed rule (and similar comments received on the Supplemental Draft EIS), the Final EIS evaluated these recommendations, and other reasonable, beneficial use alternatives. EPA's action [*i.e.,* site designation under § 102(c) of MPRSA] does not authorize the placement of dredged materials or require interagency evaluation of beneficial use alternatives. However, beneficial use alternatives and other options for the placement of dredged material are evaluated through annual COE dredging conferences.

The Atchafalaya River Bar Channel ODMDS is located east of, and parallel to, the Atchafalaya River bar channel and is approximately 18.5 miles long. The center of the ODMDS is approximately 16 miles from the mouth of the Atchafalaya River. North Point of Point au Fer Island is about 2 miles east of the northern end of the site. The average water depth at the site is approximately 16 feet. Boundary coordinates of the rectangular shaped site are as follows: 29E20′59.92″N, 91E 23′33.23″W; 29E20′43.94″N, 91E23′09.73″W; 29E08′15.46″N, 91E34′51.02″W; and 29E07′59.43″N, 91E34′27.51″W.

Ocean Dumping Site Designation Criteria

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels.

The five general criteria are given in 40 CFR 228.5 of the Ocean Dumping Regulations. EPA has determined, based on the information and analyses in the Draft EIS, Supplemental Draft EIS, and Final EIS, that the site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the site has not resulted in substantial adverse impacts to living resources of the ocean or to other uses of the marine environment.

Section 228.6 of the Ocean Dumping Regulations lists eleven specific factors to be used in evaluating a proposed disposal site to assure that the general criteria are met. The characteristics of the site are reviewed below in terms of these eleven specific factors.

1. *Geographical position, depth of water, bottom topography, and distance from coast* (40 CFR 228.6(a)(1)).

Geographical position and average water depth are given above. The Atchafalaya River Bar Channel ODMDS is located in the near shore area of the Gulf of Mexico (*i.e.,* to a depth of about 75 feet). The ODMDS gently slopes from a depth of about 5 feet at its near shore end to about 22 feet at its seaward end. Except for being located adjacent to the dredged channel, the area occupied by the ODMDS is similar in depth and bottom topography to the overall lower Atchafalaya River area.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases* (40 CFR 228.6(a)(2)).

The northwestern Gulf of Mexico is a breeding, spawning, nursery, and feeding area for shrimp, menhaden, and bottomfish. To complete their life cycles, many of the species migrate seasonally between the coastal estuaries and the Gulf. Because the timing varies by species, some migration can occur at almost any time of the year. The ODMDS is located in a region dominated by species that are estuary-related. The ODMDS represents a small area (9.14 square miles) of the total range of the white and brown shrimp and their related communities; however, the nearby Atchafalaya River estuarine area is one of the region's major nursery areas.

Disposal of material at the ODMDS would have negligible effects on Federally listed endangered and threatened species. Endangered whale species which may be found in the vicinity of the ODMDS are the sei, fin, humpback, right, and sperm. However, occurrences of whales off Louisiana are

considered rare, and because the animals generally inhabit waters far deeper than those in the ODMDS, it is unlikely that disposal operations would have any impact on whale species.

Three species of sea turtles (hawksbill, Kemp's ridley, and leatherback) classified as endangered and two species of sea turtles (green and loggerhead) classified as threatened could potentially inhabit the ODMDS. Hopper dredging has been identified as a source of mortality (incidental take) to sea turtles in inshore waters. However, disposal of maintenance material dredged from the Atchafalaya River Bar Channel is by hydraulic cutter head pipeline dredge, which has not been identified as a source of sea turtle mortality.

3. *Location in relation to beaches and other amenity areas* (40 CFR 228.6(a)(3)).

The nearest point of land is North Point of Point au Fer Island, about 2 miles from the northeast end of the ODMDS. While it may be possible to observe the disposal plume, the plume is expected to dissipate quickly after completion of the disposal operations. Except for minor affects of these limited observations, there should be no effects on the aesthetics of the area. There are no known recreational parks, beaches, or other amenity areas in proximity to the ODMDS.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any* (40 CFR 228.6(a)(4)).

Material dredged from the upper one-third of the bar channel generally is comprised of 26% sand, 30% silt, and 44% clay, and material from the lower two-thirds of the bar channel generally is comprised of 7% sand, 44% silt, and 49% clay. An estimated 9 to 11 million cubic yards of material is removed annually from the Atchafalaya River Bar Channel using a hydraulic cutter head pipeline dredge and released within the ODMDS as an un-cohesive slurry. Future disposal operations will follow the past disposal pattern with respect to types, quantities, and methods of release. Any material disposed of at the site is required to comply with the criteria of the Ocean Dumping Regulations. None of the material will be packaged in any way. The COE will likely be the only user of the site.

5. *Feasibility of surveillance and monitoring* (40 CFR 228.6(a)(5)).

The ODMDS is shallow and close to shore, which facilitates surveillance and monitoring of the site. Operational observations can be made using shore-based radar, aircraft, ship riders, and day-use boats. Monitoring would be facilitated by the database that has been established for the ODMDS. A monitoring program has been developed by EPA in cooperation with the COE for the ODMDS, as part of the ''Atchafalaya ODMDS Site Management Plan.''

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any* (40 CFR 228.6(a)(6)).

Water currents in the vicinity of the ODMDS are very complex. Although tides, loop current intrusions, and river flow may affect the local currents, the currents are influenced predominantly by winds. Thus, the direction and velocity of currents vary throughout the year.

Water currents in the area can reach velocities sufficient to resuspend the disposed dredged material. The resuspended material would be transported in the direction of the current causing the resuspension. During these periods, constant mixing of the dredged material and sediments originally in the area takes place. The mixed dredged material and background sediments settle as the velocity decreases, and become resuspended when some event again raises the current velocity.

Sediment transport at the ODMDS is both to the northwest and to the southeast. The prevailing northwest currents are relatively weak and generally transport silt-sized and clay-sized particles. In the winter, however, stronger currents to the southeast, which are driven by the passage of cold-air outbreaks (northers), transport the latter particle sizes plus sand-sized particles. Gale-force winds for a duration of 20 to 30 hours are common during the passage of one of the cold-air outbreaks, which occur from 15 to 30 times each year.

7. *Existence and effects of current and previous discharges dumping in the area (including cumulative effects*) (40 CFR 228.6(a)(7)).

Sediment physical and chemical characteristics are generally similar within and adjacent to the ODMDS. Identified effects of dredged material disposal on sediments within the ODMDS include a few relatively high concentrations for sedimentary constituents (alpha chlordane, some chlorinated biphenols, para-para-DDD, iron, aluminum, perylene, zinc, oil, and grease). However, the area is influenced by shallow water depths, frequent resuspension of bottom sediments by winds and waves, and input of large quantities of fine sediments from riverine sources. Furthermore, dredged materials released at the ODMDS are similar to background sediments in the vicinity and are widely distributed by natural processes after deposition. Since the effects of disposal area temporary, there are no cumulative effects.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean* (40 CFR 228.6(a)(8)).

The ODMDS is outside the navigation channel and, thus, not in the path of ocean-going vessels. Some smaller boats may pass over the site; however, since any mounds are expected to be short-lived, there should be no interference. All dredging and disposal operations are closely coordinated among the dredging operators and the shipping interests to avoid interference with ship traffic. Without dredging, the channel would be impassible to most shipping.

There is periodic, short-term, interference with recreational activities at the ODMDS during disposal operations. The plumes of dredged material have a minor impact on targeted fish stocks, temporarily affecting recreational fishing in the area. This interference is temporary and restricted to the relatively small area of the ODMDS being used for disposal at the particular time. Past experience with use of the site for disposal of dredged material has not indicated interference with oil and gas exploration or production. No other types of mineral extraction are taking place either within the site or in the general vicinity of the site.

The nearest oyster leases are located about 4 miles to the east of the ODMDS, near Point au Fer. Because the transport of suspended materials from the ODMDS is mainly parallel to the coastline, adverse effects of disposal operations on these oyster beds should be minimal. In addition, the oyster beds are naturally subjected to periodic episodes of high, suspended-solid concentrations from the waters of the Atchafalaya River. There have been no impacts to oyster leases from past use, and no impact is expected to result from future use of the ODMDS.

The Atchafalaya Delta Wildlife Management Area is located about 8 miles to the north of the ODMDS. Shell Keys National Wildlife Refuge and Russell Sage—Marsh Island State Wildlife Refuge are located about 29 miles to the west of the ODMDS. There has been no impact to the refuges from past use, and none is expected to result from future use of the ODMDS.

Periodically, scientific studies are carried out in the area. Use of the site

is not expected to interfere with any such studies. It is not expected that use of the site for disposal of dredged material would interfere with any other legitimate uses of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment of baseline surveys* (40 CFR 228.6(a)(9)).

The water quality and ecology of the ODMDS generally reflect that of the near shore region off the Louisiana coast affected by discharges from the Atchafalaya River. The variations in water quality depend on the amount and mixing of freshwater runoff, which are highly variable.

In the summer, calm winds, freshwater input, and intrusions of offshore waters may restrict vertical mixing in the near shore waters. Under these conditions, bottom waters can be depleted of oxygen. This hypoxic condition (dissolved-oxygen content of less than 2 ppm) may be an annual phenomenon, but the event is patchy and ephemeral and has been shown to affect shelf waters from the Mississippi Delta to the upper Texas coast.

With the following exceptions, concentrations of trace metals in waters from the Atchafalaya River Bar Channel were below detection limits: concentrations of barium, iron, and manganese from the channel sample were greater, by a factor of 4, 2, and 3, respectively. There are no EPA marine acute or chronic criteria for these elements, however, and copper was less than the detection limit.

None of the water-column parameters measured during site surveys indicated that dredged material after disposal has a permanent or measurable effect on water quality in the area of the ODMDS. Waters off southeastern Louisiana are generally turbid because of shallow depths and riverine influences, and the levels of most parameters in the ODMDS appear to be typical of the region.

A site survey of macrofaunal distribution and abundance found 40 taxa, with very little difference in average taxa richness or overall average abundance. The general pattern of percent taxa and abundance group was approximately similar to those identified in other near-coastal and estuarine waters of the northern Gulf of Mexico.

The ODMDS benthic assemblage is dominated by species that live for about 1 year and undergo rapid population expansions. Results of site surveys indicated that most macrofaunal species were distributed in patches throughout the study area and several are considered opportunistic. Endemic species have considerable ability to adapt to a range of natural disturbances in their habitat. Thus, if dredged-material disposal had affected the density of these organisms, these effects could not be discerned.

Fish collected during site surveys are characteristic of the area. Furthermore, relative numbers of dominant organisms collected, such as large numbers of sciaenids (drums and croakers), are similar to results of other baseline studies conducted in the area.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site* (40 CFR 228.6(a)(10)).

Past disposal of dredged material at the existing ODMDS has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is expected that continued disposal of dredged material will not result in the development or recruitment of such species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance* (40 CFR 228.6(a)(11)).

Studies, which involved literature search and coordination with the Louisiana State Historic Preservation Officer, did not demonstrate any known features of historical importance within the ODMDS. However, results from the literature review indicate shipwrecks may be found near the Point Au Fer Shell Reef and at the mouth of the Atchafalaya River. Hence, the northernmost portion of the ODMDS is considered to have the greatest potential to contain submerged cultural resources.

Future dredging and disposal operations at the ODMDS will consider the results of the submerged cultural resources survey. Plans and specifications for dredging contracts would be reviewed by COE cultural resources specialists to ensure that significant cultural resources are not impacted by any proposed action. In addition, future disposal into the ODMDS area will be reviewed by the COE in compliance of Section 106 of the National Historic Preservation Act of 1966 (as amended), Final Rule for Operation and Maintenance Of Army Corps of Engineers Civil Works Projects Involving the Discharge of Dredged Material Into Waters of the U.S. or Ocean Waters (33 CFR parts 209, 335, 336, 337, and 338), and requirements of the Louisiana SHPO.

Action

The action evaluated through this EPA rulemaking and completed NEPA/EIS processes is designation under § 102(c) of MPRSA of the existing COE § 103(b) alternative ODMDS for dredged material removed from the Atchafalaya River Bar Channel. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal of dredged materials removed from the Atchafalaya River Bar Channel. The evaluative processes provide a thorough and objective evaluation of reasonable alternatives, including no action, and the information needed to evaluate the suitability of an ocean disposal area for final site designation. EPA's final site designation is being conducted in accordance with the MPRSA, the Ocean Dumping Regulations, and other applicable Federal environmental legislation. Once designated, the appropriateness of ocean disposal is determined on a case-by-case basis.

EPA emphasizes that ocean disposal site designation does not constitute or imply EPA Region VI's or the COE's approval of ocean disposal of dredged material from any project. Before disposal of any dredged material at the Atchafalaya River Bar Channel ODMDS may occur, EPA Region VI and the COE must evaluate the proposed project according to the Ocean Dumping Criteria (40 CFR part 227) adopted pursuant to the MPRSA. EPA Region VI or the COE will not allow ocean disposal of dredged material if either agency determines that the Ocean Dumping Criteria are not met. In addition, the COE is required to evaluate all proposed dredging projects associated with the Atchafalaya River in accordance with the Coastal Zone Management Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Endangered Species Act.

Administrative Requirements

1. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of

State, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's final Rule does not create a mandate on State, local, or tribal governments. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. This final Rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this Rule.

2. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the 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 final Rule does not significantly or uniquely affect the communities of Indian tribal governments. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

3. Executive Order 12866

Under Executive Order 12866, (58 FR51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and other requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to lead to a rule that may:

(a) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principals set forth in the Executive Order.

This final Rule should have minimal impact on permittees. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. Consequently, EPA has determined that this Rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

4. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA 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 EPA.

This final Rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have any reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA.

5. Executive Order 13132

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is no required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

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

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 because it only has the effect of designating an existing ocean disposal site and does not alter the relationship or the distribution of power and responsibilities among the levels of government. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

6. Regulatory Flexibility Act, as Amended by the Small Businesses Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that whenever an agency promulgates a final rule under 5 U.S.C. 553, the agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the final Rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 604 and 605). Today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. Consequently, EPA's final Rule will not impose any additional economic burden on small entities. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the final Rule will not have a significant economic impact on a substantial number of small entities.

7. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the final Rule would not establish or modify any information or record-keeping requirements, but only finalizes existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

8. The Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. Consequently, it imposes no new enforceable duty on any State, local, or tribal governments or the private sector. Similarly, EPA has also determined that this Rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this Rule.

9. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12 (d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus 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. This Rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

10. 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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 19, 2000.

11. Endangered Species Act

Pursuant to section 7(a) of the Endangered Species Act, federal agencies must insure that their actions are unlikely to jeopardize the continued existence of listed threatened or endangered species or result in adverse modification or destruction of designated critical habitat. Continuing to dispose of dredged material at the designated site will not materially change the status quo and there is no designated critical habitat in the area. Moreover, the COE will continue to consult with the National Marine Fisheries Service (NMFS) on its own project-specific use of the site and on any project for which it proposes to issue a permit authorizing disposal of dredged material at the site. EPA accordingly found today's designation action was unlikely to adversely affect any listed species or critical habitat. NMFS concurred in that finding by letter dated September 9, 1999.

12. Magnuson-Stevens Fishery Conservation and Management Act

Under section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act, federal agencies must consult with the NMFS and appropriate fisheries councils before undertaking actions that may adversely affect designated essential fish habitat. NMFS has designated most of the Gulf of Mexico, including the area in which the designated disposal site is located, as essential fish habitat. It is unlikely that today's designation action will adversely affect essential fish habitat because it will not materially change the status quo. Because potentially adverse effects might be associated with its future use in the context of a specific project, the COE will continue to consult NMFS on a case-by-case basis. See 50 CFR 605.920(2).

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: January 25, 2000.

Jerry Clifford,

Acting Regional Administrator of Region 6.

In consideration of the foregoing, EPA amends subchapter H of chapter I of title 40 of the Code of Federal Regulations as set forth below.

PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

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

Authority: 33 U.S.C. 1412 and 1418.

§ 228.14 [Amended]

2. Amend § 228.14 by removing and reserving paragraph (j)(5).

3. Amend § 228.15 by adding a new paragraph (j)(21) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(j) * * *

(21) Atchafalaya River and Bayous Chene, Boeuf, and Black, LA

(i) *Location:* 29E20′59.92″ N, 91E 23′ 33.23″ W; 29E20′43.94″ N, 91E23′09.73″ W; 29E08′15.46″ N, 91E34′51.02″ W; and 29E07′59.43″ N, 91E34′27.51″ W.

(ii) *Size:* 9.14 square miles.

(iii) *Depth:* Average water depth of 16 feet.

(iv) *Primary Use:* Dredge material.

(v) *Period of Use:* Indefinite period of time.

(vi) *Restriction:* Disposal shall be limited to dredged material from the bar channel of the Atchafalaya River and Bayous Chene, Boeuf, and Black, Louisiana.

* * * * *

[FR Doc. 00–12388 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–322; MM Docket No. 98–112; RM–9027; RM–9268; RM–9384]

Radio Broadcasting Services; Anniston and Ashland, AL, and College Park, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: At the request of WNNX License Investment Company this document substitutes Channel 263C3 for Channel 263C at Anniston, Alabama, reallots Channel 263C3 to College Park, Georgia, and modifies the license of Station WHMA to specify operation on Channel 263C3 at College Park. In addition, this document allots Channel 261C3 to Anniston, Alabama, and Channel 264A to Ashland, Alabama. *See* 63 FR 38787, published July 20, 1998. The reference coordinates for Channel 263C3 at College Park, Georgia, are 33–45–32 and 84–30–10. The reference coordinates for Channel 261C3 at Anniston, Alabama, are 33–40–51 and 85–48–56. The reference coordinates for Channel 264A at Ashland, Alabama, are 33–13–15 and 85–49–35. With this action, the proceeding is terminated.

DATES: Effective June 14, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 98–112, adopted April 24, 2000, and released April 28, 2000. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

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

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 263C and adding Channel 261C3 at Anniston.

3. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Channel 264A, at Ashland.

4. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding College Park, Channel 263C3.

Federal Communications Commission.

John A. Karousos,

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

[FR Doc. 00–12256 Filed 5–17–00; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

48 CFR Parts 1516 and 1552

[FRL–6606–6]

RIN 2030–AA74

Acquisition Regulation: Award Fee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on amending the EPA Acquisition Regulation (EPAAR) to comport with changes made to the Federal Acquisition Regulation (FAR) in Federal Acquisition Circular (FAC) 97–15 dated December 27, 1999 (FAR Case 98–017). The changes to the FAR were made to implement the rulings of the United States Court of Appeals and the United States Court of Federal Claims that the Contracts Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies.

DATES: This rule is effective on August 16, 2000, without further notice, unless EPA receives adverse comments by June 19, 2000. If we receive adverse comments, we will, before the rule's effective date, publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be submitted to the contact listed below at the following address: U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: rellins.jean@epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Corel WordPerfect format or ASCII file format. No confidential business information (CBI) should be submitted through e-mail. Electronic comments on this rule may be filed on-line at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Jean Rellins, U.S. EPA, Office of Acquisition Management, (3802R), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564–4434.

SUPPLEMENTARY INFORMATION:

A. Background

Why is EPA utilizing a direct final rule to revise an EPAAR clause? Federal Acquisition Circular 97–15 amended the FAR to implement the rulings of the United States Court of Appeals and the United States Court of Federal Claims (Burnside-Ott case) that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies. This direct final rule is being published without prior proposal because we view this as a non-controversial change to the EPAAR intended to make the EPAAR consistent with the FAR. We do not anticipate any adverse comments. This rule will be effective on August 16, 2000, without further notice unless we receive adverse comments by June 19, 2000. If EPA receives adverse comments, we will,

before the rule's effective date, publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We also will publish a notice of proposed rulemaking in a future edition of the **Federal Register**. We will address the comments on the direct final rule as part of that proposed rulemaking.

B. Executive Order 12866

This direct final rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this direct final rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Regulatory Flexibility Act

The EPA certifies that this direct final rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the rule impose no reporting, record keeping, or any compliance costs.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This direct final 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 one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks.

G. Executive Order 13132

Executive Order 13132 entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under Section 6 of 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 direct final rule does not have federalism implications. It 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. This direct final rule merely changes the EPAAR to be consistent with the FAR. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

H. Executive Order 13084

Under E.O. 13084, 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 Tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the 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, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal government ''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 E.O. 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. 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.

This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rules report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Accordingly, under the authority of 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c), 48 CFR Chapter 15 is amended as follows:

List of Subjects in 48 CFR Part 1516 and 1552

Government procurement.

1. The authority citation for part 1516 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1516.405 is amended by revising paragraph (a) as follows:

1516.405 Contract clauses.

(a) The Contracting Officer shall insert the clause at 1552.216–70, Award fee (May 2000), in solicitations and contracts where a cost-plus-award-fee contract is contemplated.

* * * * *

3. The authority citation for part 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

4. Section 1552.216–70 is amended by revising the prescription date from (SEPT 1995) to (May 2000), and revising paragraph (b) to read as follows:

1552.216–70 Award fee.

* * * * *

(b) Award fee determinations made by the Government under this contract are unilaterally determined by the Fee Determination Official (FDO). The amount of the award fee to be paid is determined by the Government's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

* * * * *

Dated: April 28, 2000.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 00–12022 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 000511138–0138–01; I.D. 051100B]

RIN 0648–A019

Sea Turtle Conservation; Restrictions to Fishing Activities

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

ACTION: Temporary rule; request for comments.

SUMMARY: NMFS is closing an area along eastern North Carolina and Virginia to fishing with large-mesh gillnets with a stretched mesh size of 6 inches (15.24 cm) or greater for a 30-day period. The closed area includes all Atlantic Ocean waters between Cape Hatteras and 38° N. latitude (near the Virginia-Maryland border), west of 75° W. longitude, and a specified part of Chesapeake Bay. NMFS is taking this action because of its determination that gillnet fishing with large-mesh gillnets is the most likely cause of significant increases in the stranding of sea turtles listed as threatened or endangered under the Endangered Species Act (ESA) along the eastern coast of North Carolina. This action is necessary to protect threatened and endangered turtles from being taken by large-mesh gillnets along the North Carolina and Virginia coasts during their northern migration.

DATES: This action is effective from May 12, 2000 through June 12, 2000. Comments on this action are requested, and must be received at the appropriate address or fax number (**ADDRESSES**) by no later than 5 p.m., eastern daylight time, on June 12, 2000.

ADDRESSES: Written comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz (ph. 727–570–5312, fax 727–570–5517, e-mail Chuck.Oravetz@noaa.gov), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail Barbara.Schroeder@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles—even incidentally—is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of endangered species may only legally be authorized by an incidental take statement or an incidental take permit issued pursuant to section 7 or 10 of the ESA. Existing sea turtle conservation regulations specify procedures that NMFS may use to determine that unauthorized takings of sea turtles are occurring during fishing activities, and to impose additional restrictions to conserve listed sea turtles and to prevent unauthorized takings (50 CFR 223.206(d)(4)). Restrictions may be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each.

Recent Events

The Sea Turtle Salvage and Stranding Network has documented a high level of sea turtle strandings in North Carolina this spring. There have been two stranding events involving unprecedented numbers of turtles, along the Outer Banks in Dare and Hyde counties.

During the first stranding event, a total of 71 turtles (69 loggerheads and 2 Kemp's ridleys) washed ashore on the ocean-facing beaches between Rodanthe and Ocracoke from April 14–17, 2000. There were no externally obvious signs of death on the turtles. Necropsies revealed that the turtles had excellent fat stores and were probably in good health prior to their deaths. A few of the turtles had been feeding on nearshore, benthic species, but most had empty guts, suggesting that they were in a migratory, rather than foraging, mode. The uniform state of decomposition of the turtles indicated that they had likely all died suddenly within a short period of time, probably no more than a few days before stranding on the beach. Large amounts of sargassum weed blew ashore, coincident with the turtle strandings, and indicative of the

movement of warm Gulf Stream waters close to shore.

NMFS began investigating possible causes of the sea turtle mortality event immediately. The absence of other species in the die-off was inconsistent with a toxic algae bloom. Also, there were no major traumatic injuries such as might be caused by dredging or blasting. None of the turtles had ingested any fishing hooks. NMFS, therefore, turned attention to activities that could drown large numbers of turtles, such as net fishing. There was no trawl fishing activity in the area at the time, and gillnetting was reportedly light, although there was some activity for dogfish nearshore. Monkfish gillnetting was reported to be over in the area, but NMFS subsequently learned that gillnetters continued landing monkfish in North Carolina through the end of April. Gillnetting therefore was the most likely cause of this stranding event. Sea turtles are vulnerable to entanglement in gillnets and can drown in under an hour of forced submergence.

Oceanographic conditions probably played a role in concentrating the sea turtles off the Outer Banks. Loggerhead and Kemp's ridley turtles are known to use summer foraging grounds along the mid-Atlantic and northeast seaboard. For many turtles, their spring migrations to these feeding grounds from wintering areas along the southeastern U.S. or from warm offshore waters will bring them near Cape Hatteras. The warm Gulf Stream flows southwest to northeast past Cape Hatteras. The exact position of the Gulf Stream in this area can be highly variable week-to-week, and its position, along with local winds and counterclockwise warm-water currents from the Gulf Stream can strongly affect the coastal waters. This spring, the Gulf Stream has come quite close to Cape Hatteras: only 10 to 15 nautical miles. As usual, the coastal water inshore of the Gulf Stream has been strongly affected by eddies off the Gulf Stream. Around the time of this first stranding event, warm eddies brought water up to 20 °C (68 °F) ashore along Ocracoke and Hatteras Islands, while coastal waters farther to the north were still cold (less than 14 °C), deterring turtles from proceeding northward up the coast. The warm eddy allowed turtles to move inshore where they were vulnerable to coastal fisheries and where they were more likely to strand. Onshore winds that began on April 14 likely pushed the carcasses ashore. Immediately after this stranding event, cold water pushed in from the north around Cape Hatteras, replacing the warm eddy waters. Sea turtles were forced back offshore to find warmer water. While cold water prevailed along the coast, the strandings were greatly diminished.

A second stranding event began on May 3. From May 3–8, approximately 209 additional sea turtles (3 Kemp's ridleys, the rest loggerheads) were found dead on ocean beaches between Oregon Inlet and Hatteras Inlet. Virtually all were severely decomposed, suggesting that they had been dead at sea for at least several days before stranding. The sheer numbers and the advanced decomposition of these animals preclude meaningful necropsies. Those carcasses that have been scanned with a magnetometer have not contained any hooks. Four of the carcasses were entangled in fishing gear: Three loggerheads carried pieces of gillnet with a mesh size of 12 inches (30.48 cm) stretched, and one loggerhead was carrying gillnet with a mesh size of 10 inches (25.4 cm) stretched.

Oceanographic conditions were again a factor in this wave of strandings. Cold water lay along the North Carolina coast all the way to Cape Lookout through the end of April. Sea turtles can tolerate water temperatures down to about 10 °C, but with warm water (greater than 20 °C) only 15 to 20 nm offshore, they likely would have remained in or near the 20 °C thermal front. Satellite imagery showed a small tongue of warm water curling back towards the coast from the Gulf Stream, about 15 nautical miles east of Avon, on April 30. This tongue of warm water slowly grew and extended westward until it hit the North Carolina coast between Avon and Rodanthe on May 3, the day the turtle carcasses washed ashore. Because the satellite imagery so clearly shows a distinct water mass moving in from offshore at the exact place and time that the strandings started, it is clear that the turtles also died offshore, perhaps as much as a week before they stranded, and were then brought ashore by that water mass. Three fisheries were active in offshore waters the week prior to the strandings: hook-and-line fishing for mackerel, bluefish gillnetting, and monkfish gillnetting. The mesh sizes of the gear recovered with the stranded turtles are only consistent with gillnets for monkfish. Again, there was no evidence that the turtles had been hooked.

Analysis of Other Factors

Examination of the strandings on the Outer Banks indicates that the most likely source of sea turtle mortality is large-mesh gillnetting for monkfish and possibly dogfish. Other possible causes are not consistent with the nature of the strandings. Satellite sea surface temperature information has allowed NMFS to reconstruct the likely times and locations of the sea turtle mortality. Gillnetting for dogfish and monkfish have been the active fisheries in those times and places. These fisheries deploy thousands of yards/meters of gillnets and have very long soak times, ranging from overnight to several days. Large-mesh gillnets are known to be highly effective at catching turtles and in fact were the gear of choice during the historical sea turtle fishery. Bluefish gillnetting was also active in offshore waters at the time of the second mortality event. The bluefish fishery, however, uses smaller-mesh nets (5½ inches/13.97 cm), much less net per boat, and much shorter soak times (less than an hour to several hours) than the large-mesh gillnet fisheries. While bluefish gillnets can catch and drown turtles, these fishing characteristics make bluefish gillnetting a smaller threat to sea turtles.

Impacts on Sea Turtles

The number of dead turtles in these two stranding events is unprecedented. The 10-year stranding average (1989–98) for the entire state of North Carolina for loggerheads is 219 per year; in contrast, approximately 290 have stranded in just these two events. Springtime strandings in Dare and Hyde counties, North Carolina, however, are not unusual. Historically, there has been a small spike in turtle strandings in statistical zone 35, which generally corresponds to those two counties, as the north-migrating turtles encountered coastal fisheries. In recent years, the number of stranded turtles, particularly loggerheads, has grown. In 1997 and 1998, a total of 34 and 26 loggerheads stranded in Zone 35 in May and the first 2 weeks of June. The strandings increased dramatically in 1999, to a total of 86 loggerheads for that same period. That stranding level was itself a record. NMFS believes that these increases in mortality are the result of increased fishing effort, a shift of fishing effort later into the season, fishing methods that are more lethal to sea turtles, and, this year, oceanographic conditions that likely concentrated sea turtles off Cape Hatteras.

Strandings are a minimum indicator of at-sea mortality as winds and currents will carry many carcasses offshore. The turtles involved in the second stranding event likely were killed 10–20 nm offshore and only reached shore because a warm eddy broke off. Other turtles that may have died before the eddy formed likely were swept out to sea by the Gulf Stream.

This extreme increase in loggerhead mortality may pose a serious threat to the species' recovery, especially as the mortality has occurred at a choke point in these turtles' migration to their summer foraging grounds. Most loggerheads in U.S. waters come from one of two genetically distinct nesting populations. The population that nests in south Florida is much larger and has shown increases in nesting. The northern population that nests from northeast Florida through North Carolina is much smaller and nesting numbers are stable or declining. Previous studies suggest that up to half of the turtles stranded in North Carolina would be from the smaller, northern population. The overwhelming number of stranded turtles has precluded a full analysis of the sizes of the affected animals, but preliminary data suggest that they had a representative distribution, ranging from immatures to adults.

Continued Threat to Sea Turtles

Historical data show that increases in sea turtle strandings move south-to-north up the mid-Atlantic coast in May and June, as the migratory turtles arrive. Virginia has shown seasonal pulses in sea turtle strandings which could be magnified if the stranding trend in North Carolina continues northward. Strandings in Virginia are always the highest in the month of June, and the stranding reports for zone 36 (36-37° N. latitude) and zone 37 (37–38° N. latitude [approximately the Virginia-Maryland border]) combined have shown a definite increase in strandings in the past several years. For example, strandings in June of 1994 were recorded to be 62 animals in zones 36 and 37 combined, 81 were found in 1995, 64 in 1996, 145 in 1997, 161 in 1998, and 157 in 1999. A total of 230 dead sea turtles stranded in Virginia in 1999, including 200 loggerheads, 18 Kemp's ridleys, 6 leatherbacks and 6 unidentified turtles. Most of the strandings in Virginia have been documented from the ocean beaches south of Cape Henry and the inshore beaches in southern Chesapeake Bay. Relatively few strandings are reported from the remote and sparsely populated barrier islands of the Eastern Shore.

Based on past data, NMFS anticipates an increase in strandings in Virginia during late May and June with the migration of turtles up the Atlantic coast. Given the unusually high level of strandings in North Carolina this year and the increasing trend in strandings in recent years in Virginia, it is critical that action be implemented to reduce the likelihood that interactions with fishing gear will result in additional mortalities of sea turtles. Several large-mesh gillnet fisheries–monkfish, smooth dogfish, and black drum–are currently operating in Atlantic waters off Virginia and in Chesapeake Bay.

The coastal waters north of Cape Hatteras have warmed rapidly since May 3, and sea turtles are now moving northward toward Virginia. In fact, an aerial survey flown May 6 between the Virginia border and Cape Hatteras, approximately 5 nm offshore, sighted 30 turtles that are already north of Oregon Inlet. South of Oregon Inlet, where the strandings have been occurring, only 3 turtles were sighted. The waters to the north and farther offshore have not been surveyed, but it is clear that turtles are already entering waters off Virginia. No major stranding event has occurred in Virginia yet, but as the turtles continue their northward migration, they will continue to be vulnerable to coastal and offshore large-mesh gillnet fisheries. The turtles will likely still be concentrated on their migratory routes over the next weeks, until they disperse over their foraging grounds. Gillnet fisheries in the path of the migration can capture and kill large numbers of turtles and possibly disrupt other turtles from reaching important feeding areas. Further mortality, added to the already record-setting number of strandings, along with the undetected at-sea mortality, could be extremely damaging to loggerheads, particularly the non-recovering northern population.

Closure of Large-Mesh Gillnet Fishing

Pursuant to 50 CFR 223.206(d)(4), the exemption for incidental taking of sea turtles in 50 CFR 223.206(d)(1) does not authorize incidental takings during fishing activities if the takings may be likely to jeopardize the continued existence of a species listed under the ESA. Regulations at 50 CFR 223.206(d)(4) provide that the Assistant Administrator for Fisheries, NOAA, (AA) may issue a determination that incidental takings in the course of fishing activities are unauthorized, and specify procedures that the AA may use to impose additional restrictions to conserve listed sea turtles and prevent such takings. The level of mortality suffered by loggerhead turtles this spring off eastern North Carolina is already unprecedented and is severely impacting the northern nesting population of loggerheads. Continued mortality caused by incidental capture in large-mesh gillnets during loggerhead migrations along the mid-Atlantic coast could significantly affect this population and its ability to recover and may be likely to jeopardize the species. Therefore, the AA issues this determination that takings of threatened or endangered sea turtles by large-mesh gillnetters in mid-Atlantic waters along eastern North Carolina and Virginia are unauthorized and issues this additional restriction on fishing activities to conserve threatened and endangered sea turtles, particularly loggerhead turtles. Specifically, the AA closes the Atlantic Ocean waters of North Carolina and Virginia and in the mouth of the Chesapeake Bay to all fishing with gillnets with a stretched mesh size of 6 inches (15.24 cm) or greater. The closed area includes all offshore waters bounded by 35°13′ N. latitude on the south (approximately Cape Hatteras), 38° N. latitude on the north (just south of the Maryland-Virginia border), 75° W. longitude on the east, and the North Carolina and Virginia coasts on the west. At inlets, the western boundary of the closed area is the COLREGS demarcation line, except in Chesapeake Bay, where the closed area includes the waters contained in the regulated navigation area for Chesapeake Bay entrance and Hampton Roads, Va. and adjacent waters (as defined at 33 CFR 165.501(a)) that are east of the southeastern span of the Hampton Roads Bridge-Tunnel and the line connecting Old Point Comfort Light and Fort Wool Light. This closure is effective from May 12, 2000 through 11:59 p.m. (local time) June 12, 2000. For the duration of this closure, no gillnet with a stretched mesh size measuring 6 inches (15.24 cm) or greater may be set in the closed area. All such gillnets that are currently set must be retrieved by 11:59 p.m on May 15, 2000.

This restriction has been announced on the NOAA weather channel, in newspapers, and other media.

Additional Conservation Measures

The AA may withdraw or modify any additional restriction on fishing activities if the AA determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of this 30-day action, will be published in the **Federal Register** pursuant to 50 CFR 223.206(d)(4).

NMFS will continue to monitor sea turtle strandings to gauge the effectiveness of these conservation measures.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA has determined that this action is necessary to respond to an emergency situation to provide adequate protection for endangered and

threatened sea turtles, primarily the loggerhead sea turtle, pursuant to the ESA and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing this action in a timely manner to protect the listed sea turtles. Notification of and opportunity to comment on the procedures allowing the implementation of temporary measures to protect sea turtles was provided through the proposed rule which established these actions (57 FR 18446, April 30, 1992). For the same reasons, the AA finds good cause also under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. NMFS is making the rule effective May 12, 2000 through June 12, 2000. Immediately, no gillnets with a stretched mesh size measuring 6″ (15.24cm) or greater may be set in the closed area. The rule provides sufficient time—over one day—to retrieve all nets set previously. As stated earlier, this restriction has been announced on the NOAA weather radio, in newspapers, and other media.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.*, are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule (57 FR 57348, December 4, 1992) requiring turtle excluder device use in shrimp trawls and creating the regulatory framework for the issuance of notices such as this. Copies of the EA are available (see **ADDRESSES**).

Authority: 16 U.S.C. 1531.

Dated: May 12, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–12396 Filed 5–12–00; 4:44 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 97
Thursday May 18, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AEA–01]

Proposed Cancellation of Federal Airway: V–162 HAR–MRB

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking

SUMMARY: This notice proposes to cancel Federal Airway 162 (V–162) between Harrisburg, PA (HAR) and Martinsburg, WV (MRB). The FAA is proposing this action due to restrictions on the HAR VOR. The airway would be deleted from aeronautical charts.

DATES: Comments must be received on or before June 19, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket NO. 00–AEA–01, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111 John F. Kennedy International Airport, Jamaica, NY 11430.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following state is made: ''Comments to Airspace Docket No. 00–AEA–01.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to cancel V–162 between HAR VOR, PA and MRB VOR, WV. The FAA is proposing this action due to restrictions on the HAR VOR resulting from a flight check. The FAA is proposing this action to enhance the safety of air traffic operations. Domestic VOR airways are published in Paragraph 6010(a) of FAA Order 7400.9G, dated September 1, 1999, and Effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed action would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points dated September 1, 1999, and effective September 16, 1999, is proposed to be amended as follows:

* * * * *

Paragraph 6011 VOR Federal; Airways

V–162 cancelled between Harrisburg, PA (HAR) and Martinsburg, WV (MRB)

* * * * *

Issued in Jamaica, New York, on April 19, 2000.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 00–11491 Filed 5–17–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF DEFENSE

Department of the Navy,

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Act; Implementation

AGENCY: Department of the Navy, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy is proposing to add an exemption rule for a Privacy Act system of records. The exemption is intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

DATES: Comments must be received on or before July 17, 2000 to be considered by this agency.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 701

Privacy.

1. The authority citation for 32 CFR part 701, Subpart G continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.118, is amended by adding paragraph (u) as follows:

§ 701.118 Exemptions for specific Navy record systems.

(u) *System identifier and name:* (1) N05813–4, Trial/Government Counsel Files.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Portions of this system of records that may be exempt pursuant to subsection 5 U.S.C. 552a(j)(2) are (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(5), (e)(4)(G), (H), and (I), (e)(8), (f), and (g).

(ii) *Exemption.* Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(iii) *Exemption.* Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Portions of this system of records that may be exempt pursuant to subsections 5 U.S.C. 552a(k)(1) and (k)(2) are (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(iv) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

(v) *Reason:* (1) From subsection (c)(3) because release of accounting of disclosure could place the subject of an investigation on notice that he/she is under investigation and provide him/her with significant information concerning the nature of the investigation, resulting in a serious impediment to law enforcement investigations.

(2) From subsections (c)(4), (d), (e)(4)(G), and (e)(4)(H) because granting individuals access to information collected and maintained for purposes relating to the enforcement of laws could interfere with proper investigations and orderly administration of justice. Granting individuals access to information relating to the preparation and conduct of criminal prosecution would impair the development and implementation of legal strategy. Amendment is inappropriate because the trial/government counsel files contain official records including transcripts, court orders, and investigatory materials such as exhibits, decisional memorandum and other case-related papers. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffective investigation techniques, sources, and methods used by law enforcement personnel, and could result in the invasion of privacy of individuals only incidentally related to an investigation.

(3) From subsection (e)(1) because it is not always possible in all instances to determine relevancy or necessity of specific information in the early stages of case development. Information collected during criminal investigations and prosecutions and not used during the subject case is often retained to provide leads in other cases.

(4) From subsection (e)(2) because in criminal or other law enforcement investigations, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of an investigation, presenting a serious impediment to law enforcement investigations.

(5) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(6) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of

criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(7) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(8) From subsection (e)(8) because compliance would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures, or evidence.

(9) From subsections (f) and (g) because this record system is exempt from the individual access provisions of subsection (d).

(10) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Navy will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Navy's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

* * * * *

Dated: March 29, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–10053 Filed 5–17–00; 8:45 am]

BILLING CODE 5001–10–F

POSTAL SERVICE

39 CFR Part 111

Line-of-Travel Sequencing for Basic Carrier Route Periodicals

ACTION: Proposed rule.

SUMMARY: The Postal Service is soliciting comments on a proposed change to the Domestic Mail Manual that would require mailers to prepare basic rate carrier route Periodicals mail in line-of-travel sequence.

DATES: Comments must be received on or before June 19, 2000.

ADDRESSES: Comments must be sent to the Manager, Mail Preparation and Standards, 475 L'Enfant Plaza SW, Room 6800, Washington, DC 20260–2405. Fax: 202–268–4336. Comments will be available for public viewing from 9 a.m. to 4 p.m. in the Postal Service Library, 475 L'Enfant Plaza, 11th Floor, Washington, DC. Copies of comments also may be requested via fax or email.

FOR FURTHER INFORMATION CONTACT: Anne Emmerth, 202–268–2363, aemmerth@email.usps.gov.

SUPPLEMENTARY INFORMATION: In 1996, the Postal Service began requiring line-of-travel sequencing for all basic Enhanced Carrier Route Standard Mail (A). LOT sequencing generally approximates carriers' actual sequence of delivery. A cost study shows that this preparation has resulted in significant savings due to a reduction in time spent by carriers casing mail. Analysis indicates that implementing a line-of-travel requirement for packages of basic rate carrier route Periodicals could produce significant savings.

The Postal Service and representatives from the Periodicals industry are concerned about recent upward trends in mail processing costs for Periodicals and have been studying ways to lower costs. Out of these discussions came several ideas for further examination. One of these ideas is to require Periodicals mail qualifying for basic carrier route rates to be prepared in line-of-travel (LOT) sequence. A Postal Service cost study indicates that requiring LOT sequencing for basic rate carrier route Periodicals will result in reduced costs.

Accordingly, the Postal Service is proposing to require that Periodicals mailers prepare basic rate carrier route mail in line-of-travel sequence. Mailers would be required to sort their mail using the current USPS line-of-travel product within 90 days before the date of mailing. As an alternative, mailers may opt to prepare mail in actual walk sequence to qualify for basic carrier route rates.

The line-of-travel product contains a list of each ZIP+4 code that a route serves. The ZIP+4 codes are numbered in sequence according to their first occurrence on the route as served by the carrier. Each ZIP+4 is appended with either an ''A'' (for ascending) or a ''D'' (for descending) to specify the order in which the addresses in that ZIP+4 must be arranged. For Periodicals, all basic rate carrier route pieces would be sequenced in ascending ZIP+4 code line-of-travel order. As an alternative, mailers could prepare basic rate carrier route mail in actual walk sequence.

The proposed effective date of this change is September 9, 2000.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual (DMM) as set forth below:

E Eligibility

* * * * *

E200 Periodicals

* * * * *

E230 Nonautomation Rates

* * * * *

2.0 CARRIER ROUTE RATES

* * * * *

[Amend 2.2 by revising the heading and item a, renumbering item b as item c, and adding new item b to read as follows:]

2.2 Sequencing

Preparation to qualify eligible pieces for carrier route rates is optional and is subject to M200. Carrier route sort need not be done for all carrier routes in a 5-digit area. Specific rate eligibility is subject to these standards:

a. The carrier route rates apply to copies in carrier route packages of six or more letter-size pieces each that are sorted to carrier routes, 5-digit carrier routes, or 3-digit carrier routes trays; and six or more flat-size pieces or irregular parcel-size pieces each that are sorted to carrier route, 5-digit, or 5-digit scheme carrier routes sacks. (Preparation of 5-digit scheme carrier routes sacks is optional, but, if performed, must be done for all 5-digit scheme destinations.) The applicable sequencing requirements in M050 and in 2.2b or 2.2c also must be met.

b. Basic carrier route rate mail must be prepared either in carrier walk sequence or in line-of-travel (LOT) sequence according to LOT schemes prescribed by the USPS (M050).

c. The high density and saturation rates apply to pieces that are eligible for carrier route rates under 2.2a, are prepared in carrier walk sequence, and meet the applicable density standards in 6.0 for the rate claimed.

* * * * *

M Mail Preparation and Sortation

M000 General Preparation Standards

* * * * *

M050 Delivery Sequence

* * * * *

3.0 DELIVERY SEQUENCE INFORMATION

* * * * *

3.4 Line-of-Travel Sequence

[Revise the first sentence to read as follows:]

Unless the mail is prepared in carrier walk sequence, LOT sequence is required for mailings at Enhanced Carrier Route basic Standard Mail (A) rates and carrier route basic Periodicals rates.* * *

4.0 DOCUMENTATION

4.1 General

[Revise the fourth sentence to read as follows:]

* * * For Periodicals, the postage statement must be annotated in the ''Sequencing Date'' block on each of the lines where basic, high density, and saturation per piece rate postage is reported. * * *

* * * * *

M200 Periodicals (Nonautomation)

1.0 BASIC STANDARDS

* * * * *

1.3 Carrier Route and Walk Sequence

[Revise the second sentence of 1.3 to read as follows:]

* * * Periodicals for which a carrier route discount is claimed must be prepared as a carrier route mailing under this section and either the walk sequencing standard or the line-of-travel sequencing standard in M050; pieces prepared with a simplified address must also meet the standards in A040.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–12443 Filed 5–17–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 112–4084; FRL–6702–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: On February 2, 1999 (64 FR 5015), EPA proposed to approve the Commonwealth of Pennsylvania's regulations for Nitrogen Oxides (NO_X) Allowance Requirements (commonly referred to as the NO_X Budget Rule) as a revision to the State Implementation Plan (SIP). Prior to our taking any final rulemaking, the Commonwealth informed us that it was revising the rule. On December 27, 1999, the Commonwealth submitted a new SIP revision request to EPA which consists of the revised version of its NO_X Budget Rule. Because the Commonwealth of Pennsylvania has now submitted the revised version of its NO_X Budget Rule as a SIP revision, we are withdrawing our February 2, 1999 proposed rule on the old version. EPA will initiate a new and separate rulemaking on the Commonwealth's December 27, 1999 SIP revision submittal.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, or by e-mail at fernandez.cristina@epa.gov.

Dated: March 19, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–12519 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000211038–0038–01; I.D. 101499D]

RIN 0648–AM93

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Greater Amberjack Trip Limit; Resubmission of Disapproved Measure in Amendment 9

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes a rule that would implement a previously disapproved 1,000–lb (454–kg) commercial trip limit for greater amberjack as originally contained in Amendment 9 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The intended effect of the trip limit is to prevent overfishing and conserve and manage greater amberjack.

DATES: Comments on this proposed rule must be received at the appropriate address or fax number, (see **ADDRESSES**), no later than 5:00 p.m., eastern standard time, on June 19, 2000.

ADDRESSES: Copies of documents supporting the proposed commercial trip limit for greater amberjack may be obtained upon request from the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843-571-4366; fax: 843-769-4520.

Copies of the economic analyses of the proposed commercial trip limit for greater amberjack may be obtained upon request from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone: 727–570–5305; fax: 727–570–5583.

Written comments on this proposed rule may be submitted to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via

fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Peter.Eldridge@noaa.gov.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and approved and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through regulations at 50 CFR part 622.

NMFS determined that the status of the greater amberjack stock relative to the FMP's current overfishing definition is unknown in the *Report to Congress: Status of Fisheries of the United States, NMFS, October 1999*. Current data show declines in average size and landings of greater amberjack. Accordingly, in Amendment 9 to the FMP the Council proposed precautionary measures to ensure that greater amberjack did not approach an overfished condition. Specifically, Amendment 9 to the FMP proposed to: (1) Reduce the recreational bag limit from 3 to 1 greater amberjack per person per day; (2) prohibit harvest and possession in excess of the bag limit during April throughout the EEZ; (3) establish a 1000–lb (454–kg) commercial trip limit with no more than one trip allowed per day; (4) establish a commercial quota of 1,169,931 lb (530,672 kg) (63 percent of 1995 landings); (5) begin the fishing year May 1; (6) prohibit the sale of greater amberjack harvested under the bag limit when the season is closed; and (7) prohibit coring (removal of the head from the carcass).

On September 8, 1998, NMFS announced the availability of Amendment 9 to the FMP and requested public comments on it (63 FR 47461). On November 12, 1998, NMFS published a proposed rule to implement the measures in Amendment 9 to the FMP and requested comments on this rule (63 FR 63276). On December 9, 1998, after considering the comments received on the amendment and the proposed rule, NMFS partially approved Amendment 9 to the FMP. NMFS disapproved the proposed 1,000–lb (454–kg) commercial trip limit for greater amberjack because information at that time indicated that the benefits of the trip limit did not exceed costs. Subsequently, NMFS conducted another economic analysis of the expected effects of this measure, based on more recent information, that indicates that the benefits of the trip limit may exceed costs (net benefits), especially if a ''derby'' fishery is prevented. Based on the conclusions of the supplemental economic analysis, the Council resubmitted the proposed commercial trip limit for greater amberjack, as contained in Amendment 9 to the FMP, to NMFS for review, approval, and implementation. On January 26, 2000, NMFS approved the amberjack trip limit measure.

Classification

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

The Council prepared a final supplemental environmental impact statement for Amendment 9 to the FMP that assessed the environmental impacts of its greater amberjack trip limit. A notice of its availability was published on October 9, 1998 (63 FR 54476).

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification is based on NMFS' analyses and is summarized as follows:

Determination of Nature and Size of Economic Impacts on Small Entities: This determination and discussion is based on a series of analyses conducted by NMFS following the original disapproval decision by the Secretary of Commerce and the subsequent resubmittal of the action. One part of the determination is to decide if a substantial number of the population will be affected by the proposed Federal action and defining the population is key to the determination of substantial number. For the purposes of this determination, a narrow definition of the population that might be impacted by the action will be used. Although there are about 2,000 vessels permitted to legally harvest greater amberjack, the population is defined as being limited to those vessels that actually landed greater amberjack in the most recent fishing year for which data are available. It is further determined that all of these fishing vessels represent small entities as defined by the Small Business Administration. During the 1996–97 fishing year a total of 553 commercial fishing craft landed greater amberjack and took 3685 trips on which landings of greater amberjack were reported. Of the 553 fishing craft that could be potentially impacted, 73 reported a total of 290 trips that resulted in landing over 1,000 pounds of greater amberjack on at least one trip during the 1996–97 fishing season. In terms of the population as defined, 13 percent of the population had one or more trips on which 1,000 pounds of greater amberjack were landed and this represents 8 percent of all greater amberjack trips.

The fishing craft (small entities) expected to be directly impacted by the action are engaged in commercial fishing activities that result in the landing and sale of a variety of snapper grouper species as well as other species. In other words, these fishing businesses are not totally dependent on their ability to harvest greater amberjack. For those 73 entities reporting at least one trip on which 1,000 pounds of greater amberjack were reported, they had average gross revenues from fishing of $41,342 for the 1996–97 fishing year and $12,274, or about 30 percent of that average gross revenue, was attributed to landings of greater amberjack. Assuming no changes in fishing behavior if the trip limit is implemented, the amount of greater amberjack revenue in excess of the 1,000 pound trip limit during the 1996–97 fishing season could be interpreted as ''lost'' revenue for those trips that resulted in greater amberjack catches in excess of 1,000 pounds. However, it is known from empirical observations in other fisheries where a trip limit was introduced that fishing behavior indeed changes. The behavior can be of two different general types. When trip limits are introduced and the vessel cannot generate enough gross revenue from the trip to cover costs, the entity will either forego fishing for the species in question or will attempt to switch target species if that avenue is available. The other straightforward behavior change is to take additional trips of the original target species if the expected gross revenue will more than cover the costs of the trip. Because the data existed for this fishery, an extension of the analysis was conducted to investigate the probable change in fishing behavior and this analysis indicated that the fishermen would tend to take additional trips for greater amberjack rather than ceasing fishing or switching to an alternate species. The analysis resulted in an expectation that those vessels directly impacted by the trip limit would take an average of about 4 extra trips targeting greater amberjack if the trip limit is implemented. The analysis further indicated that the overall outcome of the trip limit would be a loss of about 3 percent of net operating revenue (gross revenue less trip costs) for the 73 vessels directly

impacted or about four tenths of a percent loss in net operating revenue for the entire population of 553 vessels that land greater amberjack. Recalling that species other than greater amberjack are also harvested by these vessels, the 4 extra trips would also result in additional revenues derived from landing other species in association with greater amberjack. However, the landings and revenue associated with the 4 extra trips per vessel were not specifically calculated and are thus not considered in the analysis except to note that the impact would be lessened if these additional landings were to be considered. The trip limit is not expected to result in any of the affected small entities being forced to cease business operations if the trip limit goes into effect. This result is based on the analysis of vessel behavior following the imposition of a trip limit and the analysis indicated that a trip limit of 1,000 pounds would allow for the full recovery of the trip costs and additional trips would be taken instead of the small entity ceasing business operations.

There are no capital, operating, reporting or other compliance costs associated with the action and due to the lack of such costs there are no differential impacts for small versus large entities. Similarly, since there are no capital costs of compliance, there is no issue related to the total amount of capital available to the small entities that may be affected by the action.

Overall Conclusion: These results indicate that a substantial number of small entities will not be impacted to a significant degree by the action to implement a 1,000 pound trip limit for commercial fishermen operating in the snapper grouper fishery of the South Atlantic.

Copies of NMFS' economic analysis are available (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 12, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

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

2. In § 622.44, paragraph (c)(4) is added to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(c) * * *

(4) *Greater amberjack.* Until the fishing year quota specified in § 622.42(e)(3) is reached, 1,000 lb (454 kg). No more than one trip may be made per day. See § 622.43(a)(5)(i) for the limitations regarding greater amberjack after the fishing year quota is reached.

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[FR Doc. 00–12577 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 65, No. 97

Thursday, May 18, 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

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION SECTION** of this notice. As provided in 36 CFR part 215.5(a) and 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a specific decision. In addition, the Responsible Official in the Southern Region will also publish notice of proposed actions under 36 CFR 215 in the newspapers that are listed in the Supplementary Information section of this notice. As provided in 36 CFR part 215(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notices on proposed actions.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, and notices of proposed actions under 36 CFR part 215 shall begin on or after May 18, 2000.

FOR FURTHER INFORMATION CONTACT: Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW, Atlanta, Georgia 30309, Phone: 404–347–4867.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 and the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR 215 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following principal newspapers which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the principal newspaper. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper for both 36 CFR parts 215 and 217.

Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper.

The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions

Affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico. *Atlanta Journal*, published daily in Atlanta, GA.

Affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the principal newspaper elected by the National Forest of that state or Ranger District.

National Forests in Alabama, Alabama

Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL

District Ranger Decisions

Bankhead Ranger District: Northwest Alabamian, published weekly (Monday & Thursday) in Haleyville, AL

Conecuh Ranger District: The Andalusia Star News, published daily (Tuesday through Saturday) in Andalusia, AL

Oakmulgee Ranger District: The Tuscaloosa News, published daily in Tuscaloosa, AL

Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL

Talladega Ranger District: The Daily Home, published daily in Talladega, AL

Tuskegee Ranger District: Tuskegee News published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR;

San Juan Star,: published daily in English in San Juan, PR

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions

The Times: published daily in Gainesville, GA

District Ranger Decisions

Armuchee Ranger District: Walker County Messenger, published bi-weekly (Wednesday & Friday) in LaFayette, GA

Toccoa Ranger District: The News Observer, published weekly (Wednesday) in Blue Ridge, GA

Brasstown Ranger District: North Georgia News, published weekly (Wednesday) in Blairsville, GA

Tallulah Ranger District: Clayton Tribune, published weekly (Thursday) in Clayton, GA

Chattooga Ranger District: Northeast Georgian, published twice weekly (Tuesday & Friday) in Cornelia, GA

Chieftain & Toccoa Record, published twice weekly (Tuesday & Friday) in Toccoa, GA

White County News Telegraph: published weekly (Thursday) in Cleveland, GA

The Dahlonega Nuggett, published weekly (Thursday) in Dahlonega, GA

Cohutta Ranger District: Chatsworth Times, published weekly (Wednesday) in Chatsworth, GA

Oconee Ranger District: Monticello News, published weekly (Thursday) in Monticello, GA

Cherokee National Forest, Tennessee

Forest Supervisor Decisions

Knoxville News Sentinel: published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)

Johnson City Press,: published daily in Johnson City, TN (covering Carter, Cocke, Green, Johnson, Sullivan, Unicoi and Washington Counties)

District Ranger Decisions

Ocoee-Hiwassee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN

Tellico-Hiwassee Ranger District: Monroe County Advocate, published weekly (Thursday) in Sweetwater, TN

Nolichucky-Unaka Ranger District: Johnson City Press, published daily in Johnson City, TN

Watauga Ranger District: Johnson City Press, published daily in Johnson City, TN.

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY

District Ranger Decisions

Morehead Ranger District: Morehead News, published bi-weekly (Tuesday and Friday) in Morehead, KY

Stanton Ranger District: The Clay City Times, published weekly (Thursday) in Stanton, KY

London Ranger District: The Sentinel-Echo, published tri-weekly (Monday, Wednesday, and Friday) in London, KY

Somerset Ranger District: Commonwealth-Journal, published daily (Sunday through Friday) in Somerset, KY

Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY

Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida

Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL

District Ranger Decisions

Apalachicola Ranger District: The Liberty Journal, published weekly (Wednesday) in Bristol, FL

Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL

Osceola Ranger District: The Lake City Reporter, published daily (Monday–Saturday) in Lake City, FL

Seminole Ranger District: The Daily Commercial, published daily in Leesburg, FL

Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina

Forest Supervisor Decisions

The State, published daily in Columbia, SC.

District Ranger Decisions

Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC.

Andrew Pickens Ranger District: The Daily Journal, published daily in Seneca, SC.

Long Cane Ranger District: The Augusta Chronicle, published daily in Augusta, GA.

Wambaw Ranger District: Post and Courier, published daily in Charleston, SC.

Witherbee Ranger District: Post and Courier, published daily in Charleston, SC.

George Washington and Jefferson National Forests, Virginia

Forest Supervisor Decisions

Roanoke Times, published daily in Roanoke, VA

District Ranger Decisions

Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA

Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA

Pedlar Ranger District: Roanoke Times, published daily in Roanoke, VA

James River Ranger District: Virginian Review, published daily (except Sunday) in Covington, VA

Deerfield Ranger District: Daily News Leader, published daily in Staunton, VA

Dry River Ranger District: Daily News Record, published daily (except Sunday) in Harrisonburg, VA

Blacksburg Ranger District: Roanoke Times, published daily in Roanoke, VA

Monroe Watchman, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Time and Monroe Watchman.)*

Glenwood Ranger District: Roanoke Times, published daily in Roanoke, VA

New Castle Ranger District: Roanoke Times, published daily in Roanoke, VA

Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA

Clinch Ranger District: Kingsport-Times News, published daily in Kingsport, TN

Wythe Ranger District: Southwest Virginia Enterprise, published by-weekly (Wednesday and Saturday) in Wytheville, VA

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions

The Town Talk published daily in Alexandria, LA

District Ranger Decisions

Caney Ranger District: Minden Press Herald, published daily in Minden, LA

Homer Guardian Journal, published weekly (Wednesday) in Homer, LA

Catahoula Ranger District: The Town Talk, published daily in Alexandria, LA

Calcasieu Ranger District: The Town Talk, published daily in Alexandria, LA

Kisatchie Ranger District: Natchitoches Times, published daily (Tuesday–Friday and on Sunday) in Natchitoches, LA

Winn Ranger District: Winn Parish Enterprise published weekly (Wednesday) in Winnfield, LA

Land Between the Lakes National Recreation Area, Kentucky and Tennessee

The Paducah Sun published daily in Paducah, KY

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions

Clarion-Ledger published daily in Jackson, MS

District Ranger Decisions

Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS

Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS

Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS

De Soto Ranger District: Clarion-Ledger, published daily in Jackson, MS

Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS

Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS

Tombigbee Ranger District: Clarion-Ledger, published daily in Jackson, MS

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions

Appalachian Ranger District: The Asheville Citizen-Times published daily in Asheville, NC

Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC

Croatan Ranger District: The Sun Journal, published weekly (Sunday through Friday) in New Bern, NC

Grandfather Ranger District: McDowell News, published daily in Marion, NC

Highlands Ranger District: The Highlander, published weekly (mid May-mid Nov Tues & Fri; mid Nov-mid May Tues only) in Highlands, NC

Pisgah Ranger District: The Asheville Citizen-Times published daily in Asheville, NC

Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC

Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC

Wayah Ranger District: The Franklin Press, published by-weekly (Wednesday and Friday) in Franklin, NC

Ouachita National Forest, Arkansas, Oklahoma

Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions

Caddo Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock AR

Cold Springs Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Jessieville Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Mena Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Poteau Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Winona Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR

Choctaw Ranger District: Tulsa World, published daily in Tulsa, OK

Kiamichi Ranger District: Tulsa World, published daily in Tulsa, OK

Tiak Ranger District: Tulsa World, published daily in Tulsa, OK

Ozark-St. Francis National Forest: Arkansas

Forest Supervisor Decisions

The Courier, published daily (Tuesday through Sunday) in Russellville, AR

District Ranger Decisions

Sylamore Ranger District: Stone County Leader, published weekly (Tuesday) in Mountain View, AR

Buffalo Ranger District: Newton County Times, published weekly in Jasper, AR

Bayou Ranger District: The Courier, published daily (Tuesday through Sunday) in Russellville, AR

Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR

Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR

Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR

St. Francis Ranger District: The Daily World, published daily (Sunday through Friday) in Helena, AR

National Forests and Grasslands in Texas, Texas

Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX

District Ranger Decisions

Angelina National Forest: The Lufkin Daily News, published daily in Lufkin, TX

Davy Crockett National Forest: The Lufkin Daily News, published daily in Lufkin, TX

Sabine National Forest: The Lufkin Daily News, published daily in Lufkin, TX

Sam Houston National Forest: The Courier, published daily in Conroe, TX

Caddo & LBJ National Grasslands: Denton Record-Chronicle, published daily in Denton, TX

Dated: May 12, 2000.

David G. Holland,

Deputy Regional Forester for Natural Resources.

[FR Doc. 00–12491 Filed 5–17–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Booger Placer Claim, Suction Dredging Nez Perce National Forest, Idaho County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental effects of dredging on the Booger placer claim on Little Elk Creek. The claimant has proposed using one eight-inch suction dredge to remove possible gold deposits from the gravel and at bedrock in the stream channel of Little Elk Creek. The operation is proposed for five years, to operate when water and weather conditions allow. The Booger placer claim is located in Section 33, T30N, R8E, BPM.

DATES: Written comments and suggestions should be received on or before June 19, 2000, to receive timely consideration in the preparation of the draft EIS.

ADDRESSES: Send written comments and suggestions on the proposed action or requests for a map of the proposed action or to be placed on the project mailing list to Kevin Martin, District Ranger, Red River Ranger District, P.O. Box 416, Elk City, Idaho 83525.

FOR FURTHER INFORMATION CONTACT: Jo Ellis, District Geologist, Red River Ranger District, P.O. Box 416, Elk City, Idaho 83525, phone (208) 842–2245.

SUPPLEMENTARY INFORMATION: The proposed action is proposed pursuant to the 1872 Mining Law, the Organic Administration Act of 1897 and Forest Service mining regulations, Title 36 Code of Federal Regulation (CFR), Part 228, Subpart A. The United States mining laws at 30 U.S.C. 21–54 Confer a statutory right to enter upon the public land to search for and remove certain minerals. The Forest Service has the responsibility to make sure that the activities are conducted so as to minimize adverse environmental impacts to National Forest System lands, 36 CFR, Part 228, Subpart A.

The proposal involves processing streambed gravel to bedrock over the entire 4,020 foot length of the claim. Deeps of the gravel are between three and six feet deep. The stream channel, between high water marks, varies from six to ten feet in width. This work would take place over five years of more whenever water and weather conditions allow operations.

The process involves utilizing high-pressure water pumps driven by gasoline-powered motors, which create suction in a flexible intake pipe. A mixture of streambed sediment and water is vacuumed into the intake pipe and passed over a sluice box mounted on a floating barge. Dense particles (including gold) are trapped in the sluice box. The remainder of the entrained material is discharged into the stream as tailings or spoils. A hole is created in the gravel so bedrock is exposed. Cracks in the bedrock are then cleared with the suction. Cable attached to a winch move large boulders or rootwads.

The Forest Service will consider a range of alternatives to the proposed action. One of these will be the ''no action'' alternative, in which the Plan of Operations would not be approved. Additional alternatives will examine varying intensity and duration of the proposed activities, including restrictions on the size of equipment and length of seasonal operation, as well as respond to the issues and other resource values.

Public participation is an important part of the project, commencing with the initial scoping process (40 CFR 1501.7), which starts with publication of this notice and continues for the next 30 days. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, the Nez Perce Tribe, and other individuals or organizations that may be interested in or affected by the proposed action.

Comments from the public and other agencies will be used in preparation of the draft EIS. The scoping process will be used to:

1. Identify potential issues;
2. Identify major issues to be analyzed in depth;
3. Eliminate minor issues or those that have been covered by a relevant previous environmental analysis, such as the Nez Perce National Forest Plan EIS;
4. Identify alternatives to the proposed action;
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the Environmental Protection Agency and available for public review in July 2000. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final EIS, which is expected to be filed in October 2000. A Record of Decision will be issued not less than 30 days after publication of a Notice of Availability of the final EIS in the **Federal Register**.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal in such a way that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir, 1986), and Wisconsin Heritages Inc. v. Harris, 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period in order that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Kevin Martin is the responsible official for this environmental impact statement.

Dated: May 5, 2000.

Kevin Martin,

District Ranger, Red River Ranger District, Nez Perce National Forest.

[FR Doc. 00–12476 Filed 5–17–00; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on Tuesday, June 13, 2000, at the 55 West Monroe Street, Suite 525, Chicago, Illinois 60603. The purpose of the meeting is to discuss civil rights issues of interest and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James E. Scales, 618–453–1045, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 12, 2000.

Lisa M. Kelly,

Special Assistant to the Staff Director, Regional Programs Coordination Unit.

[FR Doc. 00–12501 Filed 5–17–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 4:00 p.m. on Wednesday, June 7, 2000, at the Milwaukee Hilton, 509 West Wisconsin Avenue, Milwaukee, Wisconsin 53202. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Geraldine McFadden, 414–444–1952, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign

language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 12, 2000.

Lisa M. Kelly,

Special Assistant to the Staff Director, Regional Programs Coordination Unit.

[FR Doc. 00–12500 Filed 5–17–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–828]

Silicomanganese From the People's Republic of China: Notice of 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 November 8, 1999, the Department of Commerce (''the Department'') published the preliminary results of administrative review of the antidumping duty order on silicomanganese from the People's Republic of China (''PRC''). This review covers two manufacturers/exporters, Guangxi Bayi Ferroalloy Works (''Bayi''), and Sichuan Emei Ferroalloy Import and Export Co., Ltd. (''Emei''). The period of review (''POR'') is December 1, 1997 through November 30, 1998.

The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled ''*Final Results of Review.*'' The final margins differ from those published in the preliminary results due to changes that we made since the preliminary results. For details regarding these changes, see the section of the notice entitled ''*Changes Since the Preliminary Results.*''

EFFECTIVE DATE: May 18, 2000.

FOR FURTHER INFORMATION CONTACT: Timothy Finn or Howard Smith, 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) 482–0065 or (202) 482–5193 respectively.

SUPPLEMENTARY INFORMATION:

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 Rounds Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR part 351 (1999).

Background

Since the publication of the preliminary results, the following events have occurred. On November 29, 1999 the respondents and the petitioner (Eramet Marietta Inc. (''Eramet'')) submitted publicly available information and comments regarding factor valuation. On December 8, 1999 the respondents filed rebuttal comments regarding the petitioner's November 29, 1999 factor value submission. The Department issued supplemental questionnaires to the respondents on December 16, 1999, and received responses to those questionnaires on January 7, 2000. On January 11, 2000, the Department published in the **Federal Register** a notice extending the due date for the final results until May 6, 2000 (65 FR 1597). In January 2000, the Department conducted verifications of Bayi and Emei. Public versions of our verification reports, dated March 1, 2000, are on file in the Central Records Unit (''CRU''), room B–099 of the main Department of Commerce building, under the appropriate case number. In response to the Department's invitation to comment on the preliminary results of review, the petitioner and the respondents filed case and rebuttal briefs in March 2000. The Department held a public hearing regarding this review on April 3, 2000.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Review

The merchandise covered by this order is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (''HTS''). Some silicomanganese may also currently be classifiable under HTS subheading 7202.99.5040. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from Holly A. Kuga, Acting Deputy Assistant Secretary, Important Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 8, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Record Unit, room B–099 of the main Department of Commerce building. In addition a complete version of the Decision Memorandum can be accessed directly on the Web at *www.ita.doc.gov/import_admin/records/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Use of Facts Available

For a discussion of our use of facts available, see the ''Facts Available'' section of the Decision Memorandum.

Changes Since the Preliminary Results of Review

Based on the corrections presented at verification, the Department's verification findings, and our analysis of the petitioner's and the respondents' comments, we have made certain changes to the factors of production and surrogate values used to calculate the margins in the preliminary results. We have also corrected certain clerical errors in our margin calculations. The changes and corrections are discussed

in the relevant sections of the Decision Memorandum. Further details regarding the changes and corrections can be found in the Decision Memorandum, surrogate value memorandum (*see Surrogate Values Used for the Final Results of the 1997–1998 Administrative Review of Silicomanganese From the People's Republic of China*) and company-specific analysis memoranda (*see Analysis for the Final Results of the 1997–1998 Administrative Review of Silicomanganese From the People's Republic of China: Guangxi Bayi Ferroalloy and Analysis for the Final Results of the 1997–1998 Administrative Review of Silicomanganese From the People's Republic of China: Sichuan Emei Ferroalloy Import and Export Co., Ltd.*), all of which are on file in room B–099 of the main Department of Commerce building.

Final Results of Review

We determine that the following percentage weighted-average margins exist for the period December 1, 1997 through November 30, 1998:

Manufacturer/Exporter	Margin (percent)
Guangxi Bayi Ferroalloy Works	126.22
Sichuan Emei Ferroalloy Import and Export Co., Ltd	182.97

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for sales to a specific importer by the total units of subject merchandise sold to the importer in order to calculate a per-unit dollar assessment. The per-unit dollar amount will be assessed uniformly against each unit of subject merchandise that the importer entered during the POR.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of silicomanganese from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will continue to be 150.00 percent; and (4) the cash-deposit rate for non-PRC exporters will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also 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 doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 771(i) of the Act.

Dated: May 8, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comments and Responses

I. Factor Valuation
II. Facts Available
III. Clerical Errors
IV. Miscellaneous Issues
1. Classifying Electrode Paste as a Direct Material or Part of Overhead
2. Allocating Costs Over Production Quantities That Include Fines
3. Reducing Normal Value for Sales of Silicomanganese Slag
4. Recalculating Emei's Electricity Consumption Based on Verification Findings

[FR Doc. 00–12581 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On November 12, 1999, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1997 through December 31, 1997 (64 FR 61592). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

We have not made changes in the subsidy calculations from the preliminary results. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: May 18, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Copyak, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 4012, Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR part 351 (1998), unless otherwise indicated. Because the request for this administrative review was filed before January 1, 1999, the Department's substantive countervailing duty regulations, which were published in the **Federal Register** on November 25,

1998 (*see* CVD Regulations, 63 FR 65348), do not govern this review.

Background

On November 12, 1999, the Department published the preliminary results of administrative review of the countervailing duty order on certain iron metal castings from India. *See Notice of Preliminary Results and Partial Recission of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India,* 64 FR 61592 (November 12, 1999) (*Preliminary Results*). Pursuant to 19 CFR 351.213(b), this review covers only those producers/exporters of the subject merchandise for which a review was specifically requested. The producers/exporters of the subject merchandise for which this review was requested are:

AGV Exports,
Agarwal Hardware,
Ambika Exports,
Bengal Export Corporation,
Bengal Iron Corporation,
Bhagyadevi Factory,
Calcutta Ferrous Ltd.,
Carnation Enterprise Pvt. Ltd.,
Carnation Industries,[1]
Commex Corporation,
Crescent Foundry Co. Pvt. Ltd.,
Delta Enterprises,
Delta Corporation Ltd.,
Dinesh Brothers Pvt. Ltd.,
Dugar International,
Edcons Castings,
Essen International,
Ganapati Suppliers,
Global Intertrade,
Hargolal & Sons,
Hindustahn Malleables & Forgings Ltd.,
J.K. Udyog,
Kajaria Iron Castings Ltd.,[2]
Kajaria Iron Castings Pvt. Ltd.,
Kauntia Exports,
Kejriwal Iron & Steel Works,
Kiswok Industries Pvt. Ltd.,[3]
Metflow Corporation Pvt. Ltd.,
Nandikeshwari Iron Foundry Pvt. Ltd.,
Orissa Metal Industries,
Overseas Iron Foundry Pvt. Ltd.,
Rangilal & Sons,
RBA Exports,
R.B. Agarwalla & Company,
R.B. Agarwalla & Company Pvt. Ltd.,
RR Enterprise,
RSI Limited,
RS Ispat Pvt. Ltd.,
Samitex Corporation,
Sammitex,
Serampore Industries Pvt. Ltd.,
Shakti Isabgel Industries,
Shree Hanuman Foundry & Engineering Co. Ltd.,
Shree Rama Enterprises,
Shree Uma Foundries Pvt. Ltd.,
Siko Exports,
Sitaram Maohogarhia & Sons Pvt. Ltd.,
Sociedad J.B. Nagar,
SSL Exports,
Super Iron Foundry,
Tara Engineering Works,
Thames Engineering,
Tirupati International Pvt. Ltd.,
Tirupati Trading Company,
Trident Industries,
Trident International,
Uma Iron & Steel, and
Victory Castings Ltd.

The following companies, for which a review was requested, certified that they either do not produce or did not export the subject merchandise to the United States during the period of review (POR): AGV Exports, Agarwal Hardware Works & Foundries Pvt. Ltd., Ambika Exports, Bengal Iron Corporation, Bhagyadevi Factory, Delta Enterprises, Edcons Castings Pvt. Ltd., Essen International, Hargolal & Sons, Hindustahn Malleables & Forgings Ltd., J.K. Udyog, Kauntia Exports, Metflow Corporation Pvt. Ltd., Orissa Metal Industries, Overseas Iron Foundry Pvt. Ltd., RBA Exports, R.B. Agarwalla & Company Pvt. Ltd., RR Enterprise, RS Ispat Pvt. Ltd., Samitex Corporation, Sammitex, Shree Hanuman Foundry & Engineering Co. Ltd., Shree Rama Enterprises, Shree Uma Foundries Pvt. Ltd., Siko Exports, Sitaram Madhogarhia & Sons Pvt. Ltd., Tara Engineering Works, Tirupati International Pvt. Ltd., and Tirupati Trading Company. In addition, the Government of India (GOI) certified that the following companies either do not exist or do not export the subject merchandise to the United States: Dugar International, Global Intertrade, Shakti Isabgel Industries, Sociedad J.B. Nagar, and Trident Industries. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we rescinded the review with respect to these companies at the time of the preliminary results.

See Preliminary Results, 64 FR at 61592

We invited interested parties to comment on the preliminary results. On December 13, 1999, case briefs were submitted by the Engineering Export Promotion Council of India and the exporters of certain iron-metal castings from India (respondents), and the Municipal Castings Fair Trade Council and its members (petitioners). On December 20, 1999, rebuttal briefs were submitted by the respondents and petitioners. None of the interested parties requested a hearing. This review covers 29 programs.

Scope of the Review

Imports covered by this administrative review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Verification

As provided in section 782(i) of the Act, we verified information submitted by the GOI and certain producers/exporters of the subject merchandise. We followed standard verification procedures, including meeting with government and company officials and examining relevant accounting and financial records and other original source documents. Our verification results, which were issued on September 9, 1999, are outlined in the verification reports, the public versions of which are on file in the Central Records Unit (CRU), Room B–099 of the Main Commerce Building.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the ''Issues and Decision Memorandum'' (*Decision Memorandum*) from Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated concurrent with this notice, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded, all of which are addressed in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the web at www.ita.doc.gov/import__admin/records/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Use of Facts Available

For a discussion of our application of facts available, see the ''Facts Available''

[1] Carnation Industries was formerly Carnation Enterprise Pvt. Ltd.

[2] Kajaria Iron Castings Ltd. was formerly Kajaria Iron Castings Pvt. Ltd.

[3] Kiswok Industries Pvt. Ltd. was formerly Kejriwal Iron & Steel Works.

section of the Decision Memorandum, which is on file in the CRU and available on the web at www.ita.doc.gov/import__admin/records/frn.

Changes Since the Preliminary Results

We have not made any changes to the subsidy rate calculations from the preliminary results.

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this review. We will instruct Customs to assess countervailing duties as indicated below on all appropriate entries. For the period January 1, 1997 through December 31, 1997, we determine the net subsidy rates for the reviewed companies to be as follows:

Producers/exporters	Ad valorem rates (percentages)
Bengal Export Corporation	8.35
Calcutta Ferrous Ltd	9.28
Calcutta Iron Foundry	0.42
Carnation Industries Ltd	0.72
Commex Corporation	2.71
Crescent Foundry Co. Pvt. Ltd	0.84
Delta Corporation Ltd	27.65
Dinesh Brothers (Pvt.) Ltd	1.71
Ganapati Suppliers Pvt. Ltd	5.17
Kajaria Iron Castings Ltd	5.19
Kiswok Industries Pvt. Ltd	14.90
Nandikeshwari Iron Foundry Pvt. Ltd	13.72
Rangilal & Sons	0.00
R.B. Agarwalla & Company	3.56
RSI Limited	0.90
Seramapore Industries Pvt. Ltd	1.51
SSL Exports	27.65
Super Iron Foundry	1.08
Thames Engineering	27.65
Trident International	27.65
Uma Iron & Steel Company	2.10
Victory Castings Ltd	1.88

Revocation of CVD Order

As a result of the International Trade Commission's determination that revocation of this countervailing duty order would not likely lead to continuation or recurrence of material injury to an industry in the United States in the reasonably foreseeable future, the Department, pursuant to section 751(d)(2) of the Act, revoked the countervailing duty order on iron metal castings from India. *See Revocation of Countervailing Duty Order: Iron Metal Castings from India,* 64 FR 61602 (November 12, 1999). Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), the effective date of revocation was January 1, 2000. Accordingly, the Department instructed Customs to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000. The Department, however, will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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 notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: May 10, 2000.

Troy H. Cribb,

Acting Assistant Secretary for Import Administration.

Appendix I—Issues Addressed in the Decision Memorandum

Methodology and Background Information

I. Applicable Statute and Regulations
II. Facts Available
III. Benchmark Rate

Analysis of Programs

I. *Programs Conferring Subsidies*
- A. Pre-Shipment Export Financing
- B. Post-Shipment Export Financing
- C. Exemption of Export Credit from Interest Taxes
- D. Income Tax Deductions Under Section 80 HHC
- E. Import Mechanisms (Sale of Licenses)
- F. Passbook Scheme
- G. Duty Entitlement Passbook Scheme

II. *Programs Determined To Be Not Countervailable*
- A. Long-Term Financing from ''All-India Development Banks''
- B. Long-Term Loan from the West Bengal Industrial Finance Corporation
- C. Leasing of Land from the Regional Government of West Bengal

III. *Programs Found To Be Not Used*
- A. West Bengal Incentive Scheme 1993
- 1. State Capital Investment Subsidy
- B. Market Development Assistance
- C. Rediscounting of Export Bills Abroad
- D. International Price Reimbursement Scheme
- E. Cash Compensatory Support Program
- F. Programs Operated by the Small Industries Development Bank of India
- G. Export Promotion Replenishment Scheme
- H. Export Promotion Capital Goods Scheme
- I. Benefits for Export Oriented Units and Export Processing Zones
- J. Special Imprest Licenses
- K. Special Benefits
- L. Duty Drawback on Excise Taxes
- M. Payment of Premium Against Advance Licenses
- N. Pre-Shipment Export Financing in Foreign Currency
- O. Subsidies Provided by the State of Orissa
- P. Advance Licenses

IV. *Other Program Examined*
- A. Bridge Loan

V. *Programs Found Not To Exist*
- A. State Value-Added Tax ''Set-Off'' Program
- B. Interest Rate Surcharge Exemption

VI. *Analysis of Comments*
- A. Cash Credit Benchmark Interest Rate
- B. Leasing of Land
- C. Long-Term Financing
- D. Benefit Provided Under the Passbook Scheme
- E. Section 80HHC—Tax Savings Relating to Subject Castings
- F. Double-Counting of Subsidies
- G. Overdue Penalty Interest Paid

[FR Doc. 00–12580 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Recruitment

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of Recruitment.

SUMMARY: U.S. Department of Commerce Invites Small and Medium Enterprises to Join U.S. Delegation to Asia Pacific Economic Cooperation (APEC) Small and Medium Enterprise (SME) Ministerial Meeting and Related Events.

DATES: Conference: June 19–23, 2000.

Apply for participation in the U.S. Delegation by: no later than June 2, 2000.

ADDRESSES: Conference location at International Convention Center in Bandar Seri Begawan, Brunei Darussalam.

FOR FURTHER INFORMATION CONTACT: Mrs. Brenda J. Fisher, APEC Affairs Coordinator, Room 2316, International Trade Administration, U.S. Department of Commerce at phone 202/482–5334; fax 202/482–3316; or email: Brenda(underscore)Fisher@ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Mission Description

Brunei, Chair of APEC 2000, will host the Small and Medium Enterprise (SME) Ministerial and related events, including a Business Forum and E-Commerce Workshop, from June 20–23, in Bandar Seri Begawan.

The Department of Commerce is the lead U.S. Government agency on SME issues in APEC. It is important that the DOC maintain the profile of SME issues within the APEC forum and make substantial, tangible progress on USG objectives, including E-Commerce. A senior Commerce Department official will lead the U.S. delegation, including interagency and private sector participation.

The Ministerial will focus on building the foundations on which SMEs can flourish in the digital economy by holding workshops and discussions that will produce recommendations on how to best exploit

- Information and communication technology
- Human resources and development
- Strategic alliances between SMEs and SMEs and larger firms
- Financing SMEs.

Participants

- Ministers from APEC Economies representing small business.
- Private Sector Delegations from all 21 APEC member economies.

Commercial Setting

The APEC SME Ministerial and related events are being held in Brunei as it is the Chair of APEC during 2000. The confluence of senior government officials and private sector delegations from the 21 APEC member economies is expected to generate frank and constructive discussions on issues of concern to all APEC member economies and business communities.

Private sector businesses will have a unique chance to shape APEC's action agenda for SMEs during the June 20–23 SME Ministerial Meeting, SME Business Forum and associated events. Continuing the tradition of past Business Forums, all 21 APEC SME Ministers have agreed to interact with delegates from the SME Business Forum, E-Commerce Workshop, and Women Leaders' Network meeting—to be held concurrently at the International Convention Center in Bandar Seri Begawan.

The Business Forum will provide a platform for frank and constructive discussions on issues of concern to all APEC economies and business communities. The E-Commerce Workshop participants are to develop a set of recommendations that will constitute a collective action plan for APEC members on improving the adoption of e-commerce by SMEs. The Women Leaders' Network meeting will bring together women from business, academia, and government from the APEC economies in a single forum to discuss the pressing issues surrounding womens' involvement in SME businesses.

The formal agendas for the meetings provide opportunities for interaction between senior Government officials and business leaders from the participating 21 APEC member economies (Australia, Brunei, Canada, Chile, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Peoples' Republic of China, Russia, Singapore, Thailand, Taiwan, United States, and Vietnam). Of course, networking can also be conducted on the margins of the official programs as well. The intent of these interactions is to develop tangible, practical and prioritized recommendations for APEC Ministers to act upon during the Ministerial Meeting on June 22–23.

The SME Business Forum recommendations and action plans from two associated APEC SME events, the E-Commerce Workshop (involving 200 government officials and private sector) and Women Leaders' Network (a meeting of 350 businesswomen), will be combined to provide a framework for practical action regarding programs and policies for SMEs. Participants will have an opportunity to shape the APEC dialogue on subjects vital to the growth and development of SMEs, including strategic alliances (between SMEs and between SMEs and larger firms); creating the best environment for e-commerce, and other information and communications technologies; financing; and developing human resources.

Mission Goals

Our policy objectives are to advance U.S. interests for SMEs in APEC and work to implement the USG theme of building the foundations on which economies, particularly SMEs, can flourish in the digital economy. We will continue to press within APEC to produce tangible outcomes for the private sector and enhance public-private dialogue. Specifically, we seek Ministerial endorsement of the U.S. SME Business Partnership Initiative, developed in cooperation with the U.S. Chamber of Commerce. The partnership works on a bilateral basis with other APEC economies to develop internet-based matchmaking systems of qualified SME companies. The Initiative demonstrates first-hand the value-added of strategic partnerships, particularly when the appropriate due diligence is conducted. This program offers an excellent example of outcomes-oriented APEC work. We also will maintain momentum on the APEC Consumer Education and Protection Initiative (CEPI), developed with the Direct Selling Association.

The U.S. delegation head will deliver general remarks during the Ministerial meetings on one theme, strategic alliances. It is hoped that our private sector delegation will represent firms who are engaged in strategic alliances in Asia, and/or can support the formation of strategic partnerships via the use of the Internet and electronic commerce. There will be several opportunities for informal interaction with both other Ministers and the private sector delegation members.

Mission Scenario

Optional Gold Key Program in Malaysia—June 19.

Women Leaders' Network Meeting in Brunei—June 17–20.

Business Forum and E-Commerce Workshop—June 20–22.

(Note: Agendas call for plenary sessions, interaction with Ministers, and working group breakout sessions to deliberate on Ministerial themes.)

SME Ministerial—June 22–23.

The Ministerial and related events will be held at the International Convention Center in Bandar Seri Begawan, Brunei Darussalam from June 20 to 23, 2000. Each private sector participant is responsible for arranging travel itinerary, hotel accommodations and paying for his/her stay in Brunei. The registration fees for the Ministerial-related events vary: Women Leaders' Network Meeting registration fee is $200.00/delegate; Business Forum registration fee is $150.00/delegate; E-Commerce Workshop registration fee for the first 5 U.S. firms accepted on U.S. delegation is waived. The registration fee for subsequent participants for the E-Commerce Workshop is $100.00/delegate.

In addition, U.S. private sector members of the delegation are being offered an optional group Gold Key program in Kuala Lumpur, Malaysia on June 19. The Commercial Service in Malaysia is responsible for organizing the optional one-day program, which will include an Embassy briefing, meeting appointments, and reception. Cost to participate in the Gold Key is $500/company.

There will be opportunities for informal interaction with both other

Ministers and private sector delegation members. The head of the U.S. delegation will also interact with U.S. private sector participants via hospitality events and other meetings.

Criteria for Participant Selection

Eligibility

Participating companies must be incorporated in the United States.

A company is eligible to participate only if the products and/or services that it will promote on the U.S. delegation are either (a) manufactured in the United States; or (b) if manufactured or produced outside the United States, are marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product/service.

Selection Criteria

Five to ten representatives of U.S. companies will be selected on the basis of:

- Company representatives' ability to participate in discussions of relevant marketing and investment issues they face in international trade, and/or demonstration of knowledge of working with information or other high-technology means, including e-commerce, to support strategic alliances between small and medium-sized firms (defined as not more than 500 employees) and/or between SMEs and larger firms. This would reflect consistency of company's market development goals with the scope and desired outcomes of the mission as described.
- Whether the company's overall business objectives, including those of any U.S. or overseas affiliates, are fully consistent with the mission's foreign and commercial policy objectives.
- Timely receipt of signed mission application and registration materials. For those interested in the optional Gold Key program in Malaysia, timely receipt of participation agreement, marketing form, company brochures, and $500.00 fee for each participating firm.

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Internet, direct mail and broadcast fax, e-mail, notices by industry trade associations and other multiplier groups, and press releases.

Any partisan political activities (including political contributions) of an applicant are entirely irrelevant to the selection process.

Time Frame for Applications

Application deadline: The Bruneian Government has requested that all participants be identified by no later than June 10, 2000. ITA staff expect recruitment outreach to conclude on/about June 2, 2000, in order to allow for time for review and approval of applications from the private sector.

Expressions of interest to obtain application and registration materials should be submitted immediately to: Brenda J. Fisher, APEC Affairs Coordinator, Room 2316, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Phone 202 482 5334, Fax 202 482 3316; E-mail: Brenda__Fisher@ita.doc.gov

For overall meeting agendas, list of speakers, registration fees, and other administrative/logistical details, please visit the following websites, which are being regularly updated.

For SME Ministerial: *http://apecsme2000.rba.com.bn*

For E-Commerce Workshop: *http://www.apec2000.gov.bn/ecomm*

For SME Business Forum: *http://www.bsmenet.org.bn/bizforum/index.htm*

For Women Leaders' Meeting: *http://www.apec2000.gov.bn/wln*

Dated: May 12, 2000.

Philip R. Agress,

Acting Deputy Assistant Secretary for Asia and the Pacific, ITA/USDOC.

[FR Doc. 00–12466 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, June 6, 2000 from 8:15 a.m. to 5:30 p.m. and Wednesday, June 7, 2000 from 8 a.m. to 12:15 p.m. The Visiting Committee on Advanced Technology is composed of fourteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST programs; a presentation by one of the Visiting Committee members on Engineering Materials for Technological Applications; an indepth review of the Information Technology Laboratory; an indepth review of the Baldridge National Quality Program; an indepth review of the Electronics and Electrical Engineering Laboratory; and a laboratory tour. Discussions scheduled to begin at 8 a.m. and to end at 12:15 p.m. on June 7, 2000, on staffing of management positions at NIST, the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership, and feedback sessions will be closed.

DATES: The meeting will convene June 6, 2000 at 8:15 a.m. and will adjourn at 12:15 p.m. on June 7, 2000.

ADDRESSES: The meeting will be held in the Employees' Lounge (seating capacity, 80, includes 38 participants), Administration Building at NIST, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–4720.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on July 15, 1999, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: May 10, 2000.

Raymond G. Kammer,

Director.

[FR Doc. 00–12442 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Thursday, June 8, 2000. The Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Review Roles/Responsibilities of Judges and Overseers; Health Care and Education Update; 2000 Baldrige Criteria Changes and Future Criteria Evolution; New Marketing Documents; Discussion of Program Issues, and Key Issues from the June 7 Judges' Meeting.

DATES: The meeting will convene June 8, 2000, at 8:30 a.m. and adjourn at 3:00 p.m. on June 8, 2000.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: May 10, 2000.

Raymond G. Kammer,

Director.

[FR Doc. 00–12441 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Wednesday, June 7, 2000. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to Review the 2000 Baldrige Award Cycle; Discussion of Senior Examiner Training for Site Visits and Final Judging Interaction; Judges' Survey of Applicants; and Judging Process Improvement. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 7, 2000, at 11:00 a.m. and adjourn at 4:30 p.m. on June 7, 2000. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Chemistry Building, Room A228, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 31, 2000, that the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 10, 2000.

Raymond G. Kammer,

Director.

[FR Doc. 00–12582 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041800A]

Notice of Availability of Draft Stock Assessment Reports

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS has revised the Alaska, Atlantic and Gulf of Mexico, and Pacific marine mammal stock assessment reports in accordance with the Marine Mammal Protection Act (MMPA). Draft revised 2000 reports are available for public review and comment.

DATES: Comments must be received by August 16, 2000.

ADDRESSES: Send requests for printed copies of the draft Reports to: Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments. Copies of the regional reports may also be requested from Anita Lopez, Alaska Fisheries Science Center (F/AKC), NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115–0070 (Alaska); Janeen Quintal, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543 (Northwest Atlantic); Steven Swartz, Southeast Fisheries Science Center, 75 Virginia Beach Dr., Miami, FL 33149 (Mid-Atlantic and Gulf of Mexico); and Tim Price, Southwest Regional Office (F/SWO3), NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213 (Pacific). Electronic copies of the reports can be found at the following internet address: http://www.nmfs.gov/prot_res/mammals/sa_rep/sar.html. Electronic copies of the Atlantic and Gulf of Mexico Marine Mammal Stock Assessments can also be found at the following internet address: http://www.nefsc.nmfs.gov/psb/assesspdfs.htm.

FOR FURTHER INFORMATION CONTACT: Emily Hanson, Office of Protected Resources, NMFS, at (301) 713–2322, ext. 101, Anita Lopez (206) 526–4045,

regarding Alaska regional stock assessments; Janeen Quintal, (508) 495–2252 regarding Northwest Atlantic regional stock assessments; Steven Swartz, (305) 361–4487, regarding Mid-Atlantic and Gulf of Mexico regional stock assessments; or Tim Price, (562) 980–4020, regarding Pacific regional stock assessments.

SUPPLEMENTARY INFORMATION: Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessment reports (SARs) for each stock of marine mammals that occurs in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock.

The MMPA also requires NMFS and FWS to review these reports annually for strategic stocks of marine mammals and at least every three years for stocks determined to be non-strategic. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups, reviewed the status of marine mammal stocks as required, and revised reports for which new information was available. Summary tables for all stocks of marine mammals in the three regions (Tables 1–3) indicate revisions to the reports. NMFS solicits public comments on these draft revised Alaska, Atlantic and Gulf of Mexico, and Pacific reports.

Alaska Stocks

NMFS, in conjunction with the Alaska Scientific Review Group, reviewed information available for all strategic stocks of Alaska marine mammals under its authority, as well as Pacific white-sided dolphins, harbor porpoise (3 stocks), Dall's porpoise, and gray whales for the 2000 Stock Assessment Reports. A total of 14 of the 32 Alaska stock assessment reports were revised for 2000. These reports are identified by a November 1, 1999, date-stamp at the beginning of each report.

Most proposed changes to the stock assessment reports incorporate new information into mortality estimates. New Potential Biological Removal level (PBR) estimates have been calculated for those stocks having new abundance estimates. The new information on abundance and mortality did not change the status (strategic or not) of any of the Alaska stocks relative to the last time the respective stock assessment report was revised.

As recommended by the Alaska Scientific Review Group (ASRG), NMFS proposes to change the recovery factor for the Cook Inlet stock of beluga whales. The proposed recovery factor for this stock would decrease from 0.5 to 0.3. The ASRG recommended a recovery factor of 0.1 be incorporated into the draft 2000 report. However, three significant pieces of information have become available. First, the Alaska Natives in the Cook Inlet area are cooperating to control the harvest, and no beluga were killed for subsistence in 1999. Second, the 1999 surveys indicate that the decline of the stock has abated. Third, the first year of observer coverage reported no beluga taken in Cook Inlet fisheries, suggesting that mortality incidental to commercial fishing does not appear to be a significant factor affecting the Cook Inlet beluga stock. Therefore, NMFS intends to use a recovery factor of 0.3 until additional information indicates that a revision is warranted.

The proposed minimum population estimate for the North Pacific stock of Pacific white-sided dolphins was reduced from 486,719 animals to 26,880 animals, which would reduce the Potential Biological Removal level (PBR) from 4,867 animals to 269 animals. The minimum population estimate of 486,719 animals was based on an abundance estimate that reflected the range-wide estimate of Pacific white-sided dolphins, rather than one that could be applied just to the North Pacific stock. The full estimate is not considered appropriate to apply to the North Pacific management stock, but the portion of the estimate derived from sightings north of 45°N in the Gulf of Alaska can be used as the population estimate for this stock, yielding the proposed minimum population estimate of 26,880 animals.

Atlantic and Gulf of Mexico Stocks

The draft 2000 Atlantic and Gulf of Mexico Stock Assessment Reports were prepared by staff of the Northeast Fisheries Science Center and Southeast Fisheries Science Center. The reports were presented at the November 1999 meeting of the Atlantic Scientific Review Group, and subsequent revisions were based on the group's advice. The 2000 Stock Assessment Reports contain updated assessments for Atlantic strategic stocks and for Atlantic and Gulf of Mexico stocks for which new information was available. These reports are identified by a December 1999 date-stamp at the beginning of each report.

A total of 28 of the 60 Atlantic and Gulf of Mexico SARs were revised for 2000. Most of the proposed changes incorporate new information into sections on population size and mortality estimates. The revised reports include 15 strategic and 13 non-strategic stocks. For the first time, individual species abundance estimates are available for the Western North Atlantic stocks of Atlantic spotted and Pantropical spotted dolphins.

Based on recent modeling that suggests that the population of the Western North Atlantic stock of Northern right whales is in decline, the maximum net productivity for this stock has been estimated as zero, and therefore PBR for this stock would be reduced to zero. This decrease would change the focus of the Atlantic Large Whale Take Reduction Team from concentrating on reducing to eliminating the incidental mortality and serious injury of right whales. Information on human interactions (fishery and ship strikes) between the right whale, humpback whale, fin whale, and minke whale stocks were reviewed and updated.

The stock definition for humpback whales is proposed to be changed from the North Atlantic Stock to the Gulf of Maine stock, based on genetic analysis and the fidelity of whales to this region for feeding. Although the stock structure was revised, the abundance estimate is based on the entire North Atlantic aggregation of humpback whales. Existing data does not allow NMFS to separately estimate abundance for the Gulf of Maine feeding stock.

The Western North Atlantic stock of long-finned pilot whales was changed to ''strategic'' based on the annual incidental mortality estimate.

Pacific Stocks

The draft 2000 Stock Assessment Reports present a complete set of revised stock assessments for Pacific marine mammal stocks under NMFS jurisdiction. New abundance estimates are available and have been included for ten Hawaiian stocks and 25 U.S. West Coast stocks. The assessments in this report include stocks studied by the Southwest Fisheries Science Center and the National Marine Mammal Laboratory. The Pacific and Alaska Scientific Review Groups reviewed and commented on earlier versions of these draft stock assessment reports.

Mortality estimates for the California drift gillnet fishery are based on data from 1997–98 because entanglement rates of marine mammals decreased after implementation of the Take Reduction Plan in 1997.

The California/Oregon/Washington stock of short-finned pilot whales is proposed to be classified as not strategic. Including driftnet mortality

only for years after implementation of the Take Reduction Plan (1997–1998), the average annual human-caused mortality in 1997–1998 (3 animals) is estimated to be less than the PBR, and therefore they would not be classified as strategic.

The Central California stock of harbor porpoise is proposed to be classified as strategic because of increased mortality from the halibut set gillnet fishery. The average annual mortality for 1996–1998 is greater than the calculated PBR for Central California harbor porpoise. Based on the success of reducing harbor porpoise mortality in east coast fisheries, efforts are currently underway to encourage voluntary use of pingers in the central California set gillnet fishery. The observer program for this fishery is scheduled to be continued and will provide information on the success of any voluntary measures.

The Hawaii stock of false killer whales is proposed to be listed as strategic because the rate of serious injury to false killer whales within the U.S. Exclusive Economic Zone in the Hawaii longline fishery exceeds the PBR. However, the available abundance estimate, on which PBR is based, is based only on a portion of the species' range in Hawaiian waters. Additional studies of abundance, distribution, and fishery-related mortality would be required to re-evaluate this species' status in the future.

The stock assessment report for the California/Oregon/Washington stock of dwarf sperm whale (*Kogia simus*) has been discontinued. The lack of reliable sighting or stranding records off the U.S. west coast since the 1970s suggests the stock does not occur in waters under U.S. jurisdiction on a regular basis.

The stock of blue whale formerly known as the 'California/Mexico stock' has been renamed the ''Eastern North Pacific stock'' to reflect current knowledge of whale movements between the U.S. west coast and the eastern tropical Pacific (Mate et al. 1999, Stafford et al. 1999).

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Table 1--Summary table of Alaska marine mammal stocks. Marine mammal stock assessment reports that were revised relative to the 1999 reports, and that have draft 2000 Stock Assessment Reports available, are identified by an 11/1/99 date of last revision. Changes to the estimates of abundance, human-caused mortality, and other items are also indicated.

Species	Stock Area	NMFS Center	Nmin	Rmax	Fr	PBR	Total Annual Mortality	Annual Fishing Mortality	Strategic Status	Last Revision
Baird's beaked whale	Alaska	AKC	N/A	0.02	0.50	N/A	0	0	N	6/25/99
Bearded seal	Alaska	AKC	N/A	0.06	0.50	N/A	2	2	N	8/8/97
Beluga whale	Beaufort Sea	AKC	32,453	0.02	1.00	649	184	0	N	6/25/99
Beluga whale	East Chukchi Sea	AKC	3,710	0.02	1.00	74	68	0	N	6/25/99
Beluga whale	East Bering Sea	AKC	6,439	0.02	1.00	129	122	1	N	6/25/99
Beluga whale	Bristol Bay	AKC	1,316	0.02	1.00	26	20	1	N	6/25/99
Beluga whale	Cook Inlet	AKC	~~273~~ 303	0.02	~~0.50~~ 0.30	~~2.7~~ 1.8	87	0	Y	11/1/99
Bowhead whale	Western Arctic	AKC	7,738	0.02	0.50	77	49	0	Y	11/1/99
Cuvier's beaked whale	Alaska	AKC	N/A	0.02	0.50	N/A	0	0	N	6/25/99
Dall's porpoise	Alaska	AKC	76,874	0.02	1.00	1,537	42	42	N	11/1/99
Fin whale	Northeast Pacific	AKC	N/A	0.02	0.10	N/A	0	0	Y	12/30/98
Gray whale	Eastern North Pacific	AKC	~~21,597~~ 24,477	0.02	1.00	~~432~~ 490	~~47~~ 140	~~4~~ 64	N	11/1/99
Harbor porpoise	Southeast Alaska	AKC	~~8,156~~ 8,376	0.02	0.50	~~82~~ 83	~~4~~ 3	~~4*~~ 3	N	11/1/99
Harbor porpoise	Gulf of Alaska	AKC	~~7,085~~ 16,630	0.02	0.50	~~71~~ 166	~~25~~ 25	~~25~~ 25	N	11/1/99
Harbor porpoise	Bering Sea	AKC	8,549	0.02	0.50	86	2	2	N	11/1/99
Harbor seal	Southeast Alaska	AKC	35,226	0.06	1.00	2,114	1,785	36	N	12/30/98
Harbor seal	Gulf of Alaska	AKC	28,917	0.06	0.50	868	827	36	N	12/30/98

Table 1 - cont.

Species	Stock Area	NMFS Center	Nmin	Rmax	Fr	PBR	Total Annual Mortality	Annual Fishing Mortality	Strategic Status	Last Revision
Harbor seal	Bering Sea	AKC	12,648	0.06	0.50	379	192	31	N	12/30/98
Humpback whale	Western North Pacific	AKC	367	0.02	0.10	0.7	~~0.2~~ 0.4	~~0.2~~ 0.4	Y	11/1/99
Humpback whale	Central North Pacific	AKC	3,698	0.02	0.10	7.4	~~1~~ 2.8	~~1~~ 2.8	Y	11/1/99
Killer whale	Eastern North Pacific Northern Resident	AKC	717	0.02	0.50	7.2	0.8	0.8	N	12/30/98
Minke whale	Alaska	AKC	N/A	0.02	0.50	N/A	0	0	N	8/8/97
Northern right whale	North Pacific	AKC	N/A	0.02	0.10	N/A	0	0	Y	11/1/99
Northern fur seal	Eastern North Pacific	AKC	848,539	0.043	0.50	18,244	~~1,725~~ 1,724	~~17~~ 16	Y	11/1/99
Pacific white-sided dolphin	~~Central~~ North Pacific	AKC	~~486,719~~ 26,880	0.02	0.50	~~4,867~~ 269	4	4	N	11/1/99
Ribbon seal	Alaska	AKC	N/A	0.06	0.50	N/A	1	1	N	8/8/97
Ringed seal	Alaska	AKC	N/A	0.06	0.50	N/A	1	1	N	8/8/97
Sperm whale	North Pacific	AKC	N/A	0.02	0.10	N/A	0	0	Y	12/30/98
Spotted seal	Alaska	AKC	N/A	0.06	0.50	N/A	2	2	N	8/8/97
Stejner's beaked whale	Alaska	AKC	N/A	0.02	0.50	N/A	0	0	N	6/25/99
Steller sea lion	Eastern U.S.	AKC	30,403	0.06	0.75	1,368	16	16	Y	11/1/99
Steller sea lion	Western U.S.	AKC	39,031	0.06	0.10	234	442	30	Y	11/1/99

Table 2--Summary table of Atlantic and Gulf of Mexico marine mammal stocks. Marine mammal stock assessment reports that were revised relative to the 1999 reports, and that have draft 2000 Stock Assessment Reports available, are identified by a 12/99 date of last revision. Changes to the estimates of abundance, human-caused mortality, and other items are also indicated.

Species	Stock Area	NMFS Center	Nmin	Rmax	Fr	PBR	Total Annual Mortality and Serious Injury	Annual Fishing Mortality and Serious Injury	Strategic Status	Last Revision
Harbor seal	Western North Atlantic	NEC	30,990	0.12	1.0	1,859	~~934~~ 873	~~934~~ 873	N	12/99
Gray seal	Western North Atlantic	NEC	NA	NA	NA	NA	~~70~~ 75	~~70~~ 75	N	12/99
Harp seal	Western North Atlantic	NEC	N/A	N/A	N/A	N/A	~~394~~ 402	~~394~~ 402	N	12/99
Hooded seal	Western North Atlantic	NEC	N/A	N/A	N/A	N/A	5.6	5.6	N	10/99
Harbor porpoise	Gulf of Maine/Bay of Fundy	NEC	48,289	0.04	0.5	483	~~1,895~~ 1,578	~~1,895~~ 1,578	Y	12/99
Risso's dolphin	Western North Atlantic	NEC	~~11,140~~ 22,540	0.04	0.48	~~107~~ 216	~~7.2~~ 13	~~7.2~~ 13	N	12/99
Atlantic white-sided dolphin	Western North Atlantic	NEC	19,196	0.04	0.48	184	~~291~~ 223	~~291~~ 223	Y	12/99
White-beaked dolphin	Western North Atlantic	NEC	N/A	0.04	N/A	N/A	0.00	0.00	N	8/97
Common dolphin	Western North Atlantic	NEC	~~16,060~~ 11,142	0.04	0.48	~~154~~ 107	~~780~~ 612	~~780~~ 612	Y	12/99
Atlantic spotted dolphin	Western North Atlantic	NEC	~~1,617~~[1] 23,699[2]	0.04	0.5	~~16~~ 236	~~9.9~~ 7.8[1]	~~9.9~~ 7.8[1]	N	12/99
Pantropical spotted dolphin	Western North Atlantic	NEC	~~1,617~~[1] 8,450	0.04	0.5	84	~~9.9~~ 7.8[1]	~~9.9~~ 7.8[1]	N	12/99
Striped dolphin	Western North Atlantic	NEC	~~18,220~~ 44,500	0.04	0.5	~~182~~ 445	~~11~~ 7.3	~~11~~ 7.3	N	12/99
Spinner dolphin	Western North Atlantic	NEC	N/A	N/A	N/A	N/A	0.31	0.31	N	12/98

Table 2 - cont.

Species	Stock Area	NMFS Center	Nmin	Rmax	Fr	PBR	Total Annual Mortality and Serious Injury	Annual Fishing Mortality and Serious Injury	Strategic Status	Last Revision
Bottlenose dolphin	Western North Atlantic, offshore	~~NEC~~ SEC	~~8,794~~ 20,642[2]	0.04	0.5	~~88~~ 206	~~10~~ 5.3	~~10~~ 5.3	N	12/99
Bottlenose dolphin	Western North Atlantic, coastal	SEC	2,482	0.04	0.5	25	~~29~~ 46	~~29~~ 46	Y	12/99
Dwarf sperm whale	Western North Atlantic	SEC	~~N/A~~ 373[3]	0.04	~~N/A~~ 0.5	~~N/A~~ 7.5	~~0.00~~ 0.25	~~0.00~~ 0.25	N	12/99
Pygmy sperm whale	Western North Atlantic	SEC	~~N/A~~ 373[3]	0.04	~~N/A~~ 0.5	~~N/A~~ 7.5	~~0.00~~ 0.25	~~0.00~~ 0.25	N	12/99
Killer whale	Western North Atlantic	NEC	N/A	0.04	N/A	N/A	0.00	0.00	N	7/95
Pygmy killer whale	Western North Atlantic	SEC	6	0.04	0.5	0.1	0.00	0.00	N	7/95
Northern bottlenose whale	Western North Atlantic	NEC	N/A	0.04	N/A	N/A	0.00	0.00	N	12/98
Cuvier's beaked whale	Western North Atlantic	NEC	~~895~~ 2,419 [4]	0.04	0.5	~~8.9~~ 24	~~9.7~~ 9.5	~~9.7~~ 9.5[5]	Y	12/99
Mesoplodon beaked whale	Western North Atlantic	NEC	~~895~~ 2,419 [4]	0.04	0.5	~~8.9~~ 24	~~9.7~~ 9.5	~~9.7~~ 9.5[5]	Y	12/99
Pilot whale, long-finned	Western North Atlantic	NEC	~~4,968~~ 8,148[6]	0.04	0.48	~~48~~ 78	87 146	~~87~~ 146[7]	~~N~~ Y	12/99
Pilot whale, short-finned	Western North Atlantic	~~NEC~~ SEC	~~457~~ 8,148[6]	0.04	0.48	~~4.4~~ 78	~~87~~ 146	~~87~~ 146[7]	Y	12/99
Sperm whale	~~Western~~ North Atlantic	NEC	~~1,617~~ 3,400	0.04	0.1	~~3.2~~ 6.8	0.00	0.00	Y	12/99
North Atlantic right whale	Western North Atlantic	NEC	~~295~~ 291	~~0.025~~ 0	0.1	~~0.4~~ 0.0	~~1.8~~ 1.4	~~1.0~~ 0.8[8]	Y	12/99
Humpback whale	~~Western North Atlantic~~ Gulf of Maine	NEC	10,019	0.065	0.1	32.6	~~5.4~~ 3.7	~~4.4~~ 2.7[9]	Y	12/99

Table 2 - cont.

Species	Stock Area	NMFS Center	Nmin	Rmax	Fr	PBR	Total Annual Mortality and Serious Injury	Annual Fishing Mortality and Serious Injury	Strategic Status	Last Revision
Fin whale	Western North Atlantic	NEC	1,803	0.04	0.1	3.6	~~0.5~~ 0.8	0.20 [10]	Y	12/99
Sei whale	Nova Scotia	NEC	N/A	0.04	0.1	N/A	0.00	0.00	Y	12/99
Minke whale	Canadian east coast	NEC	~~2,145~~ 3,097	0.04	0.5	~~21~~ 31	~~5.8~~ 2.7	~~4.8~~ 2.7	N	12/99
Blue whale	Western North Atlantic	NEC	~~N/A~~ 308	0.04	0.1	~~N/A~~ 0.6	0.00	0.00	Y	12/99
Bottlenose dolphin	Gulf of Mexico, outer continental shelf	SEC	43,233	0.04	0.5	432	2.8	2.8	N	7/95
Bottlenose dolphin	Gulf of Mexico, continental shelf edge and slope	SEC	4,530	0.04	0.5	45	2.8	2.8	N	7/95
Bottlenose dolphin	Western Gulf of Mexico coastal	SEC	2,938	0.04	0.5	29	13	13	N	8/97
Bottlenose dolphin	Northern Gulf of Mexico coastal	SEC	3,518	0.04	0.5	35	10	10	N	8/97
Bottlenose dolphin	Eastern Gulf of Mexico coastal	SEC	8,963	0.04	0.5	0.5	8	8	N	8/97
Bottlenose dolphin	Gulf of Mexico bay, sound, and estuarine	SEC	3,933	0.04	0.5	39.7	N/A	N/A	Y	10/99
Atlantic spotted dolphin	Northern Gulf of Mexico	SEC	2,255	0.04	0.5	23	1.5	1.5	N	6/95
Pantropical spotted dolphin	Northern Gulf of Mexico	SEC	26,510	0.04	0.5	265	1.5	1.5	N	7/95
Striped dolphin	Northern Gulf of Mexico	SEC	3,409	0.04	0.5	34	0.00	0.00	N	7/95
Spinner dolphin	Northern Gulf of Mexico	SEC	4,465	0.04	0.5	45	0.00	0.00	N	7/95
Rough-toothed dolphin	Northern Gulf of Mexico	SEC	660	0.04	0.5	6.6	0.00	0.00	N	7/95
Clymene dolphin	Northern Gulf of Mexico	SEC	4,120	0.04	0.5	41	0.00	0.00	N	7/95

Table 2 - cont.

Species	Stock Area	NMFS Center	Nmin	Rmax	Fr	PBR	Total Annual Mortality and Serious Injury	Annual Fishing Mortality and Serious Injury	Strategic Status	Last Revision
Fraser's dolphin	Northern Gulf of Mexico	SEC	66	0.04	0.5	0.7	0.00	0.00	N	7/95
Killer whale	Northern Gulf of Mexico	SEC	197	0.04	0.5	2.0	0.00	0.00	N	7/95
False killer whale	Northern Gulf of Mexico	SEC	236	0.04	0.5	2.4	0.00	0.00	N	7/95
Pygmy killer whale	Northern Gulf of Mexico	SEC	285	0.04	0.5	2.8	0.00	0.00	N	7/95
Dwarf sperm whale	Northern Gulf of Mexico	SEC	N/A	0.04	N/A	N/A	0.00	0.00	N	10/99
Pygmy sperm whale	Northern Gulf of Mexico	SEC	N/A	0.04	N/A	N/A	0.00	0.00	N	10/99
Melon-headed whale	Northern Gulf of Mexico	SEC	2,888	0.04	0.5	29	0.00	0.00	N	7/95
Risso's dolphin	Northern Gulf of Mexico	SEC	2,199	0.04	0.5	22	19	19	N	7/95
Cuvier's beaked whale	Northern Gulf of Mexico	SEC	20	0.04	0.5	0.2	0.00	0.00	N	7/95
Blainville's beaked whale	Northern Gulf of Mexico	SEC	N/A	N/A	N/A	N/A	0.00	0.00	N	7/95
Gervais' beaked whale	Northern Gulf of Mexico	SEC	N/A	N/A	N/A	N/A	0.00	0.00	N	7/95
Pilot whale, short-finned	Northern Gulf of Mexico	SEC	186	0.04	0.5	1.9	0.3	0.3	Y	7/95
Sperm whale	Northern Gulf of Mexico	SEC	411	0.04	0.1	0.8	0.00	0.00	Y	7/95
Bryde's whale	Northern Gulf of Mexico	SEC	17	0.04	0.5	0.2	0.00	0.00	N	7/95

1. Mortality data are not separated by species; therefore, species-specific estimates are not available. The mortality estimate represents both Atlantic and Pantropical spotted dolphins. Estimates may include sightings of the coastal form of Atlantic spotted dolphins.
2. Estimates may include sightings of the coastal form.
3. This estimate may include both the dwarf and pygmy sperm whales.
4. This estimate includes Cuvier's beaked whales and undifferentiated Mesoplodon spp. beaked whales.
5. The estimate does not differentiate species of beaked whales (Mesoplodon spp.) and includes an unknown number of Cuvier's beaked whales.
6. This estimate may include both long-finned and short-finned pilot whales.
7. Mortality data are not separated by species; therefore, species-specific estimates are not available. This mortality estimate represents both long-finned and short-finned pilot whales. Total mortality includes Nova Scotia 94-96 average of 9 long-finned pilot whales.
8. This is the average mortality of right whales based on 5 years of observer data (0.0) and additional fishery impact records (~~1.0~~ 0.8).
9. This is the average mortality of humpback whales based on 5 years of observer data (~~0.6~~ 0.25) and additional fishery impact records (~~3.8~~ 2.4).
10. The mortality estimate is based on a review of NMFS anecdotal records from 1994-1998, that yielded an average of 0.8 human caused mortality - 0.6 ship strikes, 0.2 fishery interactions.

Table 3--Summary table of Pacific marine mammal stocks. All of the Pacific marine mammal stocks under NMFS jurisdiction were revised relative to the 1999 reports, and have draft 2000 Stock Assessment Reports available. Changes to the estimates of abundance, human-caused mortality, and other items are also indicated.

Species	Stock Area	NMFS Center	Nmin	Rmax	Fr	PBR	Total Annual Mortality and Serious Injury	Annual Fish. Mortality and Serious Injury	Strategic Status	Last Revision
California sea lion	U.S.	SWC	~~111,339~~ 109,854	0.12	1.0	~~6,680~~ 6,591	~~974~~ 1,352	~~915~~ 1,208	N	1/3/00
Harbor Seal	California	SWC	27,962	0.12	1.0	1,678	~~243~~ ≥39	~~234~~ N/A	N	1/3/00
Harbor Seal	Oregon/ Washington Coast	AKC	~~24,733~~ 24,705	0.12	1.0	~~1,484~~ 1,482	~~19~~ ≥18	~~17~~ ≥16	N	1/3/00
Harbor Seal	Inland Washington	AKC	~~16,104~~ 15,174	0.12	1.0	~~966~~ 910	~~41~~ ≥43	~~36~~ ≥38	N	1/3/00
Northern Elephant Seal	California breeding	SWC	51,625	0.083	1.0	2,142	~~145~~ ≥33	~~145~~ ≥33	N	1/3/00
Guadalupe Fur Seal	Mexico to California	SWC	3,028	0.137	0.5	104	0.0	0.0	Y	1/3/00
Northern Fur Seal	San Miguel Island	AKC	~~6,720~~ 2,336	0.086	1.0	~~216~~ 100	0.0	0.0	N	1/3/00
Monk seal	Hawaii	SWC	~~1,423~~ 1,436	0.07	0.1	5.0	N/A	N/A	Y	1/3/00
Harbor porpoise	Central California	SWC	4,172	0.04	0.50	42	~~24~~ 63	~~24~~ 63	~~N~~ Y	1/3/00
Harbor porpoise	Northern California	SWC	~~7,640~~ 8,061	0.04	~~0.5~~ 1.0	~~76~~ 81	~~0.0~~ ≥0.2	~~0.0~~ ≥0.2	N	1/3/00
Harbor porpoise	Oregon/ Washington Coast	AKC	32,769	0.04	0.5	328	12	12	N	1/3/00
Harbor porpoise	Inland Washington	AKC	2,545	0.04	0.4	20	15	15	N	1/3/00
Dall's Porpoise	California/ Oregon/ Washington	SWC	~~34,393~~ 81,866	0.04	~~0.48~~ 0.45	~~330~~ 737	~~22~~ 12	~~22~~ 12	N	1/3/00
Pacific White-sided Dolphin	California/ Oregon/ Washington	SWC	~~82,939~~ 17,475	0.04	~~0.48~~ 0.45	~~796~~ 157	~~22.0~~ ≥6.8	~~22.0~~ ≥6.8	N	1/3/00
Risso's Dolphin	California/ Oregon/ Washington	SWC	~~22,388~~ 13,079	0.04	~~0.5~~ 0.4	~~224~~ 105	~~37~~ 5.5	~~37~~ 5.5	N	1/3/00
Bottlenose Dolphin	California coastal	SWC	~~134~~ 154	0.04	0.5	~~1.3~~ 1.5	0	0	N	1/3/00

Table 3 - cont.

Species	Stock Area	NMFS Center	Nmin	Rmax	Fr	PBR	Total Annual Mortality and Serious Injury	Annual Fish. Mortality and Serious Injury	Strategic Status	Last Revision
Bottlenose Dolphin	California/ Oregon/ Washington Offshore	SWC	~~1904~~ 850	0.04	~~0.4~~ 0.5	~~15~~ 8.5	~~4.4~~ 0	~~4.4~~ 0	N	1/3/00
Striped Dolphin	California/ Oregon/ Washington	SWC	~~19,248~~ 17,995	0.04	~~0.4~~ 0.5	~~154~~ 180	~~1.2~~ 0	~~1.2~~ 0	N	1/3/00
Common dolphin, short-beaked	California/ Oregon/ Washington	SWC	~~309,717~~ 318,795	0.04	0.5	~~3,097~~ 3,188	~~272~~ 79	~~272~~ 79	N	1/3/00
Common dolphin, long-beaked	California	SWC	~~5,504~~ 27,739	0.04	~~0.48~~ 0.45	~~53~~ 250	14	14	N	1/3/00
Northern right whale dolphin	California/ Oregon/ Washington	SWC	~~15,080~~ 10,060	0.04	~~0.5~~ 0.48	~~151~~ 97	~~47~~ 15	~~47~~ 15	N	1/3/00
Killer whale	Eastern North Pacific Transient	AKC	~~336~~ 376	0.04	0.45	~~3.0~~ 3.4	~~2.0~~ 2.6	~~2.0~~ 2.4	N	1/3/00
Killer whale	Eastern North Pacific Offshore	SWC	209	0.04	0.5	2.1	0	0	N	1/3/00
Killer whale	Eastern North Pacific Southern Resident	AKC	~~89~~ 84	0.04	0.5	~~0.9~~ 0.8	0	0	N	1/3/00
Short-finned pilot whale	California/ Oregon/ Washington	SWC	717	0.04	~~0.48~~ 0.4	~~6.9~~ 5.7	~~13~~ 3.0	~~13~~ 3.0	~~Y~~ N	1/3/00
Baird's Beaked Whale	California/ Oregon/ Washington	SWC	~~252~~ 313	0.04	~~0.4~~ 0.5	~~3.1~~ 2.0	~~1.2~~ 0	~~1.2~~ 0	N	1/3/00
Mesoplodont Beaked Whales	California/ Oregon/ Washington	SWC	~~2,840~~ 2,734	0.04	~~0.45~~ 0.5	~~26~~ 27	~~>9.2~~ 0	~~9.2 – 13~~ 0	N	1/3/00
Cuvier's Beaked Whale	California/ Oregon/ Washington	SWC	~~6,070~~ 4,309	0.04	0.5	~~61~~ 43	~~28~~ 0	~~28~~ 0	N	1/3/00
Pygmy Sperm Whale	California/ Oregon/ Washington	SWC	~~2,059~~ 2,837	0.04	~~0.45~~ 0.5	~~19~~ 28	~~2.8~~ 0	~~2.8~~ 0	N	1/3/00
~~Dwarf Sperm Whale~~	~~California/ Oregon/ Washington~~	~~SWC~~	~~N/A~~	~~0.04~~	~~0.5~~	~~N/A~~	~~N/A~~	~~N/A~~	~~N~~	Stock Assessment Discontinued

Table 3 - cont.

Species	Stock Area	NMFS Center	Nmin	Rmax	Fr	PBR	Total Annual Mortality and Serious Injury	Annual Fish. Mortality and Serious Injury	Strategic Status	Last Revision
Sperm whale	California/ Oregon/ Washington	SWC	~~992~~ 995	0.04	0.1	2.0	~~3.0~~ 2.5	~~3.0~~ 2.5	Y	1/3/00
Humpback whale	California/ Oregon/ Washington	SWC	~~563~~ 861	0.04	0.1	~~0.5~~ 1.7	~~1.8~~ 1.4	1.2	Y	1/3/00
Blue whale	~~California/ Oregon/ Washington~~ Eastern North Pacific	SWC	~~1,463~~ 1,716	0.04	0.1	~~1.5~~ 1.7	~~0.2~~ 0.0	0	Y	1/3/00
Fin whale	California/ Oregon/ Washington	SWC	~~747~~ 1,044	0.04	0.1	~~1.5~~ 2.1	~~<1~~ 0.4	0	Y	1/3/00
Bryde's whale	California/ Oregon/ Washington	SWC	11,163	0.04	0.5	~~0.2~~ N/A	0	0	N	1/3/00
Sei whale	California/ Oregon/ Washington	SWC	N/A	0.04	0.1	N/A	0	0	Y	1/3/00
Minke whale	California/ Oregon/ Washington	SWC	440	0.04	0.45	4.0	~~3.6~~ 0	~~3.6~~ 0	N	1/3/00
Rough-Toothed Dolphin	Hawaii	SWC	~~N/A~~ 76	0.04	0.5	~~N/A~~ 0.8	N/A	N/A	N	1/3/00
Risso's Dolphin	Hawaii	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N	1/3/00
Bottlenose Dolphin	Hawaii	SWC	~~N/A~~ 479	0.04	0.5	~~N/A~~ 4.8	N/A	N/A	N	1/3/00
Pantropical spotted dolphin	Hawaii	SWC	~~N/A~~ 2,040	0.04	0.5	~~N/A~~ 20	N/A	N/A	N	1/3/00
Spinner dolphin	Hawaii	SWC	~~677~~ 2,355	0.04	0.5	~~6.8~~ 24	N/A	N/A	N	1/3/00
Striped dolphin	Hawaii	SWC	~~N/A~~ 52	0.04	0.5	~~N/A~~ 0.5	N/A	N/A	N	1/3/00
Melon-headed whale	Hawaii	SWC	~~N/A~~ 81	0.04	0.5	~~N/A~~ 0.8	N/A	N/A	N	1/3/00
Pygmy killer whale	Hawaii	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N	1/3/00
False killer whale	Hawaii	SWC	~~N/A~~ 83	0.04	0.5	~~N/A~~ 0.8	~~N/A~~ 9.0	~~N/A~~ 9.0	~~N~~ Y	1/3/00
Killer whale	Hawaii	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N	1/3/00

Table 3 - cont.

Species	Stock Area	NMFS Center	Nmin	Rmax	Fr	PBR	Total Annual Mortality and Serious Injury	Annual Fish. Mortality and Serious Injury	Strategic Status	Last Revision
Pilot whale, short-finned	Hawaii	SWC	~~N/A~~ 1,313	0.04	0.5	~~N/A~~ 13	N/A	N/A	N	1/3/00
Blainville's beaked whale	Hawaii	SWC	~~N/A~~ 43	0.04	0.5	~~N/A~~ 0.4	N/A	N/A	N	1/3/00
Cuvier's beaked whale	Hawaii	SWC	~~N/A~~ 29	0.04	0.5	~~N/A~~ 0.3	N/A	N/A	N	1/3/00
Pygmy sperm whale	Hawaii	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N	1/3/00
Dwarf sperm whale	Hawaii	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N	1/3/00
Sperm whale	Hawaii	SWC	~~N/A~~ 43	0.04	0.1	~~N/A~~ 0.4	N/A	N/A	Y	1/3/00
Blue whale	Hawaii	SWC	N/A	0.04	0.1	N/A	N/A	N/A	Y	1/3/00
Fin whale	Hawaii	SWC	N/A	0.04	0.1	N/A	N/A	N/A	Y	1/3/00
Bryde's whale	Hawaii	SWC	N/A	0.04	0.5	N/A	N/A	N/A	N	1/3/00

Dated: May 15, 2000.

Art Jeffers,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–12579 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: National Defense University, National Security Education Program, Department of the Army.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

DATES: June 13, 2000.

ADDRESSES: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director for Programs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: colliere@ndu.edu.

SUPPLEMENTARY INFORMATION: The Board meeting is open to the public.

Dated: May 12, 2000.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–12464 Filed 5–17–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Assessment for BRAC 95 Disposal and Reuse of Camp Kilmer, New Jersey

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the closure of Camp Kilmer, New Jersey.

The Final Environmental Assessment (EA) evaluates the environmental impacts of the disposal and subsequent reuse of the 49 acres. Alternatives examined in the EA include no action, unencumbered disposal of the property, encumbered disposal of the property. Encumbered disposal refers to transfer or conveyance of property having restrictions on subsequent use as a result of any Army-imposed or legal restraint. The unencumbered disposal alternative refers to the transfer of property without encumbrances such as environmental restrictions and easements. Under the no action alternative, the Army would not dispose of property but would maintain it in caretaker status for an indefinite period.

DATES: Comments must be submitted on or before June 19, 2000.

ADDRESSES: A copy of the Final EA may be obtained by writing to Mr. Carl Burgamy, Jr., U.S. Army Corps of Engineers, U.S. Army Engineer District, Mobile (CESAM–PD), 109 St. Joseph Street, Mobile, AL 36602.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Burgamy, Jr. at (334) 690–2036 or telefax at (334) 690–2727.

SUPPLEMENTARY INFORMATION: While closure of Camp Kilmer is the Army's primary action, the EA also analyzes the potential environmental effects of reuse as a secondary action by means of evaluating intensity-based reuse scenarios. The Army's preferred alternative for disposal of Camp Kilmer's excess property is encumbered disposal, with encumbrances pertaining to easements, use restrictions, restrictions pertaining to asbestos-containing material, future remedial activities after transfer, utility dependencies.

A Notice of Intent (NOI) declaring the Army's intent to prepare an EA for the closure of Camp Kilmer was published in the **Federal Register** on September 22, 1995 (60 FR 49264).

The Final EA is available for review at the Main Public Library, 340 Plainfield Ave., Edison, NJ 08817. Prior to initiating action the Army will consider comments received on this EA.

Dated: May 15, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health); OASA (I&E).

[FR Doc. 00–12583 Filed 5–17–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) for Schofield Barracks Wastewater Treatment Plant Effluent Treatment and Disposal, Oahu, HI

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the FEIS, which assesses the effects of implementing a system to treat and dispose of wastewater effluent from Schofield Barracks, Wheeler Army Airfield, and adjacent military lands.

Under the lead alternative, the Army would improve its Schofield Barracks Wastewater Treatment Plant to provide a higher quality effluent that would meet new State of Hawaii guidelines for effluent reuse. Part of the effluent would be used to irrigate two Army golf courses on Schofield Barracks. The balance would then be provided for irrigation reuse to Dole Foods Corporation and possibly other agricultural interests in Central Oahu. Wet weather discharge would be into Lake Wilson, an agricultural reservoir owned by Dole Foods Corporation. The lead alternative would preclude the construction of a long pipeline to the coastline and avoid disposal into the ocean.

Other alternatives considered by the FEIS included the no action alternative, which would limit the use of the Army effluent under the State of Hawaii guidelines for effluent reuse, and a joint project with the City and County of Honolulu (CCH), which would require construction of a new 14-mile pipeline from Central Oahu to the CCH's Honouliuli Wastewater Treatment Plant at the Ewa area.

None of the alternatives considered, with the possible exception of the no action alternative, are anticipated to have significant environmental impact. The Army's lead alternative provides the most potential for effluent reuse in Central Oahu.

DATES: Written comments received within 30 days of the publication of the Environmental Protection Agency's Notice of Availability for this action will be considered by the Army during final decision making.

ADDRESSES: To obtain a copy of the FEIS, contact Mr. Edward Yamada, U.S. Army Engineer District, Honolulu, ATTN: CEPOH–ED–E, Fort Shafter, HI 96858–5440; telephone: (808) 438–5421; FAX: (808) 438–7801.

FOR FURTHER INFORMATION CONTACT: Mr. Alvin Char, 25th Infantry Division

(Light) and U.S. Army Garrison Hawaii, ATTN: APVG–GWV, Schofield Barracks, Hawaii 96857–5013; Telephone: (808) 656–2878, ext. 1062, and Fax (808) 656–1039.

SUPPLEMENTARY INFORMATION: Public scoping meetings and public meetings were held after distribution of the DEIS. All interested individuals, private organizations, and government agencies were encouraged to provide input into the EIS review process. All comments received were addressed and included in the FEIS.

Coordination was undertaken with adjoining land owners; the U.S. Environmental Protection Agency; other Federal agencies; State of Hawaii agencies such as the Departments of Health, Land and Natural Resources, Transportation, Business and Economic Development, Offices of State Planning, and Environmental Quality Control; City and County of Honolulu agencies such as Board of Water Supply, Departments of Public Works, Land Utilization, and General Planning; and organizations such as the Mililani and Wahiawa Neighborhood Boards.

Dated: May 15, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 00–12562 Filed 5–17–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Northern Training Complex With a Multi-Purpose Digital Training Range and Expanded Maneuver Areas, Drop Zones, and Landing Zones at Fort Knox, KY

AGENCY: U.S. Army Armor Center and Fort Knox, Department of the Army.

ACTION: Notice of intent.

SUMMARY: Fort Knox proposes to construct and operate a multi-purpose digital training range and a series of maneuver areas, drop zones and landing zones. These facilities would provide a multi-functional war-fighting capability to meet the Army's training needs for soldiers in urban and restricted terrain combat scenarios. These facilities would upgrade existing substandard range facilities and expand the installation's training capacity to train Armor soldiers in a realistic training environment for urban and restricted terrain combat. The current facilities do not meet modern tank gunnery standards and are inadequate to support training for regional conflicts in urban and restricted areas. The project would include the installation of fiber optics, upgrading of existing roadways and construction of utilities to the site. The proposed training complex would ensure soldiers are combat ready.

ADDRESSES: Please direct written comments concerning the scope of the Northern Training Complex to:

Al Freeland, Chief, Environmental Management Division, Directorate of Base Operations Support, U.S. Army Armor Center, ATTN: ATZK–OSE, Building 1110, Room 216, Ironsides & 6th Avenue, Fort Knox, KY 40121–5000;

or

Gail Pollock, Environmental Protection Specialist, at the same address; by fax at (502) 624–3000.

FOR FURTHER INFORMATION CONTACT: Al Freeland at (502) 624–3629 or Gail Pollock at (502) 624–6684.

SUPPLEMENTARY INFORMATION: The EIS will consider reasonable alternatives including: (1) Construct the Northern Training Complex that includes the Wilcox Multi-Purpose Digital Training Range (Wilcox MPDTR) and the Maneuver Areas, Drop Zones, and Landing Zones in Training Areas 16, 17, and 18 (Training Area Complex) (preferred alternative); (2) upgrade Yano Multi-Purpose Tank Range to a Digital Range and construct Maneuver Areas, Drop Zones, and landing Zones in Training Areas 16, 17, and 18; (3) upgrade Cedar Creek Multi-Purpose Tank Range to a Digital Range and construct Maneuver Areas, Drop Zones, and Landing Zones in Training Areas 16, 17, and 18; and (4) no action (continue operations with existing ranges and facilities). Other reasonable alternatives will also be considered.

Significant Issues: The primary issues to be analyzed in this EIS include: Noise (aircraft/range firing), impacts to wetlands and riparian areas, removal of approximately 2,500 acres of forests, soil erosion, water quality, endangered species, cultural resources, and other issues raised during public scoping.

Scoping: The Army prepared Draft Environmental Assessments for the Wilcox Multi-Purpose Digital Tank Range and the Training Area 16, 17 and 18 Maneuver/Drop Zones and Landing Zones. The Environmental Assessments resulted in a determination to prepare an EIS to encompass all areas affected within the proposed Northern Training Complex.

A mailing list has been prepared for public scoping and review throughout the process of preparation of this EIS. This list includes local, state and Federal officials having jurisdictional expertise or other interests in the project; concerned citizens; conservation groups; and local news media.

Comments concerning the scope of the EIS may also be emailed to Ms. Gail Pollock at pollockl@ftknox-emph3.army.mil.

Dated: May 15, 2000.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 00–12584 Filed 5–17–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 17, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 12, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New collection.
Title: Annual Performance Report for the Preparing Tomorrow's Teachers to Use Technology Grant Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions (primary); individuals or household; State, local, or Tribal Government; SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 225.
Burden Hours: 2,250.
Abstract: This submission requests approval for a web-based performance report needed by the U.S. Department of Education (ED) to obtain baseline data and information on the progress and effectiveness of the Preparing Tomorrow's Teachers to use Technology (PT3) grantees. The PT3 grant program was established to assist consortia of public and private entities in developing and implementing teacher training programs that prepare prospective teachers to use technology for improved instructional practices and student learning opportunities in the classroom. The performance reports will be completed by all 225 grantees and data gathered from the reports will be used by ED to determine which activities are most successful at training preservice teachers to integrate technology and to determine the overall effectiveness of the PT3 grant program.

Requests for copies of the proposed information collection request may be accessed from http://edicsweb.ed.gov, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jackie Montague at 202–708–5359. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–12487 Filed 5–17–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 19, 2000. On May 11, 2000, a 60-day notice was incorrectly published in the **Federal Register** regarding this information collection. This 30-day notice should have been published since this is a discretionary grant and qualifies for the streamlined process.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB.

Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: May 12, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision of a currently approved collection.
Title: Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students (1890–0001) (KA).
Frequency: Annually.
Affected Public: State, Local, or tribal Government; SEAs or LEAs (primary); not-for-profit institutions (primary).
Reporting and Recordkeeping Hour Burden:
Responses: 50.
Burden Hours: 1,600.
Abstract: This program supports the development or enhancement, implementation, and evaluation of campus-based strategies to prevent high-risk drinking and violent behavior among college students. This collection falls under the Streamlined Discretionary Grant Process, 1890–0001.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be directed to Kathy Axt at (703) 426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–12488 Filed 5–17–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.334]

Office of Postsecondary Education, Gaining Early Awareness and Readiness for Undergraduate Programs

Notice Inviting Applications for New Awards for Fiscal Year 2000; Correction

SUMMARY: On April 27, 2000 we published in the **Federal Register** (65 FR 24764) a notice inviting applications for new awards for fiscal year 2000 for the Gaining Early Awareness and Readiness for Undergraduate Program (GEAR UP). That document incorrectly listed the priority for Partnerships that establish or maintain a scholarship program as invitational. Please note that Partnerships that establish or maintain a scholarship program will receive a competitive priority, as was stated in the application package for this year's competition.

The priority therefore reads as follows:

Competitive Preference Priority

The Secretary will give preference to Partnership projects that establish or maintain financial assistance programs that award scholarships to participating students, either in accordance with section 404E of the Higher Education Act of 1965, as amended, or in accordance with GEAR UP regulations. The Secretary will award up to five (5) additional points, in addition to any points the applicant earns under the selection criteria, to applicants who meet this priority, depending on how well the application meets the priority.

Also in that same Notice we stated that applications for a Partnership or State grant that serve students in Empowerment Zones, Supplemental Empowerment Zones, or Enterprise Communities would be given a Competitive Preference Priority. The language used to explain this priority (The Secretary will select an application that meets this priority over an application of comparable merit that does not meet this priority) comes directly from the Education Department General Regulations (EDGAR) 34 CFR Part 75.105. This notice clarifies that this preference will be applied as a tie-breaker only.

Finally, that notice incorrectly listed the maximum grant amount for State grants as $5 million. The correct maximum grant amount for State grants is $2.1 million.

FOR FURTHER INFORMATION CONTACT: Rafael Ramirez, Office of Postsecondary Education, U.S. Department of Education, 1900 K Street, NW, Room 6252, Washington, DC 20006. Telephone: (202) 502–7676. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number: 84.334 Gaining Early Awareness and Readiness for Undergraduate Program)

Dated: May 15, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–12525 Filed 5–17–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

National Nuclear Security Administration; Postponement of Scoping Meeting for the Proposed Relocation of the Los Alamos National Laboratory Technical Area 18 Missions

AGENCY: Department of Energy, National Nuclear Security Administration.

ACTION: Postponement of scoping meeting.

SUMMARY: On May 2, 2000, the Department of Energy (DOE) announced in the **Federal Register**, (65 FR 25472), that it would hold scoping meetings for the proposal to relocate missions at Technical Area 18 (TA–18). Due to the recent fire at the Los Alamos National Laboratory (LANL), the scoping meeting scheduled for May 17, 2000 at the Betty Ehart Senior Center, 2132 Central Avenue, Los Alamos, NM, has been postponed. DOE will provide notice of the new date, time, and location for this meeting when it becomes available. DOE regrets any inconvenience for this postponement. Any questions associated with the TA–18 Project can be asked by calling Mr. Jay Rose at 1–800–832–0885, ext. 65484.

Issued in Washington, D.C., this 15th day of May 2000.

Henry Garson,

NEPA Compliance Officer, Office of Defense Programs, Department of Energy.

[FR Doc. 00–12630 Filed 5–16–00; 1:33 pm]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC00–500–001, FERC–500]

Information Collection Submitted for Review and Request for Comments

May 12, 2000.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

SUMMARY: The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under the provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and

should address a copy of those comments to the Commission, as explained below. The Commission received comments from two entities in response to an earlier **Federal Register** notice of November 9, 1999 (64 FR 62184–85) and has responded to those comments in this submission.

DATES: Comments regarding this collection are best assured of having their full effect if received on or before June 10, 2000.

ADDRESSES: Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer, 725 17th Street, NW, Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, CI–1, 888 First Street, NE, Washington, DC 20426. Mr. Miller may be reached by telephone at (202)208–1415 and by e-mail at mike.miller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Description

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–500, ''Application for License, Relicense for Water Projects with More than 5 MW Capacity.''

2. Sponsor: Federal Energy Regulatory Commisison.

3. Control No.: 1902–0058. The Commission is now requesting that OMB approve a three year extension of the expiration date, with no changes to the existing collection. This is a mandatory collection requirement.

4. Necessity of Collection of Information: Submission of the information is necessary to fulfill the requirements of Part I of the Federal Power Act (FPA) in order for the Commission to make the required finding that the proposal is economically sound, is best adopted to a comprehensive plan for improving/developing a waterway or waterways. Under Part I of the FPA (16 U.S.C. sections 79a *et seq.*), the Commission has the authority to issue licenses for hydroelectric projects on the waters over which Congress has jurisdiction. The Electric Consumers Protection Act (ECPA) (Pub. L. 99–495, 100 Stat. 1243) provides the Commission with the responsibility of issuing licenses for nonfederal hydroelectric plants. ECPA also amended the language of the EPA concerning environmental issues to ensure environmental quality. The information collected under FERC–500 is used by the Commission to determine the broad impact of a hydropower license application.

5. Respondent Description: The respondent universe currently comprises on average, 9 applicants for a hydropower license/relicense.

6. Estimated Burden: 15,276 total burden hours, 9 respondents 1 response (on occasion), 1,697 hours per response (rounded off).

7. Estimated Cost to Burden to Respondents: The estimated cost burden to respondents: 15,276÷2080 hours per year×$111,545 per year=$819,212.

Statutory Authority: Sections 4(e), 9, 10, 14 and 15 of the Federal Power Act (FPA), 16 U.S.C. Sections 791a *et seq.* and Energy Consumers Protection Act, Pub. L. 99–495, 100 Stat. 1243

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–12470 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–275–000]

Chesapeake Panhandle Limited Partnership, Complainant, v. Natural Gas Pipeline Company of America, MidCon Gas Products Corp., MidCon Gas Services Corp., KN Energy, Inc. and Kinder Morgan, Inc., Respondents; Notice of Complaint

May 12, 2000.

Take notice that on May 10, 2000, Chesapeake Panhandle Limited Partnership (Complainant) filed with the Federal Energy Regulatory Commission a complaint against Natural Gas Pipeline Company of America (''NGPL''), MidCon Gas Products Corp. (MidCon Gas Products), MidCon Gas Services Corp. (MidCon Gas Services), KN Energy, Inc. (KN) and Kinder Morgan, Inc. (Kinder Morgan) (collectively, Respondents) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206. According to the Complaint, Respondents, all affiliated companies, acted in concert to circumvent the filed rate doctrine and violate NGPL's Tariff by charging rates for gathering services which NGPL performed in connection with jurisdictional transportation services and which, in sum, exceeded the rate specified in the NGPL Tariff governing the relevant service.

Complainant alleges that from March 3, 1998 until January 1, 2000, Respondents effectively charged (i) a ''gathering fee'' which in certain months exceeded the Maximum rate NGPL, a jurisdictional provider of gathering services through NGPL's West Panhandle Gathering System, was authorized to charge and (ii) a fuel retention rate for gathering service provided by NGPL, which was not included in NGPL's filed Tariff. The ''gathering fee'' and fuel retention rate were established in a Gas Sales and Purchase Agreement (GAS Sales Agreement) which MC Panhandle, Inc. (MC Panhandle), an affiliate of NGPL, had initially executed with another NGPL affiliate, MidCon Gas Services. MidCon Gas Services' interest was later transferred by assignment to MidCon Gas Products. Complainant states that, in 1998, it acquired ownership of MC Panhandle, the owner of certain gas wells in Moore and Carson Counties, Texas, subject to the terms of the Gas Sales Agreement. It avers that through this purchase it became obligated to pay, and in fact paid (through a reduced gas sales price), rates for gathering services actually performed by NGPL that were greater than the applicable rates set forth in NGPL's FERC Gas Tariff.

According to the Complainant, although the Gas Sales Agreement was nominally between MC Panhandle (later succeeded by Chesapeake Panhandle) and MidCon Gas Services (later succeeded by its affiliate MidCon Gas Products), NGPL's role in the transaction as: (1) The provider of the gathering service, (2) the affiliate of the Gas Sales Agreements's Buyers, MidCon Gas Services and MidCon Gas Products, (3) the affiliate of the Gas Sales Agreement's initial Seller, MC Panhandle, and (4) a signatory to the Gas Sales Agreement, effectively make NGPL a party to the Gas Sales Agreement and, in any event, support the inference that NGPL benefited from the actions of its affiliates in charging a rate for services which NGPL provided, but for which NGPL itself could not lawfully have charged. Thus, Complainant seeks a refund, with interest, of the amounts it was charged (by way of a gas sales price reduction) for ''gathering fees'' in excess of NGPL's authorized gathering rate and fuel retainage during the period from March 3, 1998 through December 31, 1999.

Questions concerning the Complaint may be directed to counsel for Complainant, James F. Bowe, Jr., Dewey Ballantine LLP, 1775 Pennsylvania Ave., NW, Washington, DC 20006–4605, Phone 202/429–1444, Fax 202/862–1093, e-mail *jbowe@deweyballantine.com.*

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, 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 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 30, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are Available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–2222) for assistance. Answers to the complaint shall also be due on or before May 30, 2000.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 00–12474 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–233–001]

Midwestern Gas Pipeline Transmission; Notice of Compliance Filing

May 12, 2000.

Take notice on May 9, 2000, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets identified below, with an effective date of May 1, 2000:

Substitute Fourth Revised Sheet No. 90
Substitute Second Revised Sheet No. 98
Substitute Second Revised Sheet No. 99
Substitute Third Revised Sheet No. 100
Substitute First Revised Sheet No. 101
Seventh Revised Sheet No. 110A

Midwestern states that this filing is in compliance with the Commission's April 26, 2000 Order Accepting Tariff Sheets Subject to Conditions in the above-referenced docket (April 26 Order). Midwestern Gas Transmission Company, 91 FERC ¶ 61,099 (2000).

Midwestern further states that the April 26 Order required Midwestern to file revised tariff language that would (1) Correct the Gas Industry Standards Board version reference in its tariff; and (2) specify the requirements of the waiver set forth in 18 CFR 284.8(i) of the Commission's regulations. Midwestern requests an effective date of May 1, 2000.

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. 00–12473 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–219–001]

Northwest Pipeline Corporation; Notice of Compliance Filing

May 12, 2000.

Take notice that on May 8, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing additional information related to its March 16, 2000 filing in the above referenced docket.

Northwest states that the purpose of this filing is to comply with the Commission's Letter order issued April 26, 2000 in Docket No. RP00–219, which directed Northwest to provide additional information related to the reconciliation of 1999 lost and unaccounted for volumes and the allocation of fuel usage at the Jackson Prairie storage facility.

Northwest states that a copy of this filing has been served upon each person designated on the official service list complied by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–12472 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–003]

Questar Pipeline Company; Notice of Tariff Filing

May 12, 2000.

Take notice that on May 8, 2000, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 7, with an effective day of May 8, 2000.

Questar states that the filing is being made to implement a negotiated-rate contract as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.* The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Questar further states that the tendered tariff sheet revises Questar's Tariff to implement a new negotiated-rate transportation service agreement between Questar and Texaco Natural Gas, Inc., executed May 1, 2000, with service commencing May 8, 2000.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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. 00–12471 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–229–001]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

May 12, 2000.

Take notice that on May 9, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing the revised tariff sheets identified below for inclusion in Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1, with an effective date of May 1, 2000:

Substitute Fourth Revised Sheet No. 328
Substitute Fifth Revised Sheet No. 329
Substitute Third Revised Sheet No. 336
Substitute Third Revised Sheet No. 337A
Substitute Third Revised Sheet No. 342
Substitute Second Revised Sheet No. 342A
Substitute Fifth Revised Sheet No. 347
Tenth Revised Sheet No. 412

Tennessee states that this filing is in compliance with the Commission's April 26, 2000 Order Accepting Tariff sheets Subject to Conditions in the above-referenced docket (April 26, Order). Tennessee Gas Pipeline Company, 91 FERC ¶ 61,098 (2000).

Tennessee further states that the April 26 Order required Tennessee to file revised tariff language that would (1) correct the Gas Industry Standards Board version reference in its tariff; and (2) specify the requirements of the waiver set forth in 18 CFR 284.8(i) of the Commission's regulations.

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. 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. 00–12549 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–362–000]

Texas Gas Transmission Corporation; Notice of Application

May 12, 2000.

Take notice that on May 5, 2000, pursuant to section 7 of the Natural Gas Act (NGA) and part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP00–362–000 an abbreviated application for a certificate of public convenience and necessity to be issued for the abandonment of five injection/withdrawal wells and the installation and operation of one horizontal injection/withdrawal well within it's Midland Storage Field in Muhlenberg County, Kentucky, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

The name, address, and telephone number of the person to whom correspondence and communications concerning this application should be addressed is: David N. Roberts, Manager of Certificates and Tariffs, Texas Gas Transmission Corporation, PO Box 20008, Owensboro, Kentucky, 42304; Phone No. 270/688–6712.

Texas Gas avers that the well replacement will alleviate safety issues associated with the existing five wells, will restore well deliverability that has deteriorated over time, and will allow for more efficient utilization of the storage reservoir. The project's purpose is not to increase the storage capacity or deliverability of the Texas Gas Midland Storage Field, but simply to guarantee that existing levels can be maintained in a safer, more cost effective and efficient manner so that Texas Gas can continue to meet customer contact obligations.

In association with the installation of the replacement well, Texas Gas will need to construct approximately 300 feet of 8-inch diameter lateral line to connect the well to the existing 16-inch diameter field tributary line. This lateral line will be constructed pursuant to Texas Gas's blanket certificate authorized in Docket No. CP82–407–000 (20 FERC ¶ 62,417 (1982)) and the Commission's blanket certificate regulations found at 18 CFR part 157, including the environmental conditions found at 18 CFR 157.206(b).

Texas Gas has requested expedited review of the application in order to begin drilling of the horizontal replacement well by July 1, 2000. This would allow Texas Gas to complete the proposed well during a period of low field pressure and optimal drilling conditions.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before June 2, 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 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 not motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or

if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–12475 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–140–000, et al.]

NEPA Energy LP, et al.; Electric Rate and Corporate Regulation Filings

May 10, 2000.

Take notice that the following filings have been made with the Commission:

1. NEPA Energy LP

[Docket No. EG00–140–000]

Take notice that on April 26, 2000, NEPA Energy LP (NEPA) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

NEPA acquired a 94 MW eligible facility (Facility) located in North East Pennsylvania on March 29, 2000. NEPA is a limited partnership with NEPA Energy LLC as the general partner. NEPA Energy LLC is a wholly-owned subsidiary of Welch Food, Inc., a cooperative (Welch). NEPA states that once the Facility is operational, NEPA will be engaged directly and exclusively in the business of owning and/or operating all or part of an eligible facility (as defined in section 32(a)(1) of the Public Utility Holding Company Act), be selling electricity at wholesale and making no retail electricity sales.

Comment date: May 31, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Indianapolis Power & Light Company

[Docket Nos. ER00–1026–002 and OA00–4–002]

Take notice that on May 1, 2000, Indianapolis Power & Light Company filed a letter in compliance with the Commission's orders issued February 24, 2000 in the above-referenced dockets, 90 FERC ¶ 61,180 (2000) and 90 FERC ¶ 61,174 (2000).

Comment date: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Jack A. Fusco

[Docket No. ID–3483–000]

Take notice that on April 28, 2000, Jack A. Fusco filed with the Federal Energy Regulatory Commission an Application for Authority to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. W. Thaddeus Miller

[Docket No. ID–3484–000]

Take notice that on April 28, 2000, W. Thaddeus Miller filed with the Federal Energy Regulatory Commission an Application for Authority to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Scott B. Helm

[Docket No. ID–3485–000]

Take notice that on April 28, 2000, Scott B. Helm filed with the Federal Energy Regulatory Commission an Application for Authority to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. E. Thomas Webb

[Docket No. ID–3494–000]

Take notice that on April 28, 2000, E. Thomas Webb filed with the Federal Energy Regulatory Commission an Application for Authority to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. James S. Potter

[Docket No. ID–3495–000]

Take notice that on May 1, 2000 James S. Potter filed with the Federal Regulatory Energy Commission an Abbreviated Application for Authorization to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. David B. Kinnard

[Docket No. ID–3496–000]

Take notice that on May 1, 2000, David B. Kinnard filed with the Federal Energy Regulatory Commission an Abbreviated Application for Authorization to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Roger L. Petersen

[Docket No. ID–3497–000]

Take notice that on May 1, 2000, Roger L. Peterson filed with the Federal Energy Regulatory Commission an Abbreviated Application to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Paul A. Farr

[Docket No. ID–3498–000]

Take notice that on May 1, 2000, Paul A. Farr filed with the Federal Energy Regulatory Commission an Abbreviated Application to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Robert W. Burke, Jr.

[Docket No. ID–3499–000]

Take notice that on May 1, 2000, Robert W. Burke, Jr. filed with the Federal Energy Regulatory Commission an Abbreviated Application to Hold Interlocking positions pursuant to section 305(b) of the Federal Power Act.

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Lockhart Power Company

[Docket No. OA96–163–003]

Take notice that on April 28, 2000, Lockhart Power Company tendered for filing with the Federal Energy Regulatory Commission (Commission), a report in compliance with the Commission's order in Allegheny Power Service Co., *et al.,* 90 FERC ¶ 61,224 (2000).

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. PPL Electric Utilities Corporation

[Docket No. OA97–688–001]

Take notice that on May 2, 2000, PPL Electric Utilities Corporation filed with the Federal Energy Regulatory

Commission a report in compliance with the Commission's order in Allegheny Power Service Company, 90 FERC ¶ 61,224 (2000).

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Orange and Rockland Utilities, Inc.

[Docket No. OA97–708–001]

Take notice that on May 2, 2000, Orange and Rockland Utilities, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission), a report in compliance with the Commission's order in Allegheny Power Service Co., et al., 90 FERC ¶ 61,224 (2000).

Comment date: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. UtiliCorp United Inc.

[Docket No. ER00–175–001]

Take notice that on May 2, 2000, UtiliCorp United, Inc., tendered for filing supplements to its October 21, 1999, filing of rate schedules in Docket No. ER00–175–000.

Comment date: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. California Independent System Operator Corporation

[Docket No. ER00–1365–001]

Take notice that on May 1, 2000, the California Independent System Operator Corporation (ISO), tendered for filing modifications to Amendment No. 26 of the ISO Tariff to comply with the Commission's order in California Independent System Operator Corp., 90 FERC ¶ 61,345 (2000). The ISO states that this filing has been served upon all parties in this proceeding.

Comment date: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Ameren Services Company

[Docket No. ER00–2362–000]

Take notice that on May 1, 2000, Ameren Services Company (Ameren), tendered for filing a revised Network Integration Transmission Service Agreement with the City of Newton, Illinois (Newton). The revised Agreement includes a Distribution Facilities Charge.

Ameren seeks an effective date of June 1, 2000, subject to conditions, or, in the alternative, an effective date of May 2, 2000. Accordingly, Ameren seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on Newton and on the Illinois Commerce Commission.

Comment date: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Ameren Services Company

[Docket No. ER00–2364–000]

Take notice that on May 1, 2000, Ameren Services Company (Ameren), tendered for filing a revised unexecuted Network Integration Transmission Service Agreement (Network Transmission Agreement) and a revised Network Operating Agreement with Soyland Power Cooperative, Inc., (Soyland). The revised Network Transmission Agreement includes a Distribution Facilities Charge.

Ameren seeks an effective date of June 1, 2000, subject to conditions, or, in the alternative, an effective date of May 2, 2000 for the revised Network Transmission Agreement and a date sixty days from filing for the revised Network Operating Agreement. Accordingly, Ameren seeks waiver of the Commission's notice requirements with respect to the Network Transmission Agreement.

Copies of the filing have been served on Soyland and on the Illinois Commerce Commission.

Comment date: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Ameren Services Company

[Docket No. ER00–2365–000]

Take notice that on May 1, 2000, Ameren Services Company (Ameren), tendered for filing a revised unexecuted Network Integration Transmission Service Agreement (Network Transmission Agreement) and a revised Network Operating Agreement with Clay Electric Cooperative, Inc. (Clay). The revised Network Transmission Agreement includes a Distribution Facilities Charge.

Ameren seeks an effective date of June 1, 2000, subject to conditions, or, in the alternative, an effective date of May 2, 2000 for the revised Network Transmission Agreement and a date sixty days from filing for the revised Network Operating Agreement. Accordingly, Ameren seeks waiver of the Commission's notice requirements with respect to the Network Transmission Agreement. Copies of the filing have been served on Clay and on the Illinois Commerce Commission.

Comment date: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Ameren Services Company

[Docket No. ER00–2366–000]

Take notice that on May 1, 2000, Ameren Services Company (Ameren), tendered for filing a revised unexecuted Network Integration Transmission Service Agreement with Edgar Electric Cooperative Association (Edgar). The revised Agreement includes a Distribution Facilities Charge.

Ameren seeks an effective date of June 1, 2000, subject to conditions, or, in the alternative, an effective date of May 2, 2000. Accordingly, Ameren seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on Edgar and on the Illinois Commerce Commission.

Comment date: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Ameren Services Company

[Docket No. ER00–2367–000]

Take notice that on May 1, 2000, Ameren Services Company (Ameren), tendered for filing a revised Network Integration Transmission Service Agreement with Cinergy Services, Inc., (Cinergy). The revised Agreement includes a Distribution Facilities Charge.

Ameren seeks an effective date of June 1, 2000, subject to conditions, or, in the alternative, an effective date of May 2, 2000. Accordingly, Ameren seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on Cinergy and on the Illinois Commerce Commission.

Comment date: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. CMS Marketing, Services and Trading Company

[Docket No. ER00–2368–000]

Take notice that on May 1, 2000, CMS Marketing, Services and Trading Company (Seller) tendered for filing an executed service agreement for wholesale power service to CMS MS&T Michigan, L.L.C. (Buyer) pursuant to Seller's Market Based.

Power Sales Tariff accepted for filing in Docket No. ER96–2350–000. The filing includes an administrative tariff amendment to facilitate acceptance of the service agreement.

The filing request has an effective date of June 1, 2000.

Copies of the filing have been served on the Michigan Public Service Commission and Buyer.

Comment date: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. PG&E Energy Services Corporation

[Docket No. ER00–2369–000]

Take notice that on May 1, 2000, PG&E Energy Services Corporation (PGES), 345 California Street, Suite 3200, San Francisco, California 94104, tendered for filing revisions to its rate schedule FERC No. 1 providing for the resale of Firm Transmission Rights (FTRs) issued by the California Independent Service Operator Corporation pursuant the Commission's November 10, 1999 order in Docket No. ER98–3594–000 and agreements between PGES and its affiliate, PG&E Energy Trading-Power, L.P., concerning the resale of FTRs.

Comment date: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Allegheny Energy Supply Company, L.L.C.

[Docket No. ER00–2370–000]

Take notice that on May 1, 2000, Allegheny Energy Supply Company tendered for filing a Power Sales Agreement under which Allegheny Energy Supply provides the power and energy needed by West Penn Power Company, doing business as Allegheny Power, necessary to meet its obligations as a provider of last resort under the retail direct access program implemented in the Commonwealth of Pennsylvania.

AE Supply request waiver of the prior notice requirements and an effective date of November 18, 1999.

Comment date: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Southwestern Public Service Company

[Docket No. ER00–2371–000]

Take notice that on May 1, 2000, New Century Services, Inc., on behalf of Southwestern Public Service Company (SPS), tendered for filing the Interconnection Agreement between West Texas Municipal Power Agency and SPS. This agreement is intended to supersede the Interconnection Agreement filed in Docket No. ER96–1969–000.

Comment date: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. New England Power Pool

[Docket No. ER00–2378–000]

Take notice that on May 1, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Praxair, Inc. (Praxair). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Praxair's signature page would permit NEPOOL to expand its membership to include Praxair. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Praxair a member in NEPOOL.

The Participants Committee requests an effective date of July 1, 2000, for commencement of participation in NEPOOL by Praxair.

Comment date: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–2379–000]

Take notice that on May 1, 2000, Alliant Energy Corporate Services, Inc., tendered for filing an amendment on behalf of IES Utilities Inc. (IES), Interstate Power Company (IPC) and Wisconsin Power and Light Company (WPL), in the above Dockets. This amendment is being filed because IES and IPC will join the Mid-America Interconnected Network, Inc.

Alliant Energy Corporate Services, Inc., requests an effective date of May 1, 2000, and accordingly, requests waiver of the Commission's notice requirements to permit the requested effective date.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, the Public Service Commission of Wisconsin, and all parties listed on the service list as compiled by the Secretary in this proceeding.

Comment date: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Florida Power Corporation

[Docket No. ER00–2380–000]

Take notice that on May 2, 2000, Florida Power Corporation (Florida Power) tendered for filing a service agreement providing for non-firm point-to-point transmission service and a service agreement providing for short term firm point-to-point transmission service by Florida Power to Cargill-Alliant, LLC pursuant to its open access transmission tariff.

Florida Power requests that the Commission waive its notice of filing requirements and allow the agreements to become effective on May 1, 2000

Comment date: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2381–000]

Take notice that on May 2, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 1 to Supplement No. 31 to the Market Rate Tariff to incorporate a Netting Agreement with Cargill-Alliant, LLC into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of April 19, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2382–000]

Take notice that on May 2, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 39 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of March 28, 2000 or on a date as determined by the Commission to Florida Power & Light Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. California Independent System Operator Corporation

[Docket No. ER00–2383–000]

Take notice that on May 2, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a proposed amendment (Amendment No. 29) to the ISO Tariff. Amendment No. 29 includes proposed changes to the ISO Tariff that implement ten-minute markets to reduce uninstructed deviations, enable the submission of Adjustment Bids with inter-Scheduling Coordinator trades, provide for the automation of Dispatch instructions, expand the membership of the independent Market Surveillance Committee, and modify the standards that Scheduling Coordinators must meet to avoid the need to post financial security in connection with their trades in ISO markets.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. Alliant Energy Corporate Services, Inc.

[Docket No. ER00–2384–000]

Take notice that on April 26, 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Interstate Power Company (IPC), tendered for filing a Unit Participation Capacity Transaction (Agreement) between IPC and IES Utilities Inc., for the period May 1, 2000 through September 30, 2000. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light and Alliant Energy.

Comment date: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. New England Power Pool

Docket No. ER00–2385–000

Take notice that on May 2, 2000, the New England Power Pool (NEPOOL) Participants Committee and Transmission Owners submitted as a supplement to the NEPOOL Open Access Transmission Tariff (the NEPOOL Tariff) Appendix A to the implementation rule for Ancillary Service Schedule 1 (Scheduling, System Control and Dispatch Service) of the NEPOOL Tariff. Appendix A sets forth the detailed methodology, in accordance with the previously-approved implementation rule for Schedule 1, for recovery of costs associated with the ownership of certain control center facilities required to provide scheduling, system control and dispatch services.

The NEPOOL Participants Committee and Transmission Owners state that copies of these materials were sent to the NEPOOL Participants and the six New England State governors and regulatory commissions.

Comment date: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. California Power Exchange Corporation

Docket No. ER00–2386–000

Take notice that on May 2, 2000, California Power Exchange Corporation (CalPX), on behalf of its CalPX Trading Services Division (CTS), tendered for filing proposed Amendment No. 3 to its CTS Rate Schedule FERC No. 1. Amendment No. 3 is designed to allow CTS to implement two new services in response to demand from CTS participants and the market: (1) A daily block forward market; and (2) a balance of the month market.

CTS requests waiver of the Commission's notice provisions to permit an effective date of June 29, 2000 for delivery on July 1, 2000. If the Commission does not grant the requested waiver, CTS requests an effective date of July 2, 2000 for delivery on the next delivery day for the applicable block.

Comment date: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. California Power Exchange Corporation

Docket No. ER00–2387–000

Take notice that on May 2, 2000, the California Power Exchange Corporation (CalPX), tendered for filing proposed amendments of Schedule Nos. 3 and 4 of its FERC Electric Service Tariff No. 3. These proposed amendments collectively comprise CalPX's Tariff Amendment No. 14. The purpose of the amendments is to enable CalPX to track the changes to be implemented by Tariff No. 26 of the California Independent System Operator Corporation (CAISO). The Commission accepted CAISO Tariff Amendment No. 26 with certain conditions in an order issued in Docket No. ER00–1365–000 on March 31, 2000.

Consistent with that order, CalPX requests an effective date for its Tariff Amendment No. 14 of ten days after the software modifications of both CalPX and CAISO are complete.

Comment date: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. Commonwealth Edison Company

Docket No. ER00–2388–000

Take notice that on May 2, 2000, Commonwealth Edison Company (ComEd), tendered for filing a Short-Term Firm Transmission Service Agreement (Agreement) establishing Alliant Energy Corporate Services, Inc. (Alliant), as a short-term firm customer under the terms of ComEd's OATT.

ComEd requests an effective date of July 22, 1998 to coincide with the first day of service to Alliant under this type of Service Agreement. Copies of this filing were served on Alliant.

Comment date: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. Central Vermont Public Service Corporation

Docket No. ER00–2389–000

Take notice that on May 2, 2000, Central Vermont Public Service Corporation tendered for filing a Transmission Service Agreement—Amendment No. 1 between Central Vermont Public Service Corporation and Green Mountain Power Company. Central Vermont also filed a certificate of concurrence executed by Green Mountain. Central Vermont states that the Amendment modifies the terms on which the parties operate the interconnections between them.

Copies of the filing were served upon Green Mountain and the Vermont Public Service Board.

Comment date: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

38. PPL Electric Utilities Corporation

[Docket Nos. ER00–2390–000]

Take notice that on May 2, 2000, PPL Utilities Corporation (PPL Utilities), formerly known as PP&L, Inc. filed a notice of cancellation of PPL Utilities' Open Access Transmission Tariff (Tariff), FERC Electric Tariff Volume No. 4. No customers have or are taking service under the Tariff.

PPL Utilities requests an effective date of the cancellation of July 3, 2000.

Notice of the proposed cancellation has been served upon all entities that have signed service agreements under the Tariff.

Comment date: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

39. Indianapolis Power & Light Company

[Docket No. ES00–33–000]

Take notice that on May 2, 2000, Indianapolis Power & Light Company submitted an application pursuant to Section 204 of the Federal Power Act seeking Commission authorization to issue short-term debt instruments in an amount not to exceed $500 million, from time to time, for a period commencing July 30, 2000, through July 29, 2002.

Comment date: May 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

40. Doswell Limited Partnership

[Docket No. ER00–2391–000]

Take notice that on May 2, 2000, Doswell Limited Partnership (Doswell) petitioned the Commission for (1) Acceptance of Doswell Rate Schedule FERC No. 2 and Form of Service Agreement; (2) acceptance of the Power Purchase Agreement entered into on April 17, 2000, between Doswell and Virginia Electric Power Company; (3) the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and (4) the waiver of certain Commission Regulations.

Comment date: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 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 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. 00–12468 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–138–000, et al.]

TXU (No.5) Pty Ltd., et al.; Electric Rate and Corporate Regulation Filings

May 11, 2000.

Take notice that the following filings have been made with the Commission:

1. TXU (No.5) Pty Ltd.

[Docket No. EG00–138–000]

Take notice that on May 9, 2000, TXU (No. 5) Pty Ltd, filed a withdrawal of their Application for Commission Determination of Exempt Wholesale Generator Status that was filed with the Federal Energy Regulatory Commission (Commission) on April 27, 2000, pursuant to Rule 216 of the Rules of Practice and Procedure (18 CFR 365.216).

Comment date: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. ISO New England Inc.

[Docket Nos. EL00–62–001 and ER00–2052–002]

Take notice that on May 8, 2000, ISO New England Inc. amended its March 31, 2000 filing (as corrected on April 3 and May 1, 2000) to request termination of the New England Power Pool (NEPOOL) Installed Capability market effective June 1, 2000.

Copies of said filing and a redacted version of Appendix 1 have been served upon the Secretary of the NEPOOL Participants Committee, as well as upon the utility regulatory agencies of the six New England States and the New England Conference of Public Utilities Commissioners.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. ISO New England Inc.

[Docket Nos. EL00–62–002 and ER00–2052–003]

Take notice that on May 8, 2000, contemporaneously with ISO New England Inc.'s amendment of its March 31, 2000 filing (as corrected on April 3 and May 1, 2000) to request termination of the New England Power Pool (NEPOOL) Installed Capability market effective June 1, 2000, ISO New England also filed separately in these dockets (on a confidential basis under 18 CFR 388.112) an Appendix 1, reporting mitigation activity in the Installed Capability market, in accordance with NEPOOL Market Rule 17.

Copies of said filing and a redacted version of Appendix 1 have been served upon the Secretary of the NEPOOL Participants Committee, as well as upon the utility regulatory agencies of the six New England States and the New England Conference of Public Utilities Commissioners.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Paul T. Champagne

[Docket No. ID–3500–000]

Take notice that on May 4, 2000, Paul T. Champagne filed an Application for Authorization to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

Comment date: June 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Minnesota Municipal Power Agency

[Docket No. NJ00–3–001]

Take notice that on May 3, 2000, Southern Minnesota Municipal Power Agency tendered for filing a revision to schedule 4 of its non-jurisdictional tariff. That revised version of schedule 4 was proffered as a replacement for the version filed on April 25, 2000, and noticed on April 28, 2000 in the above-referenced docket number.

Comment date: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. El Paso Electric Company

[Docket No. OA97–686–001]

Take notice that on May 5, 2000, El Paso Electric Company filed a report with the Federal Energy Regulatory Commission (Commission) pursuant to the Commission's order in Allegheny Power Service Co., *et al.,* 90 FERC ¶ 61,224 (2000).

Comment date: June 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. AllEnergy Marketing Company, L.L.C., New England Power Company, Massachusetts Electric Company, Nantucket Electric Company, Granite State Electric Company and The Narragansett Electric Company

[Docket No. OA00–1–001]

Take notice that on May 4, 2000 in compliance with the Commission's April 4, 2000 order in New England Power Company, *et al.,* 91 FERC ¶ 61,013 (2000), AllEnergy Marketing Company, L.L.C., New England Power Company, Massachusetts Electric Company, Nantucket Electric Company, Granite State Electric Company and The

Narragansett Electric Company submitted for filing a revised power marketer code of conduct.

Comment date: June 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER99–2852–001]

Take notice that on May 4, 2000, Arizona Public Service Company (APS), tendered for filing a Compliance Refund Report for refunds made in accordance with the Commission's letter of approval of the Offer of Settlement dated March 30, 2000 with the Arizona Electric Power Cooperative, Inc. in Docket No. ER99–2852–0000.

Copies of this filing have been served on Arizona Electric Power Cooperative, Inc. and the Arizona Corporation Commission.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Southern California Edison Company

[Docket No. ER98–441–019]

Take notice that on May 3, 2000, Reliant Energy Mandalay, LLC, Reliant Energy Etiwanda, LLC, Reliant Energy Power Generation, Inc., Reliant Energy Services, Inc., Southern California Edison Company, the California Independent System Operator Corp., the California Power Exchange, Pacific Gas and Electric Company, and San Diego Gas & Electric Company tendered for filing an Offer of Settlement. The Offer of Settlement resolves all of the unresolved issues set forth in Article X, sections A.2 through A.5, of the Stipulation and Agreement filed on April 2, 1999 in this docket and approved by the Commission on May 28, 1999.

Copies of the filing were served on the parties to the service list established in the above-captioned proceeding.

Comment date: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. California Independent System Operator Corporation

[Docket Nos. ER99–1971–006]

Take notice that on May 3, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Notice of Effective Date, dated May 2, 2000, which specifies that the Tariff revisions relating to the Generator Communications Project approved in Amendment No. 14 to the ISO Tariff became effective on February 7, 2000, pursuant to the Commission's May 26, 1999 order in this proceeding.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Fresno Cogeneration Partners, L.P.

[Docket No. ER00–2392–000]

Take notice that on May 3, 2000, Fresno Cogeneration Partners, L.P. (FCPLP), tendered for filing, under section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, a petition for order accepting initial rate schedule, Electric Rate Schedule FERC No. 1, pertaining to the sale of energy, capacity, replacement reserves at market-based rates, and for the waiver of certain Commission regulations and blanket authorization of others. FCPLP also requests authority, as provided in the proposed rate schedule, to sell ancillary services.

FCPLP requests that this rate schedule become effective as of April 28, 2000.

Copies of the filing were served on the California Public Utilities Commission and the California Independent System Operator.

Comment date: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER00–2393–000]

Take notice that on May 3, 2000, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Long-term Firm Point-to-Point Transmission Service Agreement with Western Area Power Administration, Rocky Mountain Region (Western) under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2394–000]

Take notice that on May 3, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 40 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of April 7, 2000 to Conectiv Energy Supply, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. PG&E Energy Services Corporation

[Docket No. ER00–2395–000]

Take notice that on May 3, 2000, PG&E Energy Services Corporation (PGES), 345 California Street, Suite 3200, San Francisco, California 94104, tendered for filing revisions to its market-based rate schedule and code of conduct to reflect its proposed affiliation with Portland General Electric Company.

Comment date: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Energetix, Inc.

[Docket No. ER00–2396–000]

Take notice that on May 3, 2000, Energetix, Inc., tendered for filing to amend its market-based rate tariff, FERC Electric Rate Schedule No. 1, to permit sales to its affiliate, Rochester Gas and Electric Corporation, without making a separate filing under section 205 of the Federal Power Act.

Comment date: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Consumers Energy Company

[Docket No. ER00–2397–000]

Take notice that on May 3, 2000, Consumers Energy Company (Consumers), tendered for filing a Facilities Agreement Between Consumers and Modular Power Systems, LLC, (Modular), dated April 26, 2000. Under the Facilities Agreement, Consumers is to construct, operate and maintain various interconnection facilities.

Consumers requests that the Facilities Agreement be allowed to become effective within 60 days after filing.

Copies of the filing were served upon Modular and upon the Michigan Public Service Commission.

Comment date: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Baconton Power LLC

[Docket No. ER00–2398–000]

Take notice that on May 3, 2000, Baconton Power LLC, tendered for filing pursuant to section 205 of the Federal Power Act, a request for blanket approval to make sales at market-based rates from its generator located in southwestern Georgia. Baconton also requests the waivers traditionally granted to parties authorized to sell power at market-based rates.

Baconton seeks a waiver of the Commission's 60-day prior notice and filing requirements and an effective date from the Commission of May 17, 2000.

Comment date: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–2399–000]

Take notice that on May 4, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements between the Companies and Cinergy Capital and Trading, Inc., under the Companies Open Access Transmission Tariff.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER00–2400–000]

Take notice that on May 4, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements between the Companies and MIECO, Inc., under the Companies Open Access Transmission Tariff.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. Pacific Gas and Electric Company

[Docket No. ER00–2401–000]

Take notice that on May 4, 2000, Pacific Gas and Electric Company (PG&E) tendered for filing an agreement entitled ''GPU Solar Service Agreement for Wholesale Distribution Service'' (Service Agreement) with GPU Solar, Inc., submitted pursuant to the PG&E Wholesale Distribution Tariff (WDT).

The Service Agreement facilitates payment of PG&E's costs of designing, constructing, procuring, testing, placing in operation, owning, operating and maintaining the customer-specific facilities requested by GPU Solar, Inc., required for service over PG&E's distribution facilities. PG&E has requested certain waivers.

Copies of this filing have been served upon GPU Solar, Inc., and the California Public Utilities Commission.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. WPS Resources Operating Companies

[Docket No. ER00–2402–000]

Take notice that on May 4, 2000, WPS Resources Operating Companies (WPSR) tendered for filing an executed Service Agreement with Upper Peninsula Power Company, providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

22. Wisconsin Public Service Corporation

[Docket No. ER00–2403–000]

Take notice that on May 4, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with Wisconsin Electric Power Supply Company, providing for transmission service under FERC Electric Tariff, Volume No. 1.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

23. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2404–000]

Take notice that on May 4, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 1 to Supplement No. 35 to the Market Rate Tariff to incorporate a Netting Agreement with NewEnergy, Inc. into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of April 10, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

24. Cinergy Services, Inc.

[Docket No. ER00–2405–000]

Take notice that on May 4, 2000, Cinergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company (CG&E), tendered for filing for approval an Interconnection Agreement dated as of March 30, 2000 and entered into by and between the City of Lebanon, Ohio, The Cincinnati Gas & Electric Company and Cinergy Services, Inc.

The Interconnection Agreement will allow for an interconnection point at the 69 KV bus of the City of Lebanon's switching station located adjacent to CG&E's Warren 138 KV Substation.

Cinergy states that it has served a copy of its filing upon the City of Lebanon, Ohio and the Public Utilities Commission of Ohio.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

25. Entergy Services, Inc.

[Docket No. ER00–2406–000]

Take notice that on May 4, 2000, Entergy Services, Inc. (Entergy Services), tendered for filing on behalf of Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing a Long-Term Market Rate Sales Agreement between Entergy Gulf States and Brazos Electric Power Cooperative, Inc., for the sale of power under Entergy Services' Rate Schedule SP.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

26. PPL EnergyPlus, LLC

[Docket No. ER00–2407–000]

Take notice that on May 4, 2000, PPL EnergyPlus, LLC (PPL EnergyPlus), tendered for filing revisions to its Rate Schedule No. 4.

PPL EnergyPlus has served a copy of this filing on PPL Electric Utilities Corporation.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

27. PJM Interconnection, L.L.C.

[Docket No. ER00–2408–000]

Take notice that on May 4, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing signature pages to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA) for ECONnergy PA, Inc. (ECONnergy) and Utilimax.com, Inc. (Utilimax.com), and an amended Schedule 17 listing the parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including ECONnergy and Utilimax.com, and each of the state electric regulatory commissions within the PJM Control Area.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

28. Puget Sound Energy, Inc.

[Docket No. ER00–2409–000]

Take notice that on May 4, 2000, Puget Sound Energy, Inc. (PSE), tendered for filing a Notice of Cancellation of a Service Agreement for Long-Term Firm Point-To-Point Transmission Service under FERC Electric Tariff Original Volume No. 7 Open Access Transmission Tariff with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer (Service Agreement No. 104 under PSE's FERC Electric Tariff Third Revised Volume No. 7).

PSE states that a copy of the filing was served upon Bonneville.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

29. PPL Electric Utilities Corporation

[Docket No. ER00–2410–000]

Take notice that on May 4, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement between PPL Utilities and the Borough of Lewisberry under PPL Utilities' Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5.

PPL Utilities requests an effective date of May 1, 2000, for the Power Sales Agreement.

PPL Utilities states that a copy of this filing has been provided to the Borough of Lewisberry and to the Pennsylvania Public Utility Commission.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

30. PPL Electric Utilities Corporation

[Docket No. ER00–2411–000]

Take notice that on May 4, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission a Power Sales Agreement between PPL Utilities and the Borough of Lewisberry under PPL Utilities' Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5.

PPL Utilities requests an effective date of May 1, 2000 for the Power Sales Agreement.

PPL Utilities states that a copy of this filing has been provided to the Borough of Lewisberry and to the Pennsylvania Public Utility Commission.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

31. Consumers Energy Company

[Docket No. ER00–2412–000]

Take notice that on May 4, 2000 Consumers Energy Company (Consumers), tendered for filing a Notice of Cancellation, terminating Consumers Energy Company Rate Schedule FERC No. 76, a facilities agreement with Wolverine Power Supply Cooperative, Inc., (Wolverine). The termination is by fully executed agreement between the two parties. Consumers requests that the cancellation be effective May 1, 2000, as specified in the termination agreement.

Copies of the filing were served upon Wolverine and upon the Michigan Public Service Commission.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

32. American Electric Power Service Corporation

[Docket No. ER00–2413–000]

Take notice that on May 4, 2000, American Electric Power Service Corporation, on behalf of the operating companies of the American Electric Power System (collectively, AEP), tendered for filing an amendment to the AEP open access transmission tariff.

AEP states that a copy of the filing has been served on all of AEP's transmission customers and on the state public service commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

33. New Century Services, Inc.

[Docket No. ER00–2414–000]

Take notice that on May 4, 2000, New Century Services, Inc. (NCS), on behalf of Public Service Company of Colorado (Public Service), tendered for filing the Master Power Purchase and Sale Agreement between Public Service and South Plains Electric Cooperative, Inc., which is an umbrella service agreement under Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

NCS requests that this agreement become effective on March 8, 2000.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

34. Entergy Services, Inc.

[Docket No. ER00–2415–000]

Take notice that on May 5, 2000, Entergy Services, Inc. (Entergy Services), as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing its 2000 annual rate redetermination update (Update) in accordance with the Open Access Transmission Tariff filed in compliance with FERC Order No. 888 in Docket No. OA96–158–000. Entergy Services states that the Update redetermines the formula rate in accordance with the annual rate redetermination provisions of Appendix 1 to Attachment H and Appendix A to Schedule 7.

Comment date: May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

35. Reliant Energy Maryland Holdings, LLC, Reliant Energy New Jersey Holdings, LLC and Reliant Energy Pennsylvania Holdings, LLC

[Docket Nos. ER00–2417–000]

Take notice that on May 4, 2000, Reliant Energy Maryland Holdings, LLC, Reliant Energy New Jersey Holdings, LLC and Reliant Energy Pennsylvania Holdings, LLC (collectively, the Reliant Energy PJM Companies), tendered for filing pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d (1994), and Part 35 of the Commission's Regulations, 18 CFR 35, revisions to their tariffs to provide for sales of regulation service at market-based rates through the Pennsylvania-New Jersey-Maryland Interchange Energy Market (PJM PX). Each of the Reliant Energy PJM Companies has further revised its tariff to consolidate provisions regarding energy, capacity and ancillary services into one market-based tariff per company.

The Reliant Energy PJM Companies request waiver of the prior notice requirements of Section 35.3 of the Commission's regulations, 18 CFR 35.3, to permit their filing to become effective as of June 1, 2000, or the date on which the PJM Interconnection, L.L.C., implements amendment to its Open Access Transmission Tariff and Operating Agreement regarding market-based pricing for Regulation service.

Comment date: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

36. Cinergy Services, Inc.

[Docket No. ER00–2418–000]

Take notice that on May 5, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cinergy Capital & Trading, Inc. (C&T).

Cinergy and C&T are requesting an effective date of April 5, 2000.

Comment date: May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

37. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–2419–000]

Take notice that on May 26, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 4 to Supplement No. 5 to the Market Rate Tariff to incorporate a Netting Agreement with Koch Energy Trading Inc., into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of March 23, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

38. New Century Services, Inc.

[Docket No. ER00–2420–000]

Take notice that on May 5, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (the Companies), tendered for filing a service agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and PPL Montana LLC.

Comment date: May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

39. Cinergy Services, Inc.

[Docket No. ER00–2422–000]

Take notice that on May 3, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cinergy Capital & Trading, Inc., (C&T).

Cinergy and Conectiv are requesting an effective date of April 5, 2000.

Comment date: May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

40. Des Plaines Green Land Development, L.L.C.

[Docket No. ER00–2423–000]

Take notice that on May 5, 2000, Des Plaines Green Land Development, L.L.C. (Des Plaines), tendered for filing its proposed Emergency Redispatch Tariff. The tariff provides for the dispatch of the Des Plaines Generation Facility during emergencies by Commonwealth Edison Co. (ComEd), the utility with which the facility is interconnected.

Des Plaines requests that the proposed tariff become effective April 11, 2000, the requested effective date of the Interconnection Agreement between Des Plaines and ComEd, and has therefore requested that the Commission waive its notice requirements.

Des Plaines has served copies of the filing on the Illinois Commerce Commission and ComEd, the only customer under the proposed tariff.

Comment date: May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

41. New England Power Pool

[Docket No. ER00–2424–000]

Take notice that on May 5, 2000, the New England Power Pool Participants Committee submitted a Load Response Program and changes to Market Rule Appendix 20–B, and requested expedited consideration of the Program and these changes in order to have them become effective on June 1, 2000.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: May 26, 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, 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 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).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–12467 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–141–000]

Northwest Pipeline Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed White River Replacement Project and Request for Comments on Environmental Issues

May 12, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the White River Replacement Project involving construction and operation of facilities by Northwest Pipeline Corporation (Northwest) in King County, Washington.[1] These facilities would consist of about 2000 feet of pipeline. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys

[1] Northwest's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice northwest provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

Summary of the Proposed Project

Northwest wants to ensure the long-term safety and integrity of its dual pipelines where they cross the meandering White River in King County, Washington, by replacing certain sections at a deeper depth. Northwest seeks authority to construct and operate 1900 feet each of its 26-inch-diameter and a 30-inch-diameter pipeline. Approximately 1600 feet of the abandonment and replacement would occur south of the river and 300 feet would occur north of the river. No construction activities would occur on these two pipelines in the active river as this section was previously buried at a sufficient depth. The replacement pipelines would be offset 100 feet west of the existing pipelines. Additionally, Northwest would remove a 665-foot length of 26-inch-diameter pipeline from the stream channel which was previously abandoned in-place. Northwest would construct a permanent stabilization structure on the north bank and a permanent habitat enhancement structure near the south bank.

The location of the project facilities is shown in appendix 1, figures 1–3.

Land Requirements for Construction

Replacement of the proposed facilities would require the use of 22.2 acres of land, including 6.0 acres of existing right-of-way (ROW), 10.7 acres of new ROW, 4.4 acres of industrial land located 3.3 miles to the west in the town of Auburn, and 1.1 acres of unimproved open land located 1400 feet north of the pipeline work area. The final permanent ROW would be 3.9 acres.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have had proposals. We call this ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- public safety
- land use
- cultural resources
- air quality and noise
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure our comments are considered, please carefully follow the instructions in the public participation section beginning on page 4.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northwest. This preliminary list of issues may be changed based on your comments and our analysis.

- Construction in a stream channel used by the federally threatened Puget Sound Chinook salmon and bull trout and the candidate species Coho salmon.
- Construction of fish habitat enhancement logjams near the south bank.
- Use of temporary and permanent ROW on the Muckleshoot Indian Reservation.
- Construction of a bank stabilization structure on the north side of the White River channel.
- Clearing of a 5.8-acre area of forest and scrub-shrub vegetation; and the disturbance of a 2-acre riparian area and a 0.1 acre area of wetland.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded.

- Send two copies of your letter: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NW., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Group 2.
- Reference Docket No. DP00–141–000.
- Mail your comments so that they will be received in Washington, DC on or before June 12, 2000.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor.'' Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–12469 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6702–6]

Agency Information Collection Activities: Questionnaire for Nominees for the Annual National Clean Water Act Recognition Awards Program (National Wastewater Management Excellence Awards Program)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Questionnaire for the Annual National Clean Water Act Recognition Awards Program (National Wastewater Management Excellence Awards Program) EPA ICR Number 1287.05, and OMB Control Number 2040–0101, approved through December 31, 2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 17, 2000.

ADDRESSES: Office of Water, Office of Wastewater Management, Municipal Support Division, Municipal Assistance Branch, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Maria E. Campbell, 202–260–5815/Fax Number 202–260–0116/e-mail at campbell.maria@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are public wastewater treatment plants, municipalities, industries, universities, manufacturing sites, and States.

Title: Questionnaire for Nominees for the Annual National Clean Water Act Recognition Awards Program (National Wastewater Management Excellence Awards Program) (OMB Control No. 2040–0101, EPA ICR No. 1287.05) expires 12/31/00.

Abstract: This ICR requests re-approval to collect data from EPA's National Clean Water Act Recognition Awards nominees. The awards are for the following program categories: Operations and Maintenance (O&M), Beneficial Use of Biosolids (Biosolids), Combined Sewer Overflow Controls (CSO), and Storm Water (SW) Management.

Note: Information collection approval for the Pretreatment awards program is included in the National Pretreatment Program ICR (OMB Control No. 2040–0009, EPA ICR No. 0003.08), approved through May 31, 2000. The National Clean Water Act Recognition Awards Program is managed by EPA's Office of Wastewater Management (OWM). The Awards Program is authorized under section 501(e) of the Clean Water Act, as amended. The Awards Program is intended to provide recognition to communities and industries which have demonstrated outstanding technological achievements, innovative processes, devices or other outstanding methods in their waste treatment and pollution abatement programs. Approximately 50 awards are presented annually. The achievements of these award winners are summarized in reports, news articles, national publications, and **Federal Register** Notice.

The information is collected from approximately 200 respondents at a total cost of $79,200 per year and 2800 burden hours, including $46,000 and 1600 burden hours for the respondents' time, and $33,200 and 1200 burden hours for the States' review time. Submission of information on behalf of the respondents is voluntary. No confidential information is requested. The Agency only collects information from award nominees under a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. Based on the data collection, national panels will evaluate the nominees' efforts and recommend finalists. The collections will be used by the respective awards programs to evaluate and determine which abatement achievements should be recognized.

As currently structured, the O&M awards program has nine categories which recognize municipal achievements. The biosolids awards program has four categories which recognize municipal biosolids operations, technology and research achievements, and public acceptance; the CSO awards program has one category which recognizes municipal programs; and the SW awards program has two categories which recognize municipal and industrial programs. All nominees are screened for environmental compliance by the States and EPA. Municipalities and institutions desiring to be considered for National awards voluntarily complete the questionnaires and provide design and operating information about their facility or programs. The award nominations are reviewed by State/Regional officials prior to forwarding them for National award consideration. At the National level, award reviews involve Federal officials and review panels comprised of representatives of EPA, State water pollution control agencies, and affiliated associations.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Respondents: Officials at public wastewater treatment plants,

municipalities, industries, universities, States and manufacturing sites.

Estimated Number of Respondents: 200.

Estimated Number of Responses Per Respondent: 1.

Frequency of Collection: Once a year.

Estimated Total Annual Burden on Respondents: 2800 hours (1600 hours for the response time and 1200 hours for the States' review time).

Burden means the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide information to EPA. This estimate includes the time needed to review instructions, collect, validate, and verify information; complete and review the collection of information; and transmit the information to EPA.

Dated: May 2, 2000.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 00–12523 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6702–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Performance Track Program Level One: The Environmental Achievement Track

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Performance Track Program Level One: The Environmental Achievement Track, ICR Number 1949.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 19, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No.1949.01. For technical questions about the ICR contact Ken Munis, at 202–260–9560.

SUPPLEMENTARY INFORMATION:

Title: Performance Track Program Level One: The Environmental Achievement Track, EPA ICR No. 1949.01. This is a new collection.

Abstract: The Environmental Protection Agency is developing a national Performance Track Program. In the July, 1999 report, ''Aiming for Excellence: Actions to Encourage Stewardship and Accelerate Environmental Progress,'' the Agency committed to developing a Performance Track Program to reward and motivate top environmental performance.

The Performance Track is a two-tiered, voluntary program designed to promote leadership in environmental protection through the use of Environmental Management Systems (EMS), Pollution Prevention Programs, and public reporting. Qualifying program participants will benefit from a variety of incentives, such as public recognition, reduced monitoring and reporting, and operational flexibility. EPA will announce and begin to solicit applications for level one of the Performance Track, the Environmental Achievement Track, in June of 2000. Level two, the Environmental Stewardship Track, will be announced in May of 2001.

Participation in the Performance Track program is voluntary. To be considered for acceptance into the program, applicants for the Environmental Achievement Track will be asked to submit information documenting their EMS, history of compliance with EPA regulations, commitment to continuous environmental performance improvement, and commitment to public outreach and performance reporting. Upon acceptance to the Environmental Achievement Track, participants will be required to make environmental performance reports accessible to the public.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 3/02/2000 (65 FR 11305); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 252 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Various Industries

Estimated Number of Respondents: 250.

Frequency of Response: Annually .

Estimated Total Annual Hour Burden: 50,450 hours.

Estimated Total Annualized Capital, O&M Cost Burden: 0

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1949.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 11, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–12518 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6701–2]

National Drinking Water Advisory Council; Contaminant Candidate List and 6-Year Review of Existing Regulations Working Group; Notice of Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

Under Section 10(a)(2) of Public Law 92–423, ''The Federal Advisory Committee Act,'' notice is hereby given that a meeting of the Contaminant Candidate List (CCL) Regulatory Determination and 6-Year Review of Existing Regulations Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held June 5–6, 2000, from 8:30 a.m.–5:00 p.m. ET (approximately), at RESOLVE, 1255 23rd Street, NW, Suite 275, Washington, DC 20037. The meeting is open to the public to observe and statements will be taken from the public as time allows. Seating is limited.

This is the first of three scheduled meetings to address the 6-Year Review of Existing Regulations. The purpose of the meeting is to begin the process of developing a protocol for selecting existing National Primary Drinking Water Regulation (NWPDRs) for possible revision. As a starting point, the Working Group will review a strawman protocol developed by U.S. EPA. Final recommendations will be forwarded to the full NDWAC for further consideration.

For more information, contact April McLaughlin, Designated Federal Officer, Contaminant Candidate List and Regulatory Determination and 6-Year Review of Existing Regulations Working Group, U.S. EPA (4607), Office of Ground Water and Drinking Water, 401 M Street SW, Washington, DC 20460. The telephone number is 202–260–5524, fax 202–401–6135, and e-mail *mclaughlin.april@epa.gov.*

Dated: May 8, 2000.

Janet Pawlukiewicz,

Acting Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 00–12521 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 12, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 19, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0410.

Title: Forecast of Investment Usage Report and Actual Usage of Investment Report.

Report No.: FCC Reports 495–A and FCC 495–B.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 300.

Estimated Time Per Response: 40 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 12,000 hours.

Total Annual Cost: N/A.

Needs and Uses: The Forecast of Investment Usage Report and the Actual Use of Investment Report implement the FCC's *Joint Cost Order,* which requires that certain telephone plant investments used for both regulated and nonregulated purposes be allocated on the basis of forecasted regulated and nonregulated use. The detection and correction of forecasting errors requires reporting of both forecasted and actual investment usage data. Sixty incumbent local exchange carriers (ILECs) file the annual reports based on study areas. If the data were collected less frequently, the Commission would not have the data in a timely manner to perform its functions. These annual reports are designed to obtain the data that are needed to evaluate ILECs proposed annual tariffs and to ensure against cross subsidization of nonregulated operations by related operations. These regulated activities are in the interests of, and for the benefit of, the ratepayers. These data are also a part of the data necessary to support the Commission's audit and other oversight functions.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–12497 Filed 5–17–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2410]

Petitions for Reconsideration of Action in Rulemaking Proceeding

May 12, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by June 2, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time of filing oppositions has expired.

Subject: Implementation of the Satellite Home Viewer Improvement Act of 1999 (CS Docket No. 99–363).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–12498 Filed 5–17–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

Cancellations of Previously Announced Meetings

Tuesday, May 16, 2000, 10 a.m.

Meeting closed to the public.

Thursday, May 18, 2000, 10 a.m.

Meeting open to the public.

DATE AND TIME: Tuesday, May 23, 2000 at 10 a.m.

PLACE: 999 E Street NW, Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438a(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, May 25, 2000 at 10 a.m.

PLACE: 999 E Street NW, Washington, DC (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and approval of Minutes

Draft Advisory Opinion 2000–06
Gerald M. Moan on behalf of the 2000 Convention Committee of the Reform Party U.S.A.

Draft Advisory Opinion 2000–07
Alcatel USA, Inc. by counsel, Jonathan B. Newton

Proposal to initiate a Notice of Proposed Rulemaking on Political Committee Definition (11 CFR 100.5)

Administrative matters.

PERSON TO CONTACT FOR INFORMATION: Ron Harris, Press Officer, telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–12623 Filed 5–16–00; 11:39 am]

BILLING CODE 6715–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

Announcing an Open Meeting of the Board

TIME AND DATE: 10 a.m., Monday, May 22, 2000.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Proposed Rule: FHLBank Capital Structure.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 00–12631 Filed 5–16–00; 2:22 pm]

BILLING CODE 6725–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health and Science; Availability of Funds and Requests for Applications for Cooperative Agreements for the National Community Centers of Excellence (CCOE) in Women's Health Program

AGENCY: Office of the Secretary, Office of Public Health and Science, Office on Women's Health.

Purpose

To provide recognition and funding to community-based programs that unite promising approaches in women's health across five components: (1) Comprehensive health service delivery, (2) training for lay and professional health providers, (3) community-based research, (4) public education/outreach, and (5) leadership development for women as health care consumers and providers. The focus of the CCOE initiative is not to develop new programs or to fund direct service or research, but rather to integrate, coordinate, and strengthen linkages between activities that are already underway in the community in order to reduce fragmentation in women's health services and activities. Another major purpose of the CCOE program is to foster the replication of promising models and strategies that coordinate and integrate women's health activities at the community level and improve health outcomes for underserved women.

The CCOE program addresses women's health from a women-centered, holistic, multi-disciplinary, and community-based perspective (see definitions below). Women's health issues are defined in the context of women's lives, including their multiple social roles and the importance of relationships with other people to their lives. This definition of women's health encompasses both mental and physical health (including oral health) and spans the life course.

The CCOE program will operate under cooperative agreements, to allow a collaborative relationship between the CCOE and the federal agencies. The funding agencies of the Department of Health and Human Services (HHS) include the Office on Women's Health; the Office of Minority and Women's Health in the Bureau of Primary Health Care of the Health Resources and Services Administration; and the Office of Minority Health. These agencies will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of program activities.

HHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010. Emphasis will be placed on aligning activities and programs with the Healthy People 2010: Goal 2—eliminating health disparities due to age, gender, race/ethnicity, education, income, disability, living in rural localities, or sexual orientation. More information on the Healthy People 2010 objectives may be found on the Health People 2010 web site: *http://www.health.gov/healthypeople.* Copies of the Healthy People 2010: Conference Edition Volumes I and II can be purchased by calling (301) 468–5960 (cost $22.00). The reference document entitled ''Healthy People 2010: Understanding and Improving Health'' is available for $9.00. Another reference is the Healthy People 2000 Review—1998–99. One free copy may be obtained from the National Center for Health Statistics (NCHS), 6525 Belcrest Road, Room 1064, Hyattsville, MD 20782 or telephone (301) 436–8500 (*DHHS Publication No,. (PHS) 99–1256). This document may also be downloaded from the NCHS web site: http://www.cdc.gov/nchs.

Program Goals

1. Reducing the fragmentation of services and access barriers that women encounter by providing a framework for the coordination and integration of comprehensive health services with research, training, and leadership

activities in the community to advance women's health.

2. Creating healthier communities with a more integrated and coordinated infrastructure for women's health targeted at underserved women.

3. Empowering underserved women as health care consumers and decision-makers.

4. Increasing the women's health knowledge base with rigorous, community-based research that reflects the health needs and issues of underserved women.

5. Increasing the number of health professionals who have training in working with underserved communities, boosting the number of girls who pursue health careers, and increasing the leadership skills and opportunities for women in the community and those who provide health services to the community.

6. Spreading the successes of model women's health strategies and new innovations to communities across the country.

7. Eliminating health disparities for women who are underserved due to age, gender, race/ethnicity, education, income, disability, living in rural localities, or sexual orientation.

Background

The National Centers of Excellence in Women's Health (CoEs) have been functioning in academic health centers since 1996. The unique feature of the CoE program has been the way it has brought together the disparate set of women's health activities that take place in academic health centers: linking together women's health research, medical education, clinical services, community outreach, and leadership development for women in academic medicine to create a more dynamic and informed system of care. The primary role of the CoEs has been to unite women's health activities and programs, promote multi-disciplinary and cross-departmental collaborations, and institutionalize a more integrative approach to women's health in academic health centers. The success of the CoE model has been rooted in this integrative approach.

The intent of the National Community Centers of Excellence in Women's Health Program (CCOE) is to maintain an emphasis on the linkage, coordination, and sharing of knowledge between different activities in women's health. Like the CoE program, the CCOE program will use an integrative approach, with the funding focused on linking activities rather than on creating new ones from the ground up. The CCOE program will adopt the components of the CoE Program (women's health research, health provider training, comprehensive clinical services, community outreach, and leadership development), but will focus on the community-based organization as the nucleus for operationalizing the new model. The CCOE program will also add a technical assistance component, so that the lessons learned from this unique model can be replicated in other communities around the country.

The CCOE program will be distinct from the CoE program in two important ways:

1. Applicants must be a community hospital, community health center, or other community-based organization. One award will be reserved for a community health center funded under Section 330 of the Public Health Service Act. Applications from academic health centers or organizations that are part of academic health centers will not be accepted as the CoE model is designed for such organizations.

2. To increase the geographic range of the Center of Excellence model, applications will be accepted from organizations in all of the American States and Territories except those that currently have CoE programs including CA, CT, IL, IN, LA, MA, MI, NC, PA, PR, WA, and WI.

As noted in Healthy People 2010, which outlines the health goals for our Nation, most successful community health initiatives involve multiple disciplines and interventions, linking community strengths and resources so that the whole is indeed greater than the sum of its parts. The CCOE program will link resources across women's health activities and disciplines to increase awareness/ knowledge, and to move women's health efforts forward more efficiently.

Eligible Applicants

Applicants must be a public or private nonprofit community-based hospital, community health center, or community-based organization serving underserved women. Academic health centers or organizations that are part of academic health centers are not eligible for funds under this announcement. To increase the geographic range of the overall Center of Excellence model, applications will be accepted from organizations in all of the American States and Territories except those which already have a National Center of Excellence in Women's Health (CoE) program. Thus applications will not be accepted from programs in the following states: CA, CT, IL, IN, LA, MA, MI, NC, PA, PR, WA, WI. One award will be reserved for a community health center funded under section 330 of the Public Health Service Act.

Deadline

To receive consideration, applications must be received by June 30, 2000 at 2 p.m. (Eastern Time). Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Application submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

Addresses/Contacts

Applications must be prepared using Form PHS 5161–1 (Revised June 1999). Application kits and questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed in writing to Ms. Anna Kindermann, Division of Program Management, Office on Women's Health, Parklawn Building, Room 16A–55, 5600 Fishers Lane, Rockville MD 20857, email: akindermann@osophs.dhhs.gov.

Completed applications are to be submitted to: Ms. Anna Kindermann, Division of Program Management, Office on Women's Health, Parklawn Building, Room 16A–55, 5600 Fishers Lane, Rockville MD 20857.

Technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Division of Management Operations, Office of Minority Health, Office of Public Health and Science, Rockville, MD, 20852, telephone (301) 594–0758, Ext. 157.

Availability of Funds

Approximately $450,000 is available for award in FY 2000 under this announcement. It is projected that awards of up to $150,000 total costs (direct and indirect) for a 12-month period will be made to approximately 3 competing applicants.

Period of Support

The start date for the cooperative agreement is September 30, 2000. Support may be requested for a total project period not to exceed 5 years.

Noncompeting continuation awards of up to $150,000 will be made subject to satisfactory performance and availability of funds.

Use of Grant Funds

Project Requirements

The major component of a CCOE program must consist of activities aimed at developing and strengthening a framework for bringing together a comprehensive array of services for women, and connecting those with promising strategies to: train a cadre of health care providers that are capable of addressing underserved women's health needs at the community level with an emphasis on prevention or moderation of illness or injury that appear controllable through individual knowledge and behavior; conduct participatory, community-based research in women's health; enhance public education and outreach activities in women's health with an emphasis on prevention or moderation of illness or injury that appear controllable through individual knowledge and behavior; and promote leadership/career development for women in the health professions and women/girls in the community. A project may develop outreach and education materials, training programs, and leadership development activities/ materials. Award recipients must also, with input from community representatives, put into place and track a set of measurable objectives for improving health outcomes and decreasing health disparities for underserved women in the community.

Each CCOE must also demonstrate an ability to foster the transfer of lessons learned and successful strategies. These may include either process-based lessons (for example: How to bring multiple community partners together) or outcomes-based lessons (for example: How to increase diabetes screening and control through improved outreach, education, and treatment). The CCOEs must foster the replication of promising models from their sites through activities such as showcasing them at meetings and workshops; providing direct technical assistance to other communities; developing replication guides/materials; and providing technical assistance to health professionals, directly or through their professional organizations, interested in working with under-served women in the community.

Use of Funds

A majority (75%) of the funds from the CCOE award must be targeted at staffing and efforts aimed at coordinating and integrating the major components of the CCOE program. The remainder (25%) of the award funding must be targeted at staff and efforts to foster the transfer of lessons learned/ successful strategies from the CCOE program.

Funds may be used to cover costs of personnel, consultants, supplies (including screening, education, and outreach supplies), equipment, and grant related travel. Funds may not be used for construction, building alterations, medical treatment, or renovations. All budget requests must be fully justified in terms of the proposed goals and objectives and include a computational explanation of how costs were determined.

Criteria for Evaluating Applications

Review of Applications

Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive to the announcement or nonconforming will be returned without comment. Accepted application will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by a technical review panel composed of government experts in the fields of program management, community service delivery, community outreach, health education, community research, and community leadership development. Consideration will be given to applicants that demonstrate progress toward eliminating health disparities through the integration of services, research, education, training, and leadership/career development. Preference will also be given to applicants located in rural, medically underserved areas. Applicants are advised to pay close attention to the specific program guidelines and general instructions in the application kit.

Application Requirements

Each applicant for a cooperative agreement funded under this announcement must:

1. Be a sustainable organization with an established network of partnering organizations capable of ensuring a coordinated women's health system in the community. The network of partnering organizations must have the capacity to plan and coordinate comprehensive health services (as defined below) for women and unite them with community-based women's health research, teaching/training opportunities in community women's health, leadership opportunities for women in health, and community outreach/education activities in women's health.

2. Demonstrate the ways in which the organization and the care that is coordinated through its partners are women-focused and sensitive to the importance of patient/provider communication/ relationships for medically underserved women of all ages. The care that is coordinated through this organization must be focused on health promotion, disease prevention, and treatment.

3. Detail/specify the roles and resources that each partnership organization will bring to the project and state the duration and terms of agreement, as confirmed by a signed agreement between the applicant organization and each partner. The documents must be signed by individuals with the authority to represent the organization (*e.g.,* president chief executive officer, executive director).

Application Review Criteria: The technical review of applications will consider the following factors:

Factor 1: Background—10%

Adequacy of demonstrated knowledge of systems of health care for underserved women at the local level; demonstrated need within the proposed community and target population of underserved women; demonstrated support and established linkages in order to conduct proposed National Community Center of Excellence in Women's Health model; extent and documented outcome of past efforts/ activities with underserved women.

Factor 2: Objectives—10%

Merit of the objectives outlined by the applicant to address the CCOE program goals (outlined above) in a way relevant to community needs and resources. Objectives should be measurable and attainable in the stated time frame.

Factor 3: Methodology—55%

I. Extent to which the applicant demonstrates access to medically underserved women.

II. Soundness of pre-existing community resources and linkages that can be built upon and coordinated to meet the requirements of the CCOE program.

III. Appropriateness of proposed approach and specific activities described to address each element of the National Community Center of Excellence in Women's Health program including 1.comprehensive women's health services, 2. public outreach and education, 3. training for professional and lay health care workers working

with underserved women, 4. participatory community-based research, 5. leadership/career development for women providers, and women/girls in the community, and 6. ability to train others in lessons learned and replication of successful strategies.

IV. Soundness of evaluation objectives for measuring program effectiveness and changes in health outcomes.

Factor 4: Management Plan—15%

Applicant organization's capability to manage and evaluate the project as determined by: the qualifications of proposed staff or requirements for ''to be hired'' staff, proposed staff level of effort, management experience of the lead agency; and the experience of each partnership organization as it relates to its defined roles and to the National Center of Excellence in Women's Health model.

Factor 5: Evaluation—10%

Thoroughness, feasibility and appropriateness of the evaluation design, and data collection and analysis procedures for the establishment of a National Community Center of Excellence in Women's Health. Potential for replication of the project for similar target populations and communities.

Award Criteria

Funding decisions will be determined by the *Director, Division for Program Management, Office on Women's Health,* and will take under consideration: the recommendations and ratings of the review panel; funding preference; geographic distribution; and health problem areas having the greatest impact on women's health. Consideration will be given to projects proposed to be implemented in Empowerment Zones, Enterprise Communities; and preference to those in rural, medically underserved areas.

Definitions

For the purposes of this cooperative agreement program, the following definitions are provided:

Community-based: In which the locus of control and decision-making powers are located at the community level, representing the community or a significant segment of the community.

Community-based Organization: Public and private, non-profit organizations which are representative of communities or significant segments of communities.

Community health center: A community-based organization that provides comprehensive primary care and preventive services to medically underserved populations. This includes but is not limited to Federally Qualified health centers, Federally Qualified health center look-alike, Migrant Health Centers, Primary Care Public Housing Health Centers, Healthcare for the Homeless Centers, and other community-based health centers.

Comprehensive women's health services: Services including, but going beyond traditional reproductive health services to address the health needs of underserved women in the context of their lives, including a recognition of the importance of relationships in women's lives, and the fact that women play the role of health providers and decision-makers for the family. Services include basic primary care services; acute, chronic, and preventive services; mental and dental health services; patient education and counseling; promotion of healthy behaviors (like nutrition, smoking cessation, substance abuse services); and enabling services. Ancillary services are also provided such as laboratory tests, X-ray, environmental, and pharmacy services.

Coordinated care: The formal linkages, case management services, partnering arrangements, and patient advocate supports that rationalize women's health resources and help underserved women to navigate through the comprehensive health services they need. Community-based organizations are expected to coordinate with State and local health departments, nonprofit organizations, academic institutions, or other local organizations in the community as appropriate.

Culturally competent: Information and services provided in the language, educational, and cultural context that is most appropriate for the individuals for whom the information and services are intended.

Enabling services: Services that help women access health care, such as transportation, translation, child care, and case management.

Healthy People 2010: A set of national health objectives that outlines the prevention agenda for the Nation. Healthy People 2010 identifies the most significant preventable threats to health and establishes national goals for the next ten years. Individuals, groups, and organizations are encouraged to integrate Healthy People 2010 into current programs, special events, publications, and meetings. Businesses can use the framework, for example, to guide worksite health promotion activities as well as community-based initiatives. Schools, colleges, and civic and faith-based organizations can undertake activities to further the health of all members of their community. Health care providers can encourage their patients to pursue healthier lifestyles and to participate in community-based programs. By selecting from among the national objectives, individuals and organizations can build an agenda for community health improvement and can monitor results over time.

Holistic: Looking at women's health from the perspective of the whole person and not as a group of different body parts. It includes mental as well as physical health.

Integrated: In the CCOE context, the bringing together of the numerous spheres of activity that touch women's health, including clinical services, research, health training, public health outreach and education, and leadership development for women. The goal of this approach is to unite the strengths of each of these areas, and create a more informed and efficient system of women's health for underserved women.

Multi-disciplinary: An approach that is based on the recognition that women's health crosses many disciplines, and that women's health issues need to be addressed across multiple disciplines, such as adolescent health, geriatrics, cardiology, mental health, reproductive health, nutrition, dermatology, endocrinology, immunology, rheumatology, etc.

Participatory, community-based research: Research in which community members participate on equal footing, to maximize the potential for exchange in knowledge and implementation of research findings. Community members work with researchers to help determine research issues, shape the research process/ objectives, and bring research results back to the community. The shared goal is to maintain scientific rigor in the research methods, while also incorporating the skills, knowledge, and strengths of the participants/ beneficiaries of the research. There is an emphasis on ensuring that research results are translated into practice and communicated back to the community.

Sustainability: An organization's or program's staying power: the capacity to maintain both the financial resources and the partnerships/linkages needed to provide the services demanded by the CCOE program. It also involves the ability to survive change, incorporate needed changes, and seize opportunities provided by a changing environment.

Underserved Women: In the context of the CCOE model, women who encounter barriers to health care that result from any combination of the following characteristics: poverty,

ethnicity and culture, mental or physical state, housing status, geographic location, language, sexual orientation, age, and lack of health insurance.

Women-centered: Addressing the needs and concerns of women in an environment that is welcoming to women, fosters a commitment to women, treats women with dignity, and empowers women through respect and education. The emphasis is on working with women not for women. Women clients are considered active partners in their own health and wellness.

Reporting and Other Requirements

General Reporting Requirements

In addition to those listed above, a successful applicant will submit an annual progress report, an annual Financial Status Report, and a final Progress Report and a final Financial Status Report in the format established by the Office on Women's Health, in accordance with provisions of the general regulations which apply under ''Monitoring and Reporting Program Performance,'' 45 CFR part 74, Subpart J and Part 92

Provision of Smoke-Free Workplace and Nonuses of Tobacco Products by Recipients of PHS Grants

HHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised on proposed health services grant applications submitted by community-based non-governmental organizations within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate state and local health agencies in the area(s) to be impacted: (a) a copy of the face page of the application (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, (3) a description of the coordination planned with the appropriate state or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office on Women's Health.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline. The Office on Women's Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See ''Intergovernmental Review of Federal Programs,'' Executive Order 12372, and 45 CFR Part 100 for a description of the review process and requirements.)

Authority: This program is authorized by 42 U.S.C. 300u–2(a)(1), 300u–3, and 300u–6(e).

OMB Catalog of Federal Domestic Assistance

The OMB Catalog of Federal Domestic Assistance Number is pending.

Dated: May 11, 2000.

David Satcher,

Assistant Secretary for Health and Surgeon General.

[FR Doc. 00–12462 Filed 5–17–00; 8:45 am]

BILLING CODE 4160–17–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACF/ACYF/HS 2000–08]

FY 2000 Announcement of Financial Assistance To Expand Head Start Enrollment

AGENCY: Administration on Children, Youth and Families (ACYF), ACF, DHHS.

ACTION: FY 2000 Announcement of financial assistance to expand Head Start enrollment.

SUMMARY: The Head Start Bureau of the Administration on Children, Youth and Families announces that competing applications will be accepted to fund Head Start programs to serve Federally-recognized Indian reservations and Alaska Native villages not currently served by Head Start and areas where Head Start services are not available for the children of migrant and seasonal farm workers. It is expected that a total of approximately $3,000,000 will be awarded to support these programs.

DATES: The closing date for receipt of applications is July 21, 2000.

ADDRESSES: Applications should be submitted to: Head Start Unserved Competition, ACYF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209, Phone # 1–800–351–2293.

Copies of the program announcement and necessary application forms can be downloaded from the Head Start Web site at: *www.acf.dhhs.gov/programs/hsb*

FOR FURTHER INFORMATION CONTACT: ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, VA 22209 or telephone: 1–800–351–2293 or email to: ehs@lcgnet.com

SUPPLEMENTARY INFORMATION:

Part I. General Information

A. Background

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Head Start currently serves approximately 835,000 children

through a network of 1520 grantees and more than 700 delegate agencies.

While Head Start is targeted primarily towards children whose families have incomes at or below the poverty line, regulations permit up to ten percent of the Head Start children in local programs to be from families who do not meet these low-income criteria. The Head Start statute also requires that a minimum of ten percent of enrollment opportunities in each program be made available to children with disabilities. Such children are expected to be enrolled in the full range of Head Start services and activities in a mainstream setting with their non-disabled peers, and to receive needed special education and related services.

Head Start programs are locally-designed to provide services through a variety of program options, based on the needs of local families that are not being met by existing early childhood and child care programs. Program options include part-day/part-year and full-day/full year center-based programs, home-based programs, combinations of center and home-based options and locally designed options.

Head Start for Children of Migrant and Seasonal Farmworkers

For purposes of establishing eligibility for Migrant Head Start services, a migrant family is defined as follows:

A family with one or more children under the age of compulsory school attendance who changed their residence by moving from one geographic location to another, either intrastate or interstate, within the past two years, for the purpose of engaging in agricultural work.

A seasonal farmworker family is a family engaged primarily in seasonal agricultural labor who has not changed its residence to another geographic location in the preceding two years.

In addition to providing the comprehensive child development services that all Head Start programs provide, Migrant/Seasonal Head Start programs typically operate for extended hours (8 to 12 hours per day), depending on the parents' work schedules, and may serve children five to seven days per week. Migrant/Seasonal programs also typically provide child development and child care services to infants, toddlers and preschool-aged children.

Note: Recent changes to the Head Start Act allow migrant Head Start programs to serve seasonal farmworker families in addition to serving migrant families. However, seasonal farmworker families may be served only where there is an adequate level of services being provided to migrant families. This expansion is targeted on those states in which there are no migrant programs, despite the presence of significant numbers of migrant families. Any request for serving seasonal farmworker families must be fully explained by the applicant, including the reasons such a proposal is being made and why the applicant believes that an adequate level of services is being provided to migrant families.

Statutory and Regulatory Authority

The Head Start program is authorized by the Head Start Act, 42 U.S.C. 9831 *et seq.*, as amended.

The relevant regulations are:

- 45 CFR part 1301, Head Start Grants Administration.
- 45 CFR part 1302, Policies and Procedures for Selection, Initial Funding and Refunding of Head Start Grantees, and for Selection of Replacement Grantees.
- 45 CFR part 1303, Appeal procedures for Head Start grantees and current or prospective delegate agencies.
- 45 CFR part 1304, Program performance standards for the operation of Head Start programs by grantees and delegate agencies.
- 45 CFR part 1305, Eligibility, recruitment, selection, enrollment and attendance in Head Start.
- 45 CFR part 1306, Head Start staffing requirements and program options.
- 45 CFR part 1308, Head Start program performance standards on services for children with disabilities.
- 45 CFR part 1309, Head Start Facilities Purchase
- 45 CFR part 74, Uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations; and certain grants and agreements with States, local governments and Indian tribal governments
- 45 CFR part 92, Uniform administrative requirements for grants and cooperative agreements to State and local governments.

B. Purpose of Announcement

This announcement solicits applications from eligible applicants that wish to compete for Head Start grants to serve Federally-recognized Indian reservations not currently served by Head Start and areas where Head Start services are not available for the children of migrant and seasonal farm workers.

The Administration on Children, Youth and Families (ACYF) is also providing funding to expand Head Start services through two other national competitions. Head Start Bureau Program Instruction ACYF–HS–PI–00–02, issued on February 15, 2000, announced the availability of approximately $185,000,000 to increase enrollment in geographical areas currently served by Head Start grantees. In addition, an announcement published in the **Federal Register** on February 29, 2000 describes a competition for approximately $40,000,000 to expand services to children under age three and pregnant women in low-income families through funding additional Early Head Start programs.

C. Eligible Applicants

Expansion applications under this announcement should be submitted under one of the following two categories:

Category 1. Applicants that wish to serve Head Start-eligible children living on Federally-recognized Indian reservations or Alaskan Native villages where a Head Start program does not currently operate.

Eligible applicants are the Tribal governments of unserved reservations that wish to initiate a Head Start program or agencies designated by these Tribal governments.

Category 2. Applicants that wish to serve Head Start-eligible children of migrant or seasonal farm workers in the following states:

Connecticut, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Montana, Oklahoma, and Puerto Rico.

Eligible applicants are local public or private non-profit or for profit agencies.

D. Available Funds

Category 1. For applicants applying to serve preschool children on unserved Indian reservations under Category 1, up to approximately $1,000,000 will be made available. No minimum enrollment level has been established for new Indian Head Start projects. Applicants should propose to serve a sufficient number of children to ensure a viable and cost-efficient program.

Category 2. For applicants applying to serve migrant and seasonal children (infants, toddlers and preschoolers) under Category 2, up to approximately $2,000,000 will be made available. While no minimum enrollment level has been established for Migrant Head Start projects, applicants should indicate a sufficient number of eligible children to ensure a viable and cost-efficient program. Factors to be addressed related to program viability should include the size of the service area proposed and a sufficient population to justify program services in ''off years'' when the population of

migrant children might be low due to crop failure, variations in the migrant stream or natural disasters such as drought or flood.

E. Recipient Share of the Project

Section 640(b) of the Head Start Act requires, with certain exceptions, that at least 20 percent of the total cost of a Head Start project come from sources other than the Federal government. Therefore, a project requesting $100,000 in Federal funds must include a match of at least $25,000 (20 percent of the total project costs). The non-Federal share may be in cash or in-kind, fairly valued, and may include facilities, equipment or volunteer services. In certain instances, as described in Section 640(b) of the Head Start Act, the requirement for a 20 percent non-federal match may be waived in part or in whole.

Expansion funds should not be used to support services that were previously provided without Federal assistance. However, expansion funds can be used to provide Head Start services, either directly or through a delegate agency, to eligible families who are enrolled in other program settings but not currently receiving comprehensive Head Start services.

Applicants may use a variety of strategies for delivering services, including:

- Combining child care, pre-kindergarten and other resources with Head Start funds and directly managing full-day, full-year services.
- Funding new delegate agencies or other appropriate arrangements which will enable local child care agencies, preschool programs or family child care providers to provide Head Start services.

Part II. Application Requirements

A. Purpose of Project Description

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specified project for which funds are requested.

B. General Instructions

Cross-referencing should be used rather than repetition. ACYF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

The Head Start Bureau is also requesting that applicants provide a summary of the project description which includes:

- The name and address of the applicant agency.
- The category of application (Category 1 or 2).
- The total number of children to be served when the program is fully operational. For applicants applying under Category 2, include the number of infant and toddlers and the number of preschoolers proposed to be served. Also include the number of children of migrant farmworkers and the number of children, if any, of seasonal farmworkers.
- The total ongoing ACYF funds requested for a 12 month period when the project is fully operational. (Do not include one-time start-up funds here.)
- The amount of any proposed one-time start-up funding requested from ACYF.
- The amount and source of any additional funding that will help support the project (i.e., funds that are in addition to Federal Head Start funds and beyond the amounts required to meet non-federal-share requirements).

The community(ies) to be served (name of town(s), city (ies) and county(ies), or the Federally recognized Indian Reservation where children will be served.

- The type of program option(s) proposed (part-day, full-day, home-based, combination program option or locally-designed options such as family child care) and proposed hours per day and days per year that children will be served in each option.
- The target date for beginning full services to new children.

C. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to. Incorporate demographic data and participant/beneficiary information, as needed.

The Head Start Bureau is particularly interested in the following:

1. A description of the need for Head Start services within the agency's service area. Provide an analysis of changes in family needs, including the implications of welfare reform and employment patterns on family needs for child care and other support services. Include data on eligible, unserved children and families. Identify any special populations of low-income children and families that have been unserved or underserved by Head Start in the past.

2. A description of the services, resources, and capacities of other local child care and early childhood programs and providers serving low-income families and how the proposed strategy for expansion of Head Start will complement and enhance the effectiveness of these other community agencies.

3. Evidence of the involvement of community agencies that serve low-income families, such as child care, early childhood education, health, welfare and other programs, in the assessment of community and family needs and the development of proposed priorities and strategies.

4. A description of the children and families to be served, the type of program option that will be operated and the geographic area in which program services will be expanded. Explain: (i) The rationale for the decisions made and how they are supported by the applicant's community assessment and consultations; (ii) how the proposed expansion will meet the needs of families for full-day, full-year services and (iii) how the proposal will help assure that all families within the service area, regardless of their cultural, linguistic or ethnic backgrounds, have

an improved opportunity to be considered for Head Start enrollment. Describe any special efforts to reach previously unserved or underserved populations of low-income families.

D. Results or Benefits Expected

Identify the results and benefits to be derived.

The Head Start Bureau is particularly interested in the following:

1. Based on the stated program objectives, identify the specific results or benefits that could be expected for children and families participating in the program. Identify the specific community-wide results or benefits including those resulting from collaborative partnership with other child and family development staff working in a variety of community agencies.

2. Identify both qualitative and quantitative data the program will collect to measure progress towards the stated results or benefits. Identify how the program will determine the extent to which it has achieved its stated objectives.

E. Approach

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

The Head Start Bureau is particularly interested in the following:

1. A description of how children and families will be recruited and selected for the program. Describe procedures to ensure that services will be provided to individuals who have the most serious need for Head Start services, including children with disabilities and unserved and underserved populations.

2. A description of strategies for delivering high quality services to children and family members, as defined by the Head Start Performance Standards, including the involvement of parents and other community members and organizations in the program strategy. Include, as appropriate, a discussion of all proposed collaborative relationships with other local organizations and the nature of the proposed collaboration(s). If applicable, describe any proposed modifications or improvements in current program practices, such as adaptations to encourage parent involvement by low-income working families.

3. A staffing pattern that will enable services to be provided in accordance with the Head Start Program Performance Standards in all component areas. Identify all proposed staff or staff positions, their proposed salary rates and the length of time they will be employed each year. Discuss how proposed compensation levels will attract and retain well-qualified and effective staff members.

4. A description of plans for staff training and development of newly-hired staff members and a discussion of how proposed staff will be supported by the grantee's organizational structure.

5. A discussion of start-up plans and a timetable to implement the increased enrollment in a carefully planned but timely and efficient manner. Describe how the program will obtain or upgrade classroom space and other facilities to required licensing standards, recruit and train new staff or community-based providers, arrange for adequate transportation, and recruit, select and enroll eligible children and families.

F. Organizational Capacity and Experience

Provide information on the applicant organization and cooperating partners.

The Head Start Bureau is particularly interested in the following:

1. Evidence of the applicant's experience and ability to administer a Head Start program, to successfully meet the Head Start Program Performance Standards and to manage the proposed expansion strategy. Include a discussion of any proposed changes and improvements in program management and governance.

2. From applicants who are establishing partnerships with other child care and early childhood agencies, providers or funding sources:

Letters of commitment from the child care and early childhood agencies and providers, including documentation of the additional resources that will be combined with the requested Head Start funds to create a high quality, full-day, full-year program. Explain and itemize these resources or services, and whether or not these costs are included as part of the non-Federal share.

A description of plans for managing, monitoring, and assisting the efforts of proposed new delegate agencies and other forms of collaborative arrangements to assure that the Head Start Program Performance Standards are met.

A description of the experience of the applicant and the proposed partnering agencies in collaborating to deliver high quality early childhood program services and in managing multiple sources of funding.

A description of how the applicant will track, manage and account for multiple funding streams, allocate costs to different funding sources, and make adjustments in the event of fluctuations in the availability of other funding sources.

G. Cost Effectiveness and Budget Appropriateness

Provide a narrative budget justification that describes how the proposed costs are derived. Discuss the necessity, reasonableness and allocability of the proposed costs.

The Head Start Bureau is particularly interested in the following:

1. A description of two budgets, one for ongoing operating costs for a 12-month period, the other for one-time start-up costs such as the renovation of facilities, purchases of equipment and initial training of new staff members. Identification in the budget of the required non-Federal share of the cost of the project. Include a discussion of strategies for obtaining the required non-Federal share, as described in Section I.E. of this announcement.

2. A description of how the proposed budget is reasonable, appropriate and cost-effective in view of the proposed services, strategies and anticipated outcomes.

3. A description of the extent to which the proposal includes significant other resources to complement the requested Head Start expansion funds.

Part III. Evaluation Criteria

Applications will be reviewed and evaluated on the following criteria:

1. Objectives and Need for Assistance (20 Points)

- The extent to which the application provides current data on the needs of young children, families, and communities for expanded Head Start services, including analyses of changes in poverty and family mobility, employment opportunities and welfare reform, and any special unserved or underserved populations or groups.
- The extent to which the application provides convincing evidence of the involvement and support of other organizations serving low-income families in assessing family and community needs and resources, developing proposed plans and strategies, and in active partnerships to implement the proposed expansion.

Information provided in response to Section II.C. of this announcement will

be used to evaluate applicants on the above criterion.

2. Results or Benefits Expected (10 Points)

• The extent to which the applicant identifies the results and benefits to be derived from the project and links these to the stated objectives.

• The extent to which the applicant describes the kinds of data to be collected and how they will be utilized to measure progress towards the stated results or benefits.

Information provided in response to Section II.D. of this announcement will be used to evaluate applicants on this criterion.

3. Approach (25 Points)

• The extent to which the application includes a detailed, well-organized, and credible plan of action to carry out the proposed expansion of Head Start services, including plans for recruitment and selection of children, arrangements for transportation and facilities and plans for start-up of the new services.

• The extent to which the application includes clear plans and a demonstrated commitment to implement the Head Start Program Performance Standards, including involvement of parents and families in program design and decision making.

• The extent to which the application proposes, where possible, to collaborate with other community providers to deliver a high quality, cost-effective Head Start program.

• The extent to which the application provides sound, cost-effective staffing, organizational and management strategies, including staff training and development to ensure that the expansion provides high quality and responsive services.

• The extent to which the application demonstrates a sound strategy for facilitating the transition of Head Start children from the Head Start program to the local school system by coordinating with the local education agency and the local schools who will be enrolling Head Start children.

Information provided in response to Section II.E. will be used to evaluate applicants on the above criterion.

4. Organizational Capacity & Experience (20 Points)

The extent of the demonstrated capacity of the applicant organization, key leaders and managers and, where appropriate, proposed partnering organizations in:

• Providing high quality, responsive services to young children and families, including evidence of the capability to meet the Head Start Program Performance Standards;

• Managing expansion of program services in an effective and timely manner; and

• Managing successful partnerships to serve young children and their families that involve sharing resources, staffing and facilities.

Information provided in response to Section II.F. will be used to evaluate applicants on the above criterion.

5. Cost Effectiveness and Budget Appropriateness (25 Points)

• The extent to which the proposed budget is reasonable, appropriate and cost effective in view of the proposed services, strategies and anticipated outcomes.

• The extent to which the applicant has mobilized significant additional resources to complement Head Start expansion funds.

Information provided in response to Section II.G. and the applicant's proposed budget will be used to evaluate applicants on the above criterion.

IV. The Application Process

A. Availability of Forms

Eligible agencies interested in applying for funds must submit the required forms included at the end of this announcement in Appendix A.

In order to be considered, an application must be submitted on Standard Form 424. Each application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. As required by the Head Start Program Performance Standards, any current Head Start grantee's Head Start Policy Council must approve the application. Applications must be prepared in accordance with the guidance provided in this announcement.

B. Application Submission

One signed original and two copies of the grant application, including all attachments, are required. Completed applications must be sent to: Head Start Expansion Unserved Competition, ACYF Operations Center, 1815 North Fort Myer Drive—Suite 300, Arlington, VA 22209.

In order to make the review of proposals easier, applicants should include in their proposals a Table of Contents and page numbers. Although there is no specific limit on the number of pages that applications may contain, applicants are encouraged to be as concise as possible.

C. Application Consideration

Applications will be reviewed against the evaluation criteria outlined above. The review will be conducted in the Washington, DC area by persons knowledgeable about the Head Start program and early childhood care, education and development, and may include staff of Head Start programs, parents of Head Start children, Federal staff from the ACF Regional Offices and the Head Start and Child Care Bureaus, and other experts, such as university faculty members and the staff of child care and pre-kindergarten programs and agencies.

The results of the competitive reviews will be taken into consideration by the Associate Commissioner of the Head Start Bureau who, in consultation with the Indian and Migrant Programs Branches, will recommend projects to be funded. The Commissioner of ACYF will make the final selection of the applications to be funded.

The Commissioner may elect not to fund applicants that have program, management, fiscal or other problems and situations that make it unlikely that they would be able to provide effective Head Start services. Also, the Commissioner may decide not to fund projects that would require unreasonably large initial start-up costs for facilities or equipment or which require unreasonably large on-going funding levels relative to the number of children and families proposed to be served.

Applicants which do not meet the requirement found in Section 641 of the Head Start Act of being a local agency, within the community(ies) it is proposing to serve, will not be selected for funding.

Successful applicants will be notified through a Financial Assistance Award which sets forth the amount of funds awarded, the terms and conditions of the grant supplement, and other relevant information.

D. Amount of Funds Awarded to Successful Applicants

In deciding the amount of funds to apply for, applicants should be guided by the need for services in their community, the amount needed to effectively and efficiently carry out the program of services proposed, the amount needed to provide high quality comprehensive services, and the availability of funds in the competitive area. There are no predetermined cost-per-child guidelines or limits to which applicants must conform.

After applications are selected for funding, the Commissioner will

determine if they will be funded for all or only part of the number of children proposed. In determining the amount of funds a selected applicant will receive, the Commissioner will consider:

- The application's competitive review ranking;
- The relative need for services in a proposed service area compared to other communities in the competitive area;
- The proposed costs in Federal Head Start funds and;
- The amount of funds available in the competitive area.

For example, an applicant which is able to expand Head Start services at a relatively lower cost in Federal Head Start funds because it shares costs with a child care agency will likely be awarded funds to serve a larger portion of the children it proposed serving than another applicant. Through the determination of funding levels, we hope to achieve a distribution of funds that is equitable and which allows as many children and communities as is possible to receive the benefits of a high quality Head Start program.

E. Closing Date for Receipt of Applications

Deadline: The closing date for the receipt of applications is July 21, 2000. Applications shall be considered as meeting this deadline if they are either:

1. Received on or before the deadline date at the address specified in the program announcement, or

2. Sent on or before the deadline date and received by ACYF in time for the independent review. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m. at the ACYF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, VA. 22209, between Monday and Friday (excluding Federal Holidays). (Applicants are cautioned that express/overnight mail services may not always deliver as agreed.)

ACYF cannot accommodate the transmission of applications by FAX or through other electronic media. Therefore, applications transmitted to ACYF electronically will not be accepted regardless of the date or time of submission and time of receipt.

Late Applications: Applications that do not meet the criteria stated above are considered late applications. ACYF will notify each late applicant that its application will not be considered.

Extension of deadlines. ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, *etc.*, or when there is a disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

F. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, (Pub.L. 104–13), the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements or program announcements. This Program Instruction meets all information collection requirements approved for ACF grant applications under OMB Control Number 0970–0139.

G. Executive Order 12372—Notification Process

This program is covered under Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applications from federally-recognized Indian Tribes are exempt from E.O. 12372.

Applicants from these thirteen jurisdictions and from federally recognized Indian tribes need take no action regarding E.O. 12372. All other applicants should contact their SPOC as soon as possible to alert them to the prospective application and to receive any necessary instructions. Applicants must submit material to the SPOC as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the SF 424, item 16a.

Under 45 CFR 100.8(a)(2), SPOCs have 60 days from the application deadline date to comment on applications submitted under this announcement. Therefore, the comment period for State processes will end on September 22, 2000. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the ''accommodate or explain'' rule.

Comments submitted directly to ACF should be addressed to: Head Start Bureau, Grants Officer, Room 2210, 330 C Street, SW, Washington, DC 20201.

ACF will notify the State of any application received which has no indication that the State process has had an opportunity for review.

A list of Single Points of Contact for each State and territory is included at Appendix B.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: May 11, 2000.

James Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

BILLING CODE 4184–01–P

Appendix A—Application Forms

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application: ☐ **Construction** ☐ **Non-Construction**

Preapplication: ☐ **Construction** ☐ **Non-Construction**

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code)*:

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*:

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ **New** ☐ **Continuation** ☐ **Revision**

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

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Instructions for the SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) an applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—''New'' means a new assistance award.

—''Continuation'' means an extension for an additional funding/budget period for a project with a projected completion date.

—''Revision'' means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (*e.g.,* construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. *List only the largest political entities affected (e.g., State,* counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of inkind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's *authorization for you to sign this application as official* representative must be on file in the applicant's office (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–P

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page

BILLING CODE 4184–01–C

Instructions for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the columns headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter the totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing

data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohl abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Polices Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a.–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safely Standards Act (40 U.S.C. §§ 327–333) labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.), related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the program.

Signature of Authorization Certifying Official

Title

Applicant Organization

Date Submitted

Administration for Children, Youth, and Families, U.S. Department of Health and Human Services

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW, Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals. Alternate I applies.

4. For grantees who are individuals. Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation. State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement, consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate 1. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—(1) The dangers of drug abuse in the workplace; (2) the grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—(1) Abide by the terms of the statement; and (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(B) The grantee may insert in the space provided below the sites(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant.

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency, designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

Administration for Children, Youth, and Families, U.S. Department of health and Human Services

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered

transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause title ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Administration for Children, Youth, and Families, U.S. Department of Health and Human Services

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL. ''Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL. ''Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	 **Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184–01–C

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime of subaward recipient. Identify the tier of the subawardee, *e.g.*, the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks ''Subawardee,'' then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number

for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (*e.g.,* Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, *e.g.,* ''RFP–DE–90–001.''

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in items 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

BILLING CODE 4184–01–P

OMB No. 0999-0020
OMB No. 0925-0418
Approved for use through 01/31/2001

Protection of Human Subjects Assurance Identification/Certification/Declaration (Common Federal Rule)

Policy: Research activities involving human subjects may not be conducted or supported by the Departments and Agencies adopting the Common Rule (56FR28003, June 18, 1991) unless the activities are exempt from or approved in accordance with the common rule. See section 101(b) the common rule for exemptions. Institutions submitting applications or proposals for support must submit certification or appropriate Institutional Review Board (IRB) review and approval to the Department or Agency in accordance with the common rule.

Institutions with an assurance of compliance that covers the research to be conducted on file with the Department, Agency, or the Department of Health and Human Services (HHS) should submit certification of IRB review and approval with each application or proposal unless otherwise advised by the Department or Agency. Institutions which do not have such an assurance must submit an assurance and certification of IRB review and approval within 30 days of a written request from the Department or Agency.

1. Request Type
☐ ORIGINAL
☐ FOLLOWUP
☐ EXEMPTION

2. Type of Mechanism
☐ GRANT ☐ CONTRACT ☐ FELLOWSHIP
☐ COOPERATIVE AGREEMENT
☐ OTHER:_____

3. Name of Federal Department or Agency and, if known, Application or Proposal Identification No.

4. Title of Application or Activity

5. Name of Principal Investigator,Program Director, Fellow, or Other

6. Assurance Status of this Project *(Respond to one of the following)*

☐ Services, covers this activity:
This Assurance, on file with Dartment of Health and Human Assurance identification no. M-_____IRB identification no. _____

☐ This Assurance, on file with *(agency/dept)*_____, covers this activity.

Assurance identification no._____ IRB identification no._____*(if applicable)*

☐ No assurance has been filed for this project. This institution declares that it will provide an Assurance and Certification of IRB review and approval upon request.

☐ Exemption Status: Human subjects are involved, but this activity qualifies for exemption under Section 101(b), paragraph_____.

7. Certification of IRB Review (Respond to one of the following IF you have an Assurance on file)

☐ This activity has been reviewed and approved by the IRB in accordance with the common rule and any other governing regulations or subparts on *(date)*_____ by: ☐ Full IRB Review or ☐ Expedited Review

☐ This activity contains multiple projects, some of which have not been reviewed. The IRB has granted approval on condition that all projects covered by the common rule will be reviewed and approved before they are initiated and that appropriate further certification will be submitted.

8. Comments

9. The official signing below certifies that the information provided above is correct and that, as required, future reviews will be performed and certification will be provided.

10. Name and Address of Institution

11. Phone No. *(with area code)*

12. Fax No. *(with area code)*

13. Name of Official

14. Title

15. Signature

16. Date

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OPTIONAL FORM 310 (Rev. 1/98
Sponsored by HHS/NIH

Public reporting burden for this collection of information is estimated to average less than an hour per response. 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: NIH, Project Clearance Office, 6701 Rockledge Drive, MSC 7730, Bethesda, Md. 20892-7730, ATTN: PRA 0925-0418. *Do not return*

BILLING CODE 4184–01–C

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Appendix B—SPOC Listing

State Single Point of Contact Listing Maintained by OMB

In accordance with Executive Order #12372, ''Intergovernmental Review of Federal Programs,'' Section 4, ''the Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development.'' This attached listing is the OFFICIAL OMB LISTING. This listing is also published in the Catalogue of Federal Domestic Assistance biannually.

OMB State Single Point of Contact Listing*

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144, e-mail: jonis@ep.state.az.us

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning and Research/State Clearinghouse, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, 540 S. duPont Hi., Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW—Suite 1200, Washington, DC 20005, Telephone: (202) 727–6537, FAX: (202) 727–1617, e-mail: charlesnic@yahoo.com or cnichols-ogmd@dcgov.org

Florida

Cherie L. Trainor, Coordinator, Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438 or (850) 414–5495, FAX: (850) 414–0479, e-mail: cherie.trainor@dca.state.fl.us

Georgia

Debra S. Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington Street, S.W.—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–3855, FAX: (404) 656–7901, e-mail: ssda@mail.opb.state.ga.us

Illinois

Virginia Bova, State Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Frances Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809

Kentucky

Kevin J. Goldsmith, Director, John-Mark Hack, Deputy Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–2849

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

Linda C. Janey, JD, Manager, Clearinghouse and Plan Review Unit, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2305, Telephone: (410) 767–4491, FAX: (410) 767–4480, e-mail: Linda@mail.op.state.md.us

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone (601) 359–6762, FAX: (601) 359–6764

Missouri

Lois Pohl/Carol Meyer, Federal Assistance Clearinghouse, Office Of Administration, P.O. Box 809, Room 915, Jefferson Building, Jefferson City, Missouri 65102, Telephone: (573) 751–4834, FAX: (573) 522–4395

Nevada

Heather Elliott, Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–6367, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Nick Mandell, Local Government Division, Room 201, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–4991, FAX: (505) 827–4948

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Marsha Roth, Albany, New York 12224, Telephone: (518)474–1605, FAX: (518) 486–5617

North Carolina

Chrys Baggett, Director, North Carolina State Clearinghouse, Office of the Secretary of Administration, 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

Jim Boyd, North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Department 105, Bismarck, North Dakota 58505–0170, Telephone: (701) 328–2094, FAX: (701) 328–2308

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 222–2656, FAX: (401) 222–2083

South Carolina

Omegia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th Floor, Columbia, South Carolina 29201,

Telephone: (803) 734–0494, FAS: (803) 734–0645

Texas

Tom Adams, Single Point of Contact, State of Texas, Governor's Office of Budget and Planning, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711–2428, Telephone: (512) 463–1771, FAX: (512) 936–2681, e-mail: tadams@governor.state.tx.us

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

West Virginia

Judith Dryer, Chief Program Manager, West Virginia Development Office, Building #6, Room 645, State Capitol, Charleston, West Virginia 25305, Telephone: (304) 558–0350, FAX: (304) 558–0362

Wisconsin

Jeff Smith, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

Wyoming

Matthew Jones, State Single Point of Contact, Office of the Governor, 200 West 24th Street, State Capital, Room 124, Cheyenne, Wyoming 82002 FAX: (307) 632–3909

TERRITORIES

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444 or (809) 723–6190, FAX: (809) 724–3270 or (809) 724–3103

Northern Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 674–2256, FAX: (670) 664–2272

Please direct all questions and correspondence about intergovernmental review to: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, FAX: (670) 664–2272.

Virgin Islands

Nellon Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Daisey Millen, Telephone: (809) 774–0750, FAX: (809) 776–0069.

If you would like a copy of this list faxed to your office, please call our publications office at: (202) 395–9068.

* In accordance with Executive Order #12372, ''Intergovernmental Review of Federal Programs,'' this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process BUT GRANT APPLICANTS ARE STILL ELIGIBLE TO APPLY FOR THE GRANT EVEN IF YOUR STATE, TERRITORY, COMMONWEALTH, ETC. DOES NOT HAVE A ''STATE SINGLE POINT OF CONTACT.'' JURISDICTIONS WITHOUT ''STATE SINGLE POINTS OF CONTACTS'' INCLUDE: Alabama; Alaska, American Samoa; Colorado; Connecticut; Kansas; Hawaii; Idaho; Louisiana; Massachusetts; Minnesota; Montana; Nebraska; New Jersey; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; and Washington.

This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

[FR Doc. 00–12373 Filed 5–17–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–197]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection;

Title of Information Collection: Maximizing the Effective Use of Telemedicine: A Study of the Effects, Cost Effectiveness and Utilization Patterns of Consultations via Telemedicine'';

Form No.: HCFA–R–197 (OMB# 0938–0705);

Use: This study deals with several issues of importance to HCFA regarding the recent proliferation of Telemedicine programs. The primary goal of this study is to develop policy recommendations for Medicare concerning utilization review and payment methods for Telemedicine services. The major objective is to evaluate the use of interactive video Telemedicine consultation.; Recommendations will be based on analysis of the use of Telemedicine for such medical consultation.;

Frequency: Other: periodically;

Affected Public: Individuals or households, Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 1,450;

Total Annual Responses: 84,235;

Total Annual Hours: 360.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 4, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–12477 Filed 5–17–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

White House Initiative on Asian Americans and Pacific Islanders, President's Advisory Commission; Notice of Meeting; Correction

In **Federal Register** Document 00–11449 appearing on page 26219 in the issue for Friday, May 5, 2000, the following corrections have been made to the Notice of Meeting for the President's Advisory Commission. The room number for the meeting on May 17, 2000 has been changed from Room 800 of the Hubert H. Humphrey Building to the Stonehenge Room of the Hubert H. Humphrey Building. A time change has taken place for the meeting on May 19, 2000. The meeting will take place from 9:00 a.m.–1:00 p.m. Those are the only changes to be noted. All other information is correct as it appears.

An additional meeting has been scheduled and will take place on Thursday, May 18, 2000. This meeting will be open to the public. The meeting will be held on May 18, 2000 from 2:00 p.m.–5:00 p.m. in Room 800 of the Hubert H. Humphrey Building located at 200 Independence Avenue, SW, Washington, DC 20201.

Requests to address the Commission should be made in writing and should include the name, address, telephone number and business or professional affiliation of the interested party. Individuals or groups addressing similar issues are encouraged to combine comments and present through a single representative. The allocation of time for remarks may be adjusted to accommodate the level of expressed interest. Written requests should be faxed to (301) 443–0259. Anyone who has interest in attending any portion of the meetings or who requires additional information about the Commission should contact: Mr. Tyson Nakashima, Office of the White House Initiative on Asian Americans and Pacific Islanders, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–2492. Anyone who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Nakashima no later than Tuesday, May 16, 2000.

Dated: May 11, 2000.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–12445 Filed 5–17–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Mutant Aequorea Victoria Fluorescent Proteins Having Increased Cellular Fluorescence

George N. Pavlakis, George A. Gaitanaris, Roland H. Stauber, John N. Vournakis (NCI)

U.S. Patent 6,027,881 issued 22 February 2000

Licensing Contact: Girish C. Barua; 301/406–7056 ext. 263; e-mail: gb18t@nih.gov

The Green Fluorescent Protein (GFP) from the jellyfish Aequorea victoria is rapidly becoming an important reporter molecule for monitoring gene expression in vivo, in situ and in real time. GFP can be used to tag proteins, cellular compartments, or cells, and has found many uses in the study of biological processes. Unlike other bioluminescent reporters, GFP fluoresces in the absence of any other proteins, substrates, or cofactors. Improved signal to noise ratio is important for several applications using GFP. We have generated GFP mutants that increase the fluorescent signal by at least tenfold over the wild-type GFP in mammalian cells. These mutants emit either green or blue light, detectable when single copy genes are inserted into the cell.

Method for Refolding Recombinant Endostatin

Dong Xie, Paul Grulich, John W. Erickson (NCI)

DHHS Reference No. E–260–99/0 filed 18 Feb 2000

Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail rr154Z@nih.gov

Endostatin is a naturally occurring collagen-derived fragment that has been the subject of intense interest due to its reported anti-tumor and anti-metastatic properties. Endostatin's exact mode of action is unknown, and a detailed analysis of this mode of action has been hampered by the inability to consistently produce large quantities of refolded recombinant endostatin. While endostatin can be recombinantly produced, the isolated protein is found in an unfolded state. Thus a need exists to produce recombinant endostatin in a biologically active form for continuing clinical development and studying specific motifs or structures associated with endostatin which may be responsible for its anti-angiogenic/metastatic properties. The current invention comprises a method of renaturing endostatin comprising contacting unfolded endostatin with an effective amount of cyclodextrin in an aqueous environment buffered at a neutral or acidic ph.

CpG Oligodeoxynucleotides Used To Improve Human Immune Responses

Dennis Klinman, Daniela Verthelyi, Kenji Ishii (FDA)

DHHS Reference No. E–078–00/0 filed 14 Jan 2000

Licensing Contact: Peter Soukas; 301–496–7056, ext. 268; e-mail: ps193c@nih.gov

This invention concerns immune-activating oligonucleotides containing CpG motifs. Although it is known that certain CpG sequences can induce responses from human immune system cells, individual subjects show considerable heterogeneity in their response to different CpG sequences. These different responses make it difficult to induce a therapeutic immune response in all members of a diverse population using a single CpG sequence, even if such a sequence is repeated in a CpG oligonucleotide. The inventors have found that a broad-based immunomodulatory response scan be generated in a wide cross-section of subjects by using a mixture of multiple different CpG motifs. The mixture of oligodeoxynucleotides of the present invention can either be mixtures of different oligodeoxynucleotides expressing different CpG motif is or a

single oligodeoxynucleotide containing multiple different motifs. The oligodeoxynucleotides of the current invention have the capacity to stimulate humoral, cell-mediated immune responses or both humoral and cell-mediated immune responses, depending on the motifs utilized. The oligodeoxynucleotides of the present invention have uses including, but not limited to, treating allergies infectious diseases, cancer, and autoimmune disorders; furthermore, the obligodeoxynucleotides of the present invention have utility as vaccine adjutants for conventional and DNA vaccines, and as anti-sense therapeutics.

A Novel Neuropeptide Potentially Involved in Pain Regulation, Blood Pressure Control, and Other Physiological Functions

Dr. Ted. Usdin (NIMH)
DHHS Reference No. E–123–99/0 filed 15 Jun 1999
Licensing Contact: Norbert Pontzer; 301/496–7736 ext. 284; e-mail: np59n@nih.gov

A 39 amino acid peptide which activates the newly discovered parathyroid 2 (PTH2) receptor has been isolated, sequenced and cloned. The PTH2 receptor is a member of the secretin receptor family which includes receptors for secretin, vasoactive intestinal polypeptide, calcitonin, glucagon, gastric inhibitory polypeptide and CRF. Immunohistochemical mapping of the PTH2 receptor shows a distribution of PTH2 receptor in: endocrine tissue including pancreatic islet somatostatin cells; thyroid parafollincular cells and peptide secreting cells in the intestine; heart muscle, and nervous tissue including areas of the hypothalamus involve din pituitary regulation and the somatic and visceral primary sensory neuron terminals in the dorsal horn of the spinal column. This distribution suggests that the ligand or an antagonist may be used to treat pain, high blood pressure, diabetes, GI disturbances, psychiatric disease and other pathologies.

Novel Disulfide Conjugated Cell Toxins and Methods of Making and Using Them

David Fitzgerald, Michael J. Iadarola (NCI)
DHHS Reference No. E–301–99/0 filed 22 Oct 1999
Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: ms482m@nih.gov

Efforts to find more effective treatments of chronic pain with few unwanted side effects or which do not dampen acutely painful potentially dangerous stimuli remains a continuing challenge. Current analgesic therapies often fall short of therapeutic goals and typically have unacceptable side effects. Thus the discovery of a more efficacious and safe means to control chronic pain is unpredictable and therapeutically advantageous.

The NIH announces a new technology which is an effective treatment for pain control directed at the local ablation of NK–1 receptor expressing cells. The NK–1 receptor is found on a variety of cell types, the predominant expressing cells being pain-mediating neurons. Other cell types include brain cells and neostriatum cells through the axon collaterals of spiny projection neurons to name a few. This technology is the discovery of a novel conjugate generated between TNB–derivatized Substance P (SP) and a truncated version of Pseudomonas exotoxin, termed PE35. When administered to NK–1 receptor expressing cells, SP–PE35 induced cell death, while cells that expressed NK–2 and NK–3 receptors remained unaffected. This toxin allows for the killing of a specific category of cell types and is an effective means of treating a variety of conditions, in particular chronic pain or tumors that express NK–1 receptors. The toxin can be placed in a pharmaceutically acceptable excipient and can be combined with any method of procedure currently being used clinically, making it a versatile and superior form of treatment.

Dated: April 25, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, National Institutes of Health.

[FR Doc. 00–12546 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Vasant Gandhi, J.D., Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 224; fax: 301/402–0220; e-mail: vg48q@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Peptides That Inhibit the Binding of Human Monocyte Chemoattractant Protein-1 (MCP–1) to Its Receptor CCR2

Teizo Yoshimura (NCI)
DHHS Reference No. E–235–99/0 filed 30 Nov 1999

MCP–1 is a chemoattractant protein and is a member of a family of proinflammatory cytokines called chemokines. Chemokines are of interest because of their ability to attract and activate specific leukocyte subsets to the exclusion of others. In particular, MCP–1 is capable of attracting monocytes but not neutrophils. The inventors isolated peptides with an antibody (E11) that immunoreacts with MCP–1. One such peptide may be useful in blocking the interaction of MCP–1 and its receptor CCR2 which may disrupt the formation and/or progression of a variety of disease states. MCP–1 has been detected in lesions of atherosclerosis, rheumatoid arthritis, pulmonary fibrosis and tumors such as malignant fibrous histiocytoma, malignant glioma, meningioma or melanoma.

Inhibition of ABC Transporters by Transmembrane Domain Analogs

Nadya Tarasova, Michael M Gottesman, Christine Hrycyna,
Christopher J Michejda (NCI)
DHHS Reference No. E–019–00/0 filed 18 Nov 1999

ABC transporters contain multiple transmembrane domains and are involved in the translocation of a variety of substrates across cell membranes. Upregulation of these transporters contributes to multiple drug resistance in cancer chemotherapy. The inventors have found that the P-gp (P-glycoprotein or Multiple Drug Resistance Protein-1) can be inhibited by properly substituted peptides corresponding to one of the transmembrane domains. Such inhibition can be used to enhance the activity of cancer chemotherapy in resistant tumors.

Assay for the Detection of a Variety of Tumors in Biological Specimens

Larry W. Fisher, Neal S. Fedarko, Marian F. Young (NICHD)
DHHS Reference No. E–173–98/0 filed 09 Apr 1999

The inventors have developed methods and reagents for the detection of bone sialoprotein (BSP) in biological samples. The technology relates to the disruption of a serum complex that masks the majority of BSP from established detection systems. Furthermore, there is evidence that there may be a more acidic form of BSP secreted not by normal bone, but only by tumors. Detection of BSP in serum may be a good marker of various bone diseases and a variety of cancers including breast, prostate, lung, and thyroid.

Dated: April 25, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 00–12547 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

Date: June 5–7, 2000.

Time: 8:30 am to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd., Room A1/A2, Rockville, MD 20852.

Contact Person: Eugene G. Hayunga, PhD, Scientific Review Administrator, National Institutes of Health, NCCAM, Building 31, Room 5B50, 9000 Rockville Pike, Bethesda, MD 20892, 301–594–2014, hayungae@od.nih.gov.

Dated: May 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–12544 Filed 5–17–00; 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 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 Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: June 14, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise P. Corman, PhD, Scientific Review Administrator, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892–7924, (301) 435–0270.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Clinical Trials Special Emphasis Panel.

Date: June 27, 2000.

Time: 8 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Joyce A. Hunter, National Heart, Lung, and Blood Inst., NIH, Rockledge Center, II, 6701 Rockledge Drive, Suite 7194, Bethesda, MD 20892–7924, 301/435–0288.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: July 13, 2000.

Time: 9 am to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton National Airport Hotel, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Louise P. Corman, PhD, Scientific Review Administrator, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892–7924, (301) 435–0270.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: July 14, 2000.

Time: 9 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Louise P. Corman, PhD, Scientific Review, Administrator, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892–7924, (301) 435–0270.

(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: May 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Fedeal Advisory Committee Policy.

[FR Doc. 00–12543 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 15, 2000.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, MD 20814.

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute of Alcohol

Abuse and Alcoholism National Institutes of Health, Suite 409, 6000 Executive Blvd. Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Program; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–12532 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed 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 such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: June 6, 2000.

Time: 7 am to 8 am.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20914.

Contact Person: Ronald Suddendorf, Phd, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–12533 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Acquired Immunodeficiency Syndrome Research Review Committee.

Date: June 15–16, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: The Governor's House Hotel, Cabinet Room, 1615 Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Paula S. Strickland, Phd, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–12534 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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: Communication Disorders Review Committee.

Date: June 14, 2000.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.

Contact Person: Melissa Stick, PhD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–12535 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A.

Date: June 13, 2000.

Time: 8 am to 6 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carole H. Latker, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–3663.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–12536 Filed 5–17–00; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secretes 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: May 24, 2000.

Time: 8 am to 4 pm.

Agenda: To review and evaluate contract proposals.

Place: One Washington Circle, 1 Washington Circle NW, Washington, DC 20037.

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.

(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: May 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–12538 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: June 22, 2000.

Time: 1:30 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: David I. Sommers, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–12539 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical 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 General Medical Sciences Special Emphasis Panel Summer Research Experiences for Undergraduates.

Date: June 14, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Laura Moen, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13H, Bethesda, MD 20892, 301–594–3998.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Protein Structure Initiative.

Date: June 27–29, 2000.

Time: 8 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Irene B. Glowinski, PhD, Assistant Chief, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892–6200, (301) 594–3663, glowinsi@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–12541 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; 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: Minority Programs Review Committee MARC Review Subcommittee A.

Date: June 22–23, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–12542 Filed 5–17–00; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Services Special Emphasis Panel, Contract NIH 00–26.

Date: June 19, 2000.

Time: 9 am to 12 pm.

Agenda: To review and evaluate contract proposals.

Place: NIEHS—East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(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: May 4, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–12545 Filed 5–17–00; 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 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 grants applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Library Review Committee

Date: June 14–15, 2000

Closed: June 14, 2000, 8:30 am to 11:30 am

Agenda: To review and evaluate grant applications

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894

Open: June 14, 2000, 11:30 am to 12 pm

Agenda: Administrative Reports and Program Developments

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894

Closed: June 14, 2000, 12 pm to 1:30 pm.

Agenda: To review and evaluate fellowship grant applications.

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: June 14, 2000, 1:30 pm to 5:30 pm.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Open: June 15, 2000, 8:30 am to 9:00 am

Agenda: Administrative Reports and Program Development

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894

Closed: June 15, 2000, 9 am to 12 pm

Agenda: To review and evaluate grant applications

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894

Closed: June 15, 2000, 12 pm to 1:30 pm

Agenda: To review and evaluate resource grant applications

Place: National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894

Contact Person: Sharee Pepper, Phd, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive Suite 301, Bethesda, MD 20892, (301) 594–4933

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–12540 Filed 5–17–00; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 30, 2000.

Time: 10 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dharam S. Dhindsa, DVM, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 30–31, 2000.

Time: 6 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: American Inn of Bethesda, 8130 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Ramesh K. Nayak, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 31–June 1, 2000.

Time: 8:30 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

Contact person: Gamil C. Debbas, PhD, Scientific Review Adminsitrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 31, 2000.

Time: 1 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 31, 2000.

Time: 2 pm to 4 pm.

*Agenda:*To review and evaluate grant applications and/or proposals

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892 (301) 435–1043.

(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: May 10, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–12537 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Uridine Prodrug Analogues: Uses in Cancer Diagnosis and Therapy

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in PCT Patent Application S/N PCT/US98/23109 (23109) entitled, ''Antitumor Uridine Analogs'' which was filed on October 10, 1998 and claims priority to U.S. Patent Application S/N 60/063,587 entitled, ''Diagnosis and Treatment of Tumors with Drugs Activated by Thymidylate Synthase,'' which was filed on October 10, 1997 to Nascent Pharmaceuticals LLC of San Francisco, California. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to human therapeutics and diagnostics for the detection and treatment of breast and gastrointestinal cancers.

DATES: Only *written* comments and/or license applications which are received by the National Institutes of Health on or before July 17, 2000 will be considered.

ADDRESSES: Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Richard U. Rodriguez, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804. Telephone: (301) 496–7056, X287; Facsimile (301) 402–0220; E-mail rr154z@nih.gov.

SUPPLEMENTARY INFORMATION: The technology claimed in '23109 relates to methods, compounds and compositions for diagnosing and/or treating cancers with anti-tumor agents activated by thymidylate synthase (TS) and/or thymidine kinase (TK). In addition, the invention relates to the preparation and use of positron emitting nucleoside analogues for imaging applications.

TS is an essential enzyme for DNA synthesis, and it has been shown to be

more abundantly expressed in tumor cells than in normal cells. Historically, scientists have tried to capitalize upon this overexpression and have attempted to inhibit TS activity with the goal of shrinking tumors and/or killing tumor cells. For example, fluorouracil and floxuridine have been used to treat breast, colon, pancreas, stomach, ovarian and head/neck carcinomas, but the effectiveness of these approaches have been limited because many tumors are inherently resistant to these treatments, and even those that are initially sensitive, develop resistance during the course of treatment. It was subsequently shown, that a strong correlation exists between resistance and high level expression of TS.

The inventors have proceeded along another route, again, attempting to capitalize upon the high levels of TS in tumor cells. Instead of trying to inhibit TS activity, they have proposed the introduction of uridine analogue prodrugs into cancer cells. These prodrugs would then be converted to more toxic thymidine analogues. This approach seems to avoid the observed problems of TS inhibition and shows great promise.

Detection and diagnostic applications for this technology are also possible. In particular, the success of this type of strategy would be contingent upon the extent of prodrug incorporation into DNA and therefore, the analysis of a tumor cell's DNA could provide diagnostic information regarding the optimal therapy for a specific tumor type. Traditionally, methods to determine growth rates have been invasive, but this technology would provide for non-invasive external imaging methods which would avoid the need for biopsies as well as providing for the capability of scanning larger areas of the body.

Thymidine is an excellent probe for monitoring growth/DNA synthesis, but it cannot be used in these situations because it is quickly degraded in the body. Analogues of thymidine would obviate this problem and could be produced upon conversion of the contemplated uridine analogue prodrugs.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 25, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–12548 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4570–N–02]

Office of the Assistant Secretary for Public and Indian Housing; Notice of Funding Availability for Fair Share Allocation of Incremental Voucher Funding Fiscal Year 2000; Amendments to NOFA and Reopening of Application Period

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Fund Availability (NOFA); Amendments and Reopening of Application Period.

SUMMARY: On March 10, 2000, HUD published its FY 2000 NOFA for Fair Share Allocation of Incremental Voucher Funding (''Fair Share NOFA''). This document amends the selection criteria of this NOFA primarily to better reflect the appropriate weight in points that should have been assigned to the ''housing needs'' selection criterion so that need is the most important basis for allocating incremental voucher funding. As discussed in more detail in the Supplementary Information section of this notice, the points of other selection criteria are also revised to better reflect their appropriate weight, and the separate criterion for portability is removed. This notice also explains that HUD will substitute the number of ''contracted units'' for ''HUD-approved budget'' the number of certificates and vouchers on the latest HUD-approved budget when the number of a PHA's contracted units is higher than the number of a PHA's budgeted units.

The application period for the Fair Share NOFA closed on April 24, 2000. This notice reopens the application period for an additional 30 day period.

DATES: Applications are due on June 19, 2000.

Applicants that already submitted applications by the April 24, 2000, application due date, need not resubmit a new application, and need not amend their applications. Applicants that already submitted applications, however, may submit new or amended applications if they so choose.

SUPPLEMENTARY INFORMATION:

Background—March 10, 2000 NOFA

If you are interested in applying for funding under the Fair Share NOFA, and did not apply earlier, please review the entire Fair Share NOFA, published on March 10, 2000 (65 FR 13222). Except for the reopening of the application period and the revisions made by this document, all other provisions of the Fair Share NOFA are unchanged and remain applicable.

The March 10, 2000 Fair Share NOFA will provide you with detailed information regarding the submission of an application, Section 8 program requirements, the application selection process to be used by HUD in selecting applications for funding, and other valuable information relative to a PHA's application submission and participation in the program covered by this NOFA. The March 10, 2000 Fair Share NOFA is also available on HUD's internet site at http://www.hud.gov under ''Funds Available.'' This **Federal Register** notice amending the March 10, 2000 Fair Share NOFA is also available at the same HUD web site.

Reopening of Application Period

Application Due Date. Your completed application (an original and two copies) or any amendment to an earlier submitted application (also an original and two copies) is due on or before June 19, 2000 at the addresses shown below.

As noted earlier, applicants that already submitted applications by the April 24, 2000, application due date, need not resubmit a new application, and need not amend their applications. Applicants that already submitted applications, however, may submit new or amended applications if they so choose.

Submission of new or amended applications should clearly identify the name of the applicant, the applicant HA code (*e.g.* CA002), and whether the information submitted is new and replaces a previously submitted application in its entirety or is an addendum to the previously submitted application.

Address for Submitting Applications. Submit your original application or your original application amendment and one copy to Michael E. Diggs, Director

of the Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW, Suite 800, Washington, DC 20024.

Submit the second copy of your application or application amendment to the local HUD Field Office Hub, Attention: Director, Office of Public Housing, or to the local HUD Field Office Program Center, Attention: Program Center Coordinator.

The Grants Management Center is the official place of receipt for all applications in response to this NOFA.

Delivered Applications. If you are hand delivering your application, or application amendment, it is due on or before 5:00 pm, Eastern time, on the application due date to the Office of Public and Indian Housing's Grants Management Center (GMC) in Washington, DC. A copy is also to be submitted by the applicant to the local HUD Field Office Hub or local HUD Field Office Program Center.

This application deadline in this notice is firm as to date and hour. In the interest of fairness to all competing PHAs, HUD will not consider any application or application amendment that is received after the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

Mailed Applications. Applications sent by U.S. mail will be considered timely filed if postmarked before midnight on the application due date and received within ten (10) days of that date.

Applications Sent by Overnight Delivery. Applications sent by overnight delivery will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

For Application Kit. An application kit is not available and is not necessary for submitting an application for funding under this NOFA. The March 10, 2000 Fair Share NOFA, as amended by this notice, contains all of the information necessary for the submission of an application for voucher funding in connection with this NOFA.

For Further Information and Technical Assistance. You may contact George C. Hendrickson, Housing Program Specialist, Room 4216, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Room 4216, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1872, ext. 4064, or you may contact Ms. Sherry McCown at the Grants Management Center at (202) 358–0273. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

Amendments to Selection Criteria and Points Assigned

This document amends the selection criteria in Section IV of the March 10, 2000 Fair Share NOFA primarily to better reflect the appropriate weight in points that should have been assigned to the ''housing needs'' selection criterion so that need is the most important basis for allocating incremental voucher funding. Weights of other criteria are reduced accordingly. This document also alters or removes two selection criteria that do not assess a public housing agency's housing needs and are otherwise problematic. First, the residency preference subcategory is being altered to provide for the assignment of points to PHAs that will limit applicability of residency preferences to 15% of all new admissions to the program, as well as to those PHAs that do not have a residency preference or agree to eliminate one. This change is made in recognition that some PHAs with legally adopted residency preferences and great housing needs would have been penalized by the language provided in the March 10, 2000 Fair Share NOFA. Second, the portability selection criterion is removed because portability is adequately covered in the Area-Wide Housing Opportunities (Selection Criterion 2) and because the portability criterion would have awarded too many points for PHAs promising to absorb portable families with the new funds, relative to the March 10, 2000 Fair Share NOFA's treatment of PHAs that already are absorbing portable families. Because of the changes in the Selection Criteria, changes were required to be made to Attachment 2 to the March 10, 2000 Fair Share NOFA (Fair Share Application Checklist) and the amended checklist is included in this notice.

This document also revises the total amount of points a PHA is eligible to receive under the Fair Share NOFA. The March 10, 2000 Fair Share NOFA provided for a total of 160 points. The amendments made by this notice provide that the total number of points a PHA is eligible to receive is 100 points.

The changes made by this document are as follows:

- Selection Criterion 1: Housing Needs—the maximum number of points for this criterion is changed from 30 to 45 points, and the assignment of these points is based more specifically on the percentage of the State's housing need in the PHA's jurisdiction.
- Selection Criterion 2: Efforts of PHA to Provide Area-Wide Housing Opportunities for Families—the points for this criterion are changed from 60 to 30 points. To correspond to the reduction in the point total for this criterion, all the subcategories under Selection Criterion 2 are reduced from 10 to 5 points. In addition, the residency preference subcategory is changed as discussed above. PHAs that would have received points for this subcategory will still receive points and need submit nothing else unless they choose to amend their certification. PHAs that would not have received points but would qualify under the amended language need to submit the required certification.
- Selection Criterion 3: Local Initiatives—the points for this criterion are changed from 20 to 10 points.
- Selection Criterion 4: Disabled Families—the points for this criterion are changed from 20 to 10 points.
- Selection Criterion 5: Medicaid Home and Community Based Services Waivers under Section 1915(c) of the Social Security Act—the points for this criterion are changed from 10 to 5 points.
- Selection Criterion 6: Portability—this criterion is removed as a selection criterion for the reasons discussed above. Statements already submitted in response to this criterion will not be considered.

Substitution of ''Contracted Units'' for Budgeted Units When Number of Contracted Units Is Higher Than Number of Budgeted Units

In the March 10, 2000 Fair Share NOFA, HUD used the term ''HUD-approved budget'' in discussing the calculation of maximum funding allowed under the NOFA. For example, in Section V.(A) (''Fair Share Application Process''), HUD advises that the ''The GMC may recommend for approval the maximum funding for a PHA under this NOFA that does not exceed the lesser of 25% of the PHA vouchers and certificates on the latest HUD-approved budget or 25% of the number of vouchers available in the State, whichever is less.'' (See page 13226, first column). Reference to 25%

of HUD-approved budget (''budgeted units'') for certificates and vouchers also appears in Section V(B) and Section VI(A) (also on page 13226).

Because the automated data on budgeted units are not optimal in all cases, through this notice, HUD provides notification that it will substitute in this calculation contracted units (*i.e.,* the number of units under an Annual Contributions Contract) for the number of certificates and vouchers on the latest HUD-approved budget when the number of a PHA's contracted units is higher than the number of a PHA's budgeted units. The determination of contracted units shall be made in accordance with Attachment 3 (Methodology for Determining Lease-Up and Budget Authority Utilization Percentage Rates) to the March 10, 2000 Fair Share NOFA (see page 13229).

Accordingly, in the FY 2000 NOFA for Fair Share Allocation of Incremental Voucher Funding, notice document 00–6027, beginning at 65 FR 13222, in the issue of Friday, March 10 2000, the following amendments are made to Section IV of the NOFA at 65 FR 13224, and Attachment 2 at 65 FR 13229:

IV. Fair Share Application Rating Process

(A) *Selection Criteria.* The GMC will use the Selection Criteria shown below for the rating of applications submitted in response to this NOFA. The maximum score under the selection criteria for fair share funding is 100 points.

(1) Selection Criterion 1: Housing Needs (45 points).

(a) Description: This criterion assesses the housing need in the primary market area specified in the PHA's application compared with the housing need for the State. Housing need is defined as the number of very low-income renter households with severe rent burden, based on 1990 Census data. Very low-income is defined as income at or below the Section 8 very low-income limits. Severe rent burden is defined as a household paying 50 percent or more of its gross income for rent.

(b) Needs Data: For the purpose of this criterion, housing needs are based on a tabulation of 1990 Census data prepared for the Department by the Bureau of the Census. Data on housing needs are available for all States, all counties (county equivalents), and places with populations of 10,000 or more as of 1990. Information will be posted on the HUD Home Page site on the Internet's world wide web (http://www.hud.gov under ''Funds Available'') indicating the proportion of each State's housing needs for primary markets.

(c) Rating and Assessment: The number of points assigned is based on the percentage of the State's housing need that is within the PHA's primary market area. The primary market area is defined as the jurisdiction (or its closest equivalent in terms of areas for which housing needs data are available) in which the PHA is authorized to operate and where the vouchers will be used, as described in its application. (See paragraph VI(C) of this NOFA regarding regional (multi-county) and State PHAs.)

(1) The GMC will assign the following points :

- 45 points (maximum). For each percentage point of the State's housing need (rounded to the nearest percentage point), the PHA will receive two points.

(2) A State, regional or multi-county PHA will receive points based on the areas it serves where the vouchers will be used, *e.g.,* the entire State or the sum of the housing needs for the counties and/or localities comprising its primary market area.

(3) A PHA with a primary market area that is a community with a population of 10,000 or less, or a PHA for which housing needs data are not available, will receive 2 points.

(2) Selection Criterion 2: Efforts of PHA to Provide Area-Wide Housing Opportunities for Families (30 points).

(a) Description: Many PHAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. The efforts described in response to this selection criterion must be beyond those required by federal law or regulation such as the portability provisions of the Section 8 voucher program. The GMC will assign points to PHAs that have established cooperative agreements with other PHAs or created a consortium of PHAs in order to facilitate the transfer of families and their rental assistance between PHA jurisdictions. In addition, the GMC will assign points to PHAs that have established relationships with non-profit groups to provide families with additional counseling, or have directly provided counseling, to increase the likelihood of a successful move by the families to areas that do not have large concentrations of poverty.

(b) Rating and Assessment: The GMC will assign point values for any of the following assessments for which the PHA qualifies and add the points for all the assessments (maximum of 30 points) to determine the total points for this Selection Criterion:

- 5 Points—Assign 5 points if the PHA documents that it participates in an area-wide exchange program where all PHAs absorb portable Section 8 families.
- 5 Points—Assign 5 points if the PHA certifies that (i) its administrative plan does not include a ''residency preference'' for selection of families to participate in its voucher program, or (ii) it will eliminate immediately any ''residency preference'' currently in its administrative plan, or (iii) it will limit applicability of residency preferences to 15% of all new admissions to the voucher program.
- 5 Points—Assign 5 points if the PHA documents that it has established a contractual relationship with a non-profit agency or the local governmental entity to provide housing counseling for families that want to move to low-poverty or non-minority areas. The five PHAs approved for the FY 93 Moving to Opportunity (MTO) for Fair Housing Demonstration, PHAs participating in the Regional Opportunity Counseling (ROC) Program, and any other PHAs that receive counseling funds from HUD in connection with the demolition of public housing, public housing vacancy consolidation, or settlement of litigation involving desegregation may qualify for points under this assessment. However, these PHAs must identify all activities undertaken, other than those funded and required under the MTO Demonstration, ROC Program, or the court-ordered plans or plans for relocating public housing families, to expand housing opportunities.
- 5 Points—Assign 5 points if the PHA documents that it participates with other PHAs in using a metropolitan wide or combined waiting list for selecting participants in the program.
- 5 Points—Assign 5 points if the PHA documents that it has implemented other initiatives that have resulted in expanding housing opportunities in areas that do not have undue concentrations of poverty or minority families.
- 5 Points—Assign 5 points if the PHA has formed a consortium or joint venture with other PHAs to administer its voucher program.

(3) Selection Criterion 3: Local Initiatives (10 points).

(a) Description: The application must describe the extent to which the PHA demonstrates locally initiated efforts in support of its voucher and certificate programs or comparable tenant-based rental assistance programs. Evaluation of a locality's contribution is measured competitively by whether the locality is able to provide services, cash contributions, or tax abatements to rental property owners leasing to Section 8 families, or demonstrates its

intention to provide this kind of support in the future.

(b) Rating and Assessment: The GMC will assign one of two point-values, as follows:

• 10 points: The State or locality provides local support (e.g., financial, manpower for inspection services) to its voucher or certificate program.

• 0 points: The State or locality does not provide support to the PHA's voucher or certificate program.

(4) Selection Criterion 4: Disabled Families (10 points).

(a) Description: The GMC will assign 10 points to PHAs that indicate at least 15 percent or more of the vouchers they are requesting (or funded by HUD) under this NOFA will be used to house disabled families. The PHA's application must be specific as to the exact percentage of vouchers that will be issued solely to disabled families. Disabled families are defined as follows:

(i) *Disabled Family.* A family whose head, spouse, or sole member is a person with disabilities. The term ''disabled family'' may include two or more such persons with disabilities living together, and one or more such persons with disabilities living with one or more persons who are determined essential to the care and well-being of the person or persons with disabilities (live-in aides).

(ii) *Person with disabilities.* A person who—

a. Has a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or

b. Is determined to have a physical, mental or emotional impairment that:

1. Is expected to be of long-continued and indefinite duration;

2. Substantially impedes his or her ability to live independently; and

3. Is of such a nature that such ability could be improved by more suitable housing conditions, or

c. Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)).

The term ''person with disabilities'' does not exclude persons who have the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome (HIV).

(Note: While the above definition of a ''person with disabilities'' is to be used for purposes of determining a family's eligibility for a Section 8 voucher designated as being for a disabled family under this NOFA, the definition of a person with disabilities contained in section 504 of the Rehabilitation Act of 1973 and its implementing regulations must be used for purposes of meeting the requirements of Fair Housing laws, including providing reasonable accommodations.)

No individual shall be considered a person with disabilities for the purpose of determining eligibility solely on the basis of any drug or alcohol dependence.

(b) Rating and Assessment: The GMC will assign one of two point values, as follows:

• 10 points: The PHA will use not less than 15 percent of the vouchers being requested (or funded by HUD) to house disabled families.

• 0 points: The PHA will use less than 15 percent of the vouchers it is requesting (or funded by HUD) to house disabled families.

(5) Selection Criterion 5: Medicaid Home and Community Based Services Waivers Under Section 1915(c) of the Social Security Act (5 points).

(a) Description: This selection criterion is for PHAs interested in the provision of Section 8 voucher assistance to families within their jurisdiction who are disabled and also covered under a waiver of Section 1915(c) of the Social Security Act. Section 1915(c) waivers are approved by the Health Care Financing Administration within the Department of Health and Human Services (HHS) for the agency within each State responsible for the administration of the medicaid program. Contacting the responsible State agency (for example, the Agency for Health Care Administration in the State of Florida) will assist the PHA in determining how many, if any, individuals are covered by a Section 1915(c) waiver in the PHA's legal area of operation. These waivers allow medicaid-eligible individuals at risk of being placed in hospitals, nursing facilities or intermediate care facilities the alternative of being cared for in their homes and communities. These individuals are thereby assisted in preserving their independence and ties to family and friends at a cost no higher than that of institutional care.

While a Section 1915(c) waiver may cover individuals other than those who are disabled, the focus of Selection Criterion 5 is on disabled families only. The definition of disabled families listed under Selection Criterion 4 will be used by PHAs for purposes of the issuance of vouchers to disabled families in connection with Selection Criterion 5; *i.e.,* only those individuals that meet the definition of a disabled family in this announcement are to be considered in connection with a PHA determining how many such disabled families are covered by a Section 1915(c) waiver in their legal area of operation and whether to try to qualify for the 5 points available under Selection Criterion 5. The PHA's application must be specific as to the percentage of vouchers that will be issued to such disabled families.

Any PHA attempting to qualify for the 5 points available under Selection Criterion 5 should also include information within its application indicating the collaborative efforts already undertaken with the responsible State agency to identify eligible families, as well as agreements reached with that agency for future referrals of such families. HUD reserves the right at some future point in time to conduct an evaluation of the success of the PHA's efforts to collaborate with the State agency and to successfully house individuals that meet the requirements of being covered by a Section 1915(c) waiver, qualify as a disabled family under this announcement, and are otherwise eligible for a Section 8 voucher.

(b) Rating and Assessment: The GMC will assign one of two point values as follows:

• 5 points: The PHA will use not less than 3 percent of the vouchers being requested (or funded by HUD) to house Section 8 eligible, disabled families covered by a waiver under Section 1915(c) of the Social Security Act.

• 0 points: The PHA will use less than 3 percent of the vouchers it is requesting (or funded by HUD) to house Section 8 eligible, disabled families covered by a waiver under Section 1915(c) of the Social Security Act.

(c) Prohibition Against Double Counting. The number (percentage) of disabled families that a PHA indicates it will issue vouchers to when qualifying for the 5 points available under Selection Criterion 5 cannot be used to also qualify for the 10 points available under Selection Criterion 4 or conversely.

Dated: May 15, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

Attachment 2

FAIR SHARE VOUCHER APPLICATION CHECKLIST

PHA NAME:_____

CITY/STATE:_____

PHA CODE #:_____

_____ Delivered by the **due date**, or mailed and postmarked before midnight on due date, or placed in transit with overnight delivery service before due date.

_____ **Original and one copy** of application submitted to Michael E. Diggs, Director of the Grants Management Center, Department of Housing and Urban Development, 501 School St., SW, Suite 800, Washington, D.C., 20024; and **one copy** sent to local HUD Field Office Hub, Attn: Director, Office of Public Housing, or to the local HUD Field Office Program Center, Attention: Program Center Coordinator.

_____ **If applicable**, PHA designates another **housing agency, nonprofit agency, or contractor to administer new funding.**

_____ Copy of letter from local HUD Field Office requiring contract administrator.

_____ Agreement from contract agency to administer funding on behalf of applicant.

_____ Copy of PHA letter to local HUD Field Office appealing requirement for contract administrator.

_____ Copy of written response to appeal from local HUD Field Office.

_____ PHA listed on HUD Home Page Internet site as passing **90% lease-up OR 90% budget authority utilization -or-**

_____ PHA not listed as meeting 90% thresholds. PHA includes information confirming 90% lease-up or budget authority utilization for 1998 or 1999 using same methodology and data sources indicated in Attachment 3 to the Fair Share NOFA.

_____ PHA is in **compliance with all fair housing and civil rights laws** (refer to Section III. General Program Requirements).

_____ PHA has **not been debarred or otherwise disqualified** from providing assistance under the Section 8 Housing Choice Voucher Program.

_____ **Form HUD-52515**, Funding Application (January 1996 version), completed in its entirety, except Section C. (See Section VI.(A) of the NOFA and form HUD-52515 regarding information to be entered thereon.)

_____ **Letter of Intent and Narrative**

_____ Includes statement of acceptance of a reduction in the number of vouchers.

_____ Includes minimum number of vouchers PHA will accept:_____.

_____ Includes a narrative description of how the application meets, or will meet, the application selection criteria.

Housing Needs **(Criterion 1).** Areas PHA is authorized to operate in (HUD-52515).

_____ Efforts of PHA to Provide Area-Wide Housing Opportunities for Families **(Criterion 2).**

_____ Evidence of participation in area-wide exchange program where all PHA absorb portable Section 8 families.

_____ Certification that (i) the PHA's administrative plan does not include a "residency preference" for selection of families to participate in its voucher program, or (ii) PHA will eliminate immediately any "residency preference" currently in its administrative plan, or (iii) the PHA will limit applicability of residency preferences to 15% of all new admissions to the voucher program..

_____ PHA contract to provide housing counseling for families moving to low-poverty/non-minority areas.

_____ Is an approved PHA for FY 1993 Moving to Opportunity (MTO) Fair Housing Demonstration, **- or-**

_____ Is a participant in the Regional Opportunity Counseling (ROC) Program, **-or-**.

_____ Receives counseling funds related to public housing demolition, vacancy consolidation, or litigation.

_____ Describes other activities expanding housing opportunities (not MTO, ROC, or litigation efforts).

_____ Documentation of PHA's Participation With Other PHAs in Using Metropolitan-Wide/Combined Waiting List.

_____ Documentation of Other Initiatives Resulting in Expansion of Housing Opportunities.

_____ Documentation of Consortium or Joint Venture with other PHAs to administer its voucher program.

_____ Local Initiatives **(Criterion 3)**. Narrative description of locally initiated efforts in support of the PHA's voucher and certificate programs.

_____Disabled Families (**Criterion 4**). Includes a narrative description indicating the PHA will use 15 percent or more of the vouchers being requested/funded to house disabled families.

_____Medicaid Home and Community Based Services Waivers Under Section 1915(c) of the Social Security Act **(Criterion 5)**. Includes narrative description indicating the percentage of vouchers to be issued to disabled families covered by a Section 1915(c) waiver, and the collaborative efforts undertaken with the State agency to identify eligible families/agreements for future referrals of such families from that agency.

_____**Description of Primary Market Area**. Regional (multi-county) and State PHAs clearly identify which cities and counties they will use the vouchers in that are within their legal area of operation.

_____Statement Regarding Steps PHA Will Take To: **(Affirmatively Further Fair Housing)**

_____ Eliminate impediments to fair housing identified in local Analysis of Impediments (AI) to Fair Housing Choice,

_____ Remedy discrimination in housing, or

_____ Promote fair housing rights and fair housing choice.

_____ **Program Summary**. Provide a separate, <u>one paragraph</u> statement describing

how the vouchers being applied for will address the local housing needs of eligible families in renting decent, safe, and affordable housing. Describe, where applicable, how the vouchers will be used to expand existing housing choices, and whether the PHA intends to use the vouchers to establish or expand upon its existing Family Unification Program, partnerships with local government, nonprofit agencies, or private industry groups. Also address any related notable local program activities, best practices, or accomplishments.

_____**Application Checklist.** A copy of this Checklist has been included as part of the PHA's application.

[FR Doc. 00–12586 Filed 5–15–00; 4:58 pm]

BILLING CODE 4210–33–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE805269–6

Applicant: Daniel A. Soluk, Illinois Natural History Survey, Champaign, Illinois.

The applicant requests a permit amendment to take Hine's Emerald Dragonfly (Somatochlora hineana) in the states of Alabama, Michigan, Missouri and Ohio. The applicant is currently authorized to conduct take in Illinois and Wisconsin. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: May 12, 2000.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 00–12573 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Atlantic Coast Piping Plover in Massachusetts

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Massachusetts Division of Fisheries and Wildlife has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The requested permit, which is for a period of three years, would authorize the incidental take of the threatened piping plover *(Charadrius melodus)* in Massachusetts. The proposed take would occur as a result of specific actions relating to the management of recreational use of beaches where breeding piping plovers are found.

The Massachusetts Division of Fisheries and Wildlife has prepared a draft environmental assessment (EA) for the incidental take application. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application and draft EA should be received on or before June 19, 2000.

ADDRESSES: Written comments regarding the application and requests for copies of the draft EA and the conservation plan should be addressed to Field Supervisor, New England Field Office, 22 Bridge St., Unit 1, Concord, New Hampshire 03301–4986, telephone (603) 225–1411. Please refer to permit TE813653 when submitting comments. Comments regarding the conservation plan will be forwarded to the Massachusetts Division of Fisheries and Wildlife for review and response.

FOR FURTHER INFORMATION CONTACT: Susanna L. von Oettingen at the above address.

SUPPLEMENTARY INFORMATION:

The Atlantic Coast piping plover was listed as a threatened species on January 10, 1986. Because of its listing as threatened, the piping plover is protected by the Act's prohibitions against ''take''. However, the Service may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23 and 17.32. For threatened species, such permits are available for scientific purposes, incidental take, or special purposes consistent with the purposes of the Act.

The Massachusetts Division of Fisheries and Wildlife (Division) has applied to the Service for an incidental take permit pursuant to Section 10(a)(1)(B) of the Act. This permit would authorize the incidental take of piping plovers through otherwise lawful activities occurring on plover breeding beaches. Included in the application is a conservation plan prepared by the Division detailing the activities that would result in incidental take and describing measures that mitigate, minimize and monitor the amount of take. In 1996, the Division was granted a Section 10(a)(1)(B) permit for the incidental take of piping plovers. The permit expired in 1998. The conservation plan included in the current application under review is an updated document and will replace the earlier conservation plan.

The revised recovery plan for the Atlantic Coast piping plover (U.S. Fish and Wildlife Service, 1996. Piping Plover (*Charadrius melodus*), Atlantic Coast Population, Revised Recovery Plan. Hadley, MA. 258 pp) identified New England (which includes Massachusetts) as a recovery unit. Guidelines in the recovery plan state that permits for incidental take that will reduce the productivity of breeding piping plovers should only be allowed in recovery units where the subpopulation has achieved at least 70% of its portion of the recovery goal. The 1999 preliminary estimate of 634 pairs of piping plovers in the New England recovery unit indicate that the population has exceeded the recovery goal of 627 pairs specified in the recovery plan. Furthermore, under an intensive management program, the Massachusetts piping plover population has increased more than four-fold over the last ten years, from 140 pairs in 1990 to 505 pairs in 1999.

The purpose of the proposed incidental take permit is to provide increased flexibility in managing Massachusetts beaches for use by recreationists and homeowners, while assuring continued progress toward the recovery of the Massachusetts and Atlantic Coast populations of the piping plover. The additional flexibility in managing beaches will prevent a disproportionate expenditure of resources directed at the protection of a few nests or broods in areas where they may significantly disrupt beach access by large numbers of people and be highly vulnerable to disturbance and/or mortality. Management flexibility also

will create incentives for the continued participation by beach management agencies and organizations involved in protecting piping plovers.

The two alternatives presented by the Division in the conservation plan and the draft EA are limited to the proposed action and the no-action alternative (continuation of current management recommendations without increased flexibility for limited take).

The proposed action establishes strict statewide and site-specific eligibility criteria that must be met prior to the implementation of the proposed Section 10 incidental take permit. Statewide eligiblity requirements determine the level of take that will be allowed for each breeding season. Site-specific eligibility requirements determine whether a landowner may participate in permitted activities, and requires that these landowners make additional plover protection commitments, including the use of predator exclosures, prohibition of dogs, implementation of public outreach programs (for heavily-used public recreational beaches), and plover monitoring and reporting. The proposed permit would be effective during the 2000, 2001 and 2002 plover breeding seasons. Authorized take would only affect piping plovers; take of other federally-listed species is specifically excluded from the proposed action.

Incidental take likely to occur on eligible sites may result from several management activities outlined in the conservation plan. Certain activities will be automatically authorized statewide and at particular sites. Statewide activities automatically proposed to be authorized include the taking of chicks on paved or improved roads and in parking lots and take caused by fireworks located within one-half mile or more from plover nests or chicks. Additional proposed take automatically permitted at three sites includes: (1) Take from fireworks at Crane Beach, Ipswich; (2) take from unescorted essential vehicles on a specified portion of Crane's Beach; (3) take from unescorted vehicles on a specified portion of Plymouth Beach, Plymouth; and (4) take of chicks by unescorted vehicles on a specified portion of Sandy Neck, Barnstable.

Additional discretionary take may also be authorized at a limited number of sites that meet specific eligibility requirements. Landowners that choose to undertake such actions may apply to be included under the Division's proposed permit that will authorize the incidental take. Proposed authorized activities are: (1) Reduction of symbolically-fenced buffer areas around plover nests, applicable to one plover nest per site per year; (2) moving eggs from heavily-used pedestrian or vehicle access points; (3) limited use of escorted off-road vehicle caravans for recreational access during periods when unfledged chicks are present on the beach; and (4) limited use of vehicles for homeowner access after dark through areas with unfledged chicks.

Take of piping plovers primarily will occur either through direct mortality of chicks, harassment of chicks or adults, or mortality of eggs that occurs as the result of nest abandonment or inadequate incubation or nest defense. As a result of these takings, overall reproductive success will be reduced at individual sites, and adverse effects may occur to immediate habitats of individuals pairs or broods. However, the level of incidental take likely to occur will not reduce productivity enough to substantially slow progress toward recovery. Take that occurs as a result of a permit issued to the Division will not include mortality of adults, nor will actions undertaken within the scope of such a permit permanently degrade otherwise suitable habitat.

The Division has proposed to minimize and monitor the level of incidental take through a number of measures. Continued population growth over the duration of the permit should be ensured by conditioning the authorization of discretionary incidental take on maintaining average productivity of 1.5 chicks fledged per pair for the entire state, individual Management Units and individual sites. If statewide productivity falls below 1.5 chicks fledged per pair, incidental take authorized for the following year will be limited. The conservation plan encompasses a sufficiently large geographic area that should some sites experience adverse effects from environmental or demographic stochasticity, unsuccessful management, or larger incidental take than predicted, those set-backs may be balanced by more favorable conditions or results of management elsewhere in the planning unit. Finally, the proposed permit duration of three years will allow for a relatively rapid evaluation of the conservation plan in light of management results and changes in the overall status of the Massachusetts and New England plover populations that may occur in 2000, 2001 and 2002.

The 1996 Section 19(a)(1)(B) incidental take permit granted to the Division outlined eligibility requirements similar to those proposed in the current application. Due to a decrease in piping plover productivity in 1996, permit activities were not allowed to occur the following year in order to ensure the continued recovery of piping plovers in Massachusetts. Piping plover productivity also fell below the established eligibility criteria in 1997, again precluding the implementation of measures permitted in the 1996 Section 10 permit. The eligibility criteria proposed in the current Section 10(a)(1)(B) permit application provide a greater range of options than the previous permit. These options will allow greater flexibility to implement the portions of the proposed permit that will have the least impact on the recovery of the Massachusetts population of the piping plover.

Dated: May 11, 2000.

Mamie Parker,

Deputy Regional Director, Region 5.

[FR Doc. 00–12492 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration, development, and production activities have been issued to the following companies:

Company	Activity	Date issued
BP Exploration (Prudhoe Bay Unit)	Production	April 21, 2000.
BP Exploration (Kuparuk Unit)	Production	April 21, 2000.
Western Geophysical (Anadarko)	Exploration	April 21, 2000.

Company	Activity	Date issued
BP Exploration (Northstar)	Development	May 3, 2000.
ARCO Alaska, Inc. (Meltwater North)	Exploration	May 3, 2000.
ARCO Alaska, Inc. (Spark # 1)	Exploration	May 3, 2000.
ARCO Alaska, Inc. (Rendezvous A&B)	Exploration	May 3, 2000.
ARCO Alaska, Inc. (Lookout A)	Exploration	May 3, 2000.
ARCO Alaska, Inc. (Moose's Tooth A&C)	Exploration	May 3, 2000.
ARCO Alaska, Inc. (Clover A&B)	Exploration	May 3, 2000.
ARCO Alaska, Inc. (Cairn)	Exploration	May 3, 2000.
Western Geophysical (ARCO)	Exploration	May 3, 2000.
Western Geophysical (BP Exploration)	Exploration	May 3, 2000.
Kuukpik/Fairweather Geophysical	Exploration	May 3, 2000.
BP Exploration (Point Thomson)	Exploration	May 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (300) 362–5148 or (907) 786–3810.

SUPPLEMENTARY INFORMATION:

Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations ''Marine Mammals; Incidental Take During Specified Activities (65 FR 16828; March 30, 2000).''

Dated: May 8, 2000.

Mike Boylan,

Acting Deputy Regional Director.

[FR Doc. 00–12527 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Final Agency Action To Take 90.94 Acres of Land, More or Less, Into Trust for the Lower Brule Sioux Tribe of Indians of South Dakota

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of intent to take land into trust.

SUMMARY: This provides notice that a final agency determination has been made to acquire 90.94 acres of land, more or less, into trust for the Lower Brule Sioux Tribe of Indians of South Dakota. The United States will acquire title no sooner than thirty days after this notice is published. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1 and pursuant to 25 CFR 151.12(b), 61 **Federal Register** 18082–18083, April 24, 1996.

FOR FURTHER INFORMATION CONTACT: Terrance L. Virden, Bureau of Indian Affairs, Director, Office of Trust Responsibilities, MS–4513/MIB/Code 200, 1849 C Street, NW, Washington, DC 20240; telephone (202) 208–5831.

SUPPLEMENTARY INFORMATION: On April 6, 2000, the Assistant Secretary—Indian Affairs made a final determination that the United States will accept 90.94 acres of land, more or less, in trust for the Lower Brule Sioux Tribe of Indians of South Dakota. It was determined that the acceptance of the following described land into trust, pursuant to 25 U.S.C. 465, would be in the best interest of the Lower Brule Sioux Tribe of Indians of South Dakota.

Lyman County, South Dakota

A portion of the Northeast Quarter of the Northwest Quarter (NE¼NW¼) lying North of Highway No. 16 (shown as Lot H–1 in Book 3 of Plats, Page 108) and except Lot ''A'' of Lester's Addition (a subdivision of the NE¼NW¼) of Section Twenty-Four (24) and the West Half of the Southwest Quarter (W½SW¼) of Section Thirteen (13), the Northwest Quarter of the Northwest Quarter of the Northwest Quarter (NW¼NW¼NW¼) of Section Twenty-Four (24), and the Northeast Quarter of the Northwest Quarter of the Northwest Quarter (NE¼NW¼NW¼) of Section Twenty-Four (24), Township One Hundred Four North (104N), Range Seventy-Two West (72W) of the Fifth Principal Meridian, Lyman County, South Dakota.

Subject to any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: May 12, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–12585 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY090–00–1310–EJ]

Notice of Availability of Final Environmental Impact Statement for the Pinedale Anticline Natural Gas Exploration and Development Project, and Proposed Amendment to the Pinedale Resource Management Plan

AGENCY: Lead Agency—Bureau of Land Management, Interior. Cooperating Agencies—U.S. Forest Service, Department of Agriculture, Corps of Engineers, U.S. Army, State of Wyoming.

ACTION: Notice of Availability of Final Environmental Impact Statement (FEIS) for the Pinedale Anticline Natural Gas Exploration and Development Project, Sublette County, Wyoming, and Notice of 30-day protest period for proposed amendment to the Pinedale Resource Management Plan (RMP).

SUMMARY: The FEIS is an abbreviated FEIS. The FEIS and the Draft EIS (DEIS) comprise the entire document for filing purposes and for the decision making process. Please refer to the DEIS for more detailed analysis and description of the proposed action and alternatives. The FEIS contains 7 Sections. Section 1, Introduction; Section 2, Potential Management Scenario for Continued Exploration and Development; Section 3, Analysis of Revised Sales Gas Pipeline Alternatives; Section 4, Errata; Section 5, Comment Responses and Letters; Section 6, Responses to Environmental Group Notices and Alerts; and Section 7, Public Hearing Comments and Responses. BLM has identified the Resource Protection (RP) Alternative on Federal Lands and Minerals as its preferred alternative based on information contained in the DEIS, comments received during public scoping, and comments received on the DEIS. BLM considers the RP Alternative on All Lands and Minerals to be the environmentally preferred alternative.

The Pinedale Anticline EIS identifies the need for amendment, planning review, and/or maintenance of the following 1988 Pinedale RMP items: (1) The amendment of a Pinedale RMP off-road vehicle (ORV) designation; (2) the update and modification, if necessary, of visual resource management (VRM) classification; and (3) withhold unleased Federal lands and minerals and/or expired leases in the Hoback Basin, southern foothills of the Gros Ventre Range, and the Wind River Front from oil and gas leasing until the effects of leasing these lands can be addressed in a planning review of the Pinedale RMP and Bridger-Teton Leasing EIS.

DATES: Comments on the FEIS will be accepted for 30 days following the date that the Environmental Protection Agency (EPA) publishes their Notice of Availability in the **Federal Register**. The EPA notice is anticipated to be published on June 2, 2000. Protest of the proposed ORV designation amendment to the Pinedale RMP must be postmarked within 30 days following the date that the Environmental Protection Agency publishes the filing notice for the Final EIS in the **Federal Register**.

ADDRESSES: Comments on the FEIS should be sent to Bureau of Land Management, Bill McMahan (Project Coordinator), 280 Highway 191 North, Rock Springs, WY 82901, or they can be e-mailed to bill_mcmahan@blm.gov.

Protests on the proposed ORV designation amendment to the Pinedale RMP should be sent to the Director (210), Bureau of Land Management, Attention: Brenda Williams, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bill McMahan, Project Coordinator, Bureau of Land Management, Rock Springs, Wyoming 82901, (307) 352–0224.

SUPPLEMENTARY INFORMATION: The DEIS (NOA published by EPA in the **Federal Register**, November 26, 1999; comment due date February 4, 2000, following State Director approval of a 10 day extension of time for review/comment on the DEIS) analyzed a proposal by the Pinedale Anticline Operators to drill up to 900 new wells to achieve 700 producing locations over the next 10 to 15 years on their leased acreage within the Pinedale Anticline Project Area (PAPA) (approximately 197,345 acres) in western Wyoming. Lands associated with the new drilling program are located between the town of Pinedale, Wyoming, and the Jonah Natural Gas Field (30 miles south); and between the Green River on the west and Wyoming Highway 191 on the east (between 8 and 15 miles wide). Comments were received on the DEIS from a number of groups. A total of 235 comment letters were received. BLM held a public hearing on January 12, 2000. A total of 86 people signed in at the hearing—17 gave statements. BLM responses to each comment letter and hearing comments are included in Sections 5, 6, and 7 of the FEIS.

Factors Affecting Pinedale Resource Management Plan (RMP) Completed in 1988—The Pinedale Anticline EIS addresses the need for amendment, planning review, and/or maintenance of the Pinedale RMP. The EIS identifies that (1) the RMP decision designating portions of the PAPA as ''open'' to off-road vehicle (ORV) use should be amended from ''open'' to ''limited to existing roads and trails'' to protect surface values and to be consistent with other oil/gas development areas; (2) the visual resource management (VRM) classification for the VRM classifications within the Resource Area need to be updated and the RMP modified if necessary; and (3) all Federal lands and minerals that are unleased and/or that have expired leases in the Hoback Basin, southern foothills of the Gros Ventre Range, and the Wind River Front should be withheld from oil and gas leasing until the effects of leasing these lands can be addressed in a planning review to determine any needed modification to the 1988 Pinedale RMP and to the Bridger-Teton Leasing EIS (Management Areas 21, 45, 71, and 72).

The RMP planning review for the identified areas (see Pinedale Anticline DEIS Figure 5–2) would address new issues and concerns for air quality related values, protection of scenic values of the mountain ranges, protection of the new and/or more densely populated rural subdivisions occurring on private surface underlain by Federal minerals, and other resource concerns. An analysis of these factors may affect Federal mineral leasing and other Federal authorizations on the described lands.

The Pinedale Anticline EIS proposal to amend the Pinedale RMP ORV ''open'' area designation to ''limited to existing roads and trails'' is protestable. This is the only part of the Pinedale Anticline EIS that is protestable under the BLM Planning Regulations (43 CFR 1610.5–2). Anyone disagreeing with the proposed decision to change the ORV designation within the Pinedale Anticline project area must file a written protest within the 30-day review period for the FEIS. The proposed amendment may be protested by parties who participated in the Pinedale Anticline EIS process, who have an interest which is or may be adversely affected by the proposed change, and who raised issue with ORV use during the EIS process. The protest must include the following information: (1) The name, mailing address, telephone number, and interest of the person filing the protest; (2) a statement of the issue(s) submitted during the DEIS review process by the protesting party, or an indication of the date the issue(s) were discussed for the record; (3) a statement of the part(s) of the recommendation being protested; (4) a copy of all documents addressing the issue(s) that were submitted during the DEIS review process by the protesting party, or an indication of the date the issue(s) were discussed for the record; and (5) a concise statement explaining why the proposed decision is believed to be wrong.

At the end of the 30-day protest period, the proposed change, if not protested, will become final. If a protest is received, approval of oil and gas development will be based upon the existing ORV designation until final action on the protest has been completed. Any significant change made as a result of a protest will be made available for public review and comment before it is approved.

This DEIS, in compliance with section 7(c) of the Endangered Species Act (as amended), includes the Biological Assessment for the purpose of identifying any endangered or threatened species which are likely to be affected by the proposed action.

Dated: May 12, 2000.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 00–12495 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–2000–1310–DB]

Notice of Intent To Prepare an Environmental Impact Statement; Desolation Flats Natural Gas Development Project, Carbon and Sweetwater Counties, Wyoming, To Conduct a Planning Review of the Proposed Project Area, and if Necessary, Amend Either or Both the Great Divide and Green River Resource Management Plans

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) and to conduct scoping for the Desolation Flats Natural Gas

Development Project, Carbon and Sweetwater Counties, Wyoming.

SUMMARY: Under section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM), Rawlins Field Office, will direct the preparation of an EIS on the potential impacts of a proposed natural gas field development project. Approximately 385 gas wells and associated facilities could be constructed on approximately 229,781 acres of primarily Federal land (some private and State included), over a 20-year development period. The project area is located in southwestern Carbon County and southeastern Sweetwater County, Wyoming. The proposed action may be modified, as a result of comments received during scoping or anytime during the preparation of the draft EIS, to include actions that may, upon review, require a plan amendment to the Green River and Great Divide Resource Management Plans. A planning review of existing land-use decisions would be conducted. Additionally an evaluation of potential relevant and important resource values in the Desolation Flats project area portion of the Monument Valley Management Area of the Rock Springs Field Office would be done. Any needed changes in existing management or any new management actions to be prescribed for the area will be identified and, if necessary, the Green River RMP amended. In accordance with 43 CFR 3420.1–2, this notice also serves as a call for coal and other resource information to solicit indications of interest and information on coal resource development potential in the proposed project area and on other resources which may be affected by the proposed project. Affected Federal lands are administered by the BLM Rawlins and Rock Springs Field Offices. The EIS will be prepared by a third-party contractor.

DATES: Comments on the project proposal will be accepted through June 23, 2000. Public scoping meetings will be held at 7 p.m. on the following dates, at the following locations:

—June 7, 2000, in Rock Springs, Wyoming, Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North.

—June 8, 2000, in Rawlins, Wyoming, Bureau of Land Management, Rawlins Field Office, 1300 North Third Street.

ADDRESSES: Comments should be sent to Bureau of Land Management, Rawlins Field Office, John Spehar, Team Leader, 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301, phone (307) 328–4200, or e-mailed to rawlins__wymail@blm.gov. Additionally, the Scoping Notice will be posted on the Wyoming BLM homepage at www.wy.blm.gov. Your response is important and will be considered in the environmental analysis process. If you do respond, we shall keep you informed of decisions resulting from the analysis. Please note that public comments submitted for this scoping review, including names, e-mail addresses, and street addresses of the respondents will be available for public review and disclosure at the above address during regular business hours (7:45 a.m. to 4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentially. If you wish to withhold your name, e-mail address, or street address from public review or from disclosure under the Freedom of Information Act, you must state this plainly at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, John Spehar, Project Manager, 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301, phone 307–328–4264, e-mail: John_Spehar@blm.gov.

SUPPLEMENTARY INFORMATION: Marathon Oil Company (Marathon) has notified the Bureau of Land Management that Marathon and other operators propose a 20-year field development project. The proposed project area, referred to as the Desolation Flats area, is generally located in Townships 13–16 North, Ranges 94–96 West, Sixth Principal meridian, Carbon and Sweetwater Counties, Wyoming.

The project area is located approximately 14 miles west and north of Baggs, Wyoming. The project area is approximately 229,781 acres in size. The vast majority of land and mineral ownership is Federal. The Federal land surface and Federally owned minerals are managed by the Rawlins and Rock Springs BLM Field Offices.

Marathon and other operators propose to drill 385 wells on 361 locations and construct associated facilities, including roads, well pads, pipelines, and compressor stations. Drilling of exploratory or confirmation/delineation wells on existing Federal leases will be permitted on a case-by-case basis during the preparation of the EIS. A site-specific environmental assessment (EA) will be prepared for each individual drilling proposal.

The Desolation Flats project area contains lands covered by two existing natural gas development project EISs. The Mulligan Draw Unit EIS and the Dripping Rock/Cedar Breaks Area EA were approved for spacing of one well per section and for drilling in the Almond Formation. The intent of including the Mulligan Draw EIS area and the Dripping Rock/Cedar Breaks EA area within the Desolation Flats project area, as described by the operators, is to determine the feasibility and environmental impacts of a well-spacing density greater than the authorized one-well per 640-acre spacing.

This EIS will address cumulative impacts and will include consideration of affects of other oil and gas projects addressed in recently completed EISs for the Mulligan Draw Gas Field Project, the Creston/Blue Gap Natural Gas Project, the soon to be completed Continental Divide/Wamsutter II Natural Gas Project, and the recently proposed Atlantic Rim Coalbed Methane Project EA. Potential issues to be addressed in the EIS include, but are not limited to: impacts to wildlife populations and their habitats, access road development and transportation management, surface and ground water resources, impacts from additional drilling and production activities, reclamation, noxious weed control, conflicts with livestock grazing operations, protection of cultural and paleontological resources, threatened and endangered species, and cumulative impacts.

Dated: May 12, 2000.

Alan R. Pierson,

State Director.

[FR Doc. 00–12496 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–010–0777–XQ]

Notice of Meeting

AGENCY: Lower Snake River District, Bureau of Land Management, Interior.

ACTION: Meeting notice.

SUMMARY: The Lower Snake River District Resource Advisory Council will meet in Boise. Potential agenda topics are the Interior Columbia Basin Ecosystem Management Plan, the Integrated Natural Resources Management Plan for the U.S. Air Force

Enhanced Training in Idaho project, sage grouse habitat management, implementation of rangeland standards and guidelines, off-highway vehicle management and other land management issues.

DATES: June 22, 2000. The meeting will begin at 9 a.m. Public comment periods will be held at 9:30 a.m. and 4 p.m.

ADDRESSES: The meeting will be held at the Lower Snake River District Office, located at 3948 Development Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office (208–384–3393).

Dated: May 12, 2000.

Howard Hendrick,

District Manager.

[FR Doc. 00–12490 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; GP0–0014; OR–54087]

Public Land Order No. 7446; Withdrawal of Public Lands for the Desert Springs Seed Orchard; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 80 acres of public land from surface entry and mining for a period of 50 years and transfers administrative jurisdiction to the Forest Service to protect its investment in the development of a seed orchard. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: May 18, 2000.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6189.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), to protect the proposed investment of Federal funds and related facilities for the Forest Service's Desert Springs Seed Orchard:

Willamette Meridian

T. 33 S., R. 18 E.,
Sec. 11, E½SE¼.

The area described contains 80 acres in Lake County.

2. Administrative jurisdiction of the land described in Paragraph 2 is hereby transferred to the Forest Service.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: May 4, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–12478 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–100–1430–EU; WYW–146697]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands located near Pinedale, Wyoming, have been examined and found suitable for classification for conveyance to Sublette County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Sublette County intends to use the land as a shooting sports complex.

Sixth Principal Meridian

T. 33 N., R. 109 W.,
Section 7, Lots 1 and 2.
T. 33 N., R. 110 W.
Section 12, S½NE¼NE¼, SE¼NE¼.

The land described above contains 132.67 acres.

FOR FURTHER INFORMATION CONTACT: Detailed information concerning this action is available for review at the Pinedale Field Office, Bureau of Land Management, 432 East Mill Street, P.O. Box 768, Pinedale, Wyoming 82941, or contact Bill Wadsworth at (307) 367–5341.

SUPPLEMENTARY INFORMATION: The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The conveyances, when completed, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. A right-of-way for ditches and canals constructed by the authority of the United States. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Field Manager, Bureau of Land Management, Pinedale Field Office, P.O. Box 768, Pinedale, Wyoming 82941.

The analysis may identify that an amendment to the Pinedale RMP is needed. If a plan amendment is needed, other notices, mailings, or media releases will announce a 30-day protest period on the proposed amendment.

Classification Comments

Interested parties may submit comments involving the suitability of the lands for a shooting sports complex. Comments on the classification should only address whether the land is physically suited for a shooting sports complex (as appropriate), whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific uses proposed in the conveyance applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decisions, or any other factor not directly related to the suitability of the land for a shooting sports complex. Any adverse comments will be reviewed by the State Director. In the absence of any

adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

Dated: May 4, 2000.

Priscilla Mecham,

Field Manager.

[FR Doc. 00–12574 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–4377; ES–50671, Group 154, Minnesota]

Notice of Filing of Plat of Survey; Minnesota

The plat of the dependent resurvey of portions of the south, east and north boundaries, portions of the subdivisional lines, the survey of the subdivision of sections 1 through 4, 6, 7, 9 through 21, 23 through 28, and 30 through 36, the reestablishment of the record meander line in sections 2, 3, 4, 11, 18, 23 and 34, and the metes-and-bounds survey in section 34, Township 143 North, Range 39 West, 5th Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on June 19, 2000.

The survey was requested by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., June 19, 2000.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: May 4, 2000.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 00–12479 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 18465]

Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Prisons, Department of Justice, has filed an application to extend Public Land Order No. 6493 for a 20-year period. This order withdrew public land from surface entry and mining for sewage treatment, a water well, and a buffer zone for a Federal Correctional Institution located on adjacent land.

DATES: Comments and requests for a public meeting must be received by August 16, 2000.

ADDRESSES: Comments and meeting requests should be sent to the Facilities Manager, Federal Correctional Institution, 37900 North 45th Avenue, Phoenix, Az 85027–7003.

FOR FURTHER INFORMATION CONTACT: D.C. Henderson, Federal Correctional Institution, Phoenix, Arizona; 623–465–9757.

SUPPLEMENTARY INFORMATION: On May 2, 2000, the Bureau of Prisons filed an application to extend Public Land Order No. 6493 for a 20-year period. Public Land Order No. 6493 withdrew the following described land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Gila and Salt River Meridian

T. 6 N., R. 2 E.,
Sec. 28, N½SW¼SW¼;
Sec. 29, E½SE¼NE¼, E½NE¼SE¼, and NE¼SE¼SE¼.

The area described contains 70 acres in Maricopa County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing, by the date specified above, to the Facilities Manager, Federal Correctional Institution, Phoenix, Arizona.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request, by the date specified above, to the Facilities Manager, Federal Correctional Institution, Phoenix, Arizona. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Dated: May 9, 2000.

Kelly Grissom,

Acting Deputy State Director, Resources Division.

[FR Doc. 00–12528 Filed 5–17–00; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Information Collection Request.

SUMMARY: To comply with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), we are notifying you that an information collection request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before June 19, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (OMB Control Number 1010-NEW), 725 17th Street, NW, Washington, DC 20503. You should also send copies of these comments to us. Our mailing address for written comments regarding this information collection is David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. Email address is *RMP.comments@mms.gov.*

Public Comment Procedure

Your comments and copies of your comments may be submitted to the addresses listed above. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Report of Sales and Royalty Remittance, Form MMS–2014, OMB Control Number 1010–NEW, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we

have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov.* You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. 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 of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: Report of Sales and Royalty Remittance.

OMB Control Number: 1010–NEW.

Bureau Form Number: Form MMS–2014.

Abstract: The Secretary of the Interior is responsible for the collection of royalties from leases producing minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands and Federal onshore and offshore leases, to collect the royalties due, and to distribute the funds in accordance with those laws. MMS is responsible for the royalty management functions assigned to the Secretary and is developing a financial accounting system which includes royalty and production reporting as a part of an overall effort to improve management of the nation's resources. This new system will be effective October 1, 2001, and will replace both the Accounting and Financial System and the Production Accounting and Auditing System. MMS's proposal for royalty reporting requirements was published in the Federal Register on February 23, 1999 (64 FR 8835).

In April 1996, RMP undertook a compliance reengineering initiative. The principal reengineering objective was to define and implement a new compliance strategy ensuring that Federal and Indian mineral lease revenues were accurately and timely paid in the most cost-effective manner possible.

The Royalty Policy Committee (RPC), which includes representatives from industry, States, Indian Tribal and allottee groups, and MMS, issued recommendations in June 1996 to streamline both royalty and production reporting. An action plan was developed to implement many of the recommendations. However, in August 1996, the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA) was enacted into law. RSFA significantly changed many of RMP's historical operating assumptions as well as some fundamental Federal oil and gas mineral revenue financial activities. Although near-term changes in processes and systems were made to implement the law, long-term strategies, business processes, and aging systems needed to be addressed for RMP to be cost-effective and responsive to customer needs. The decision was made April 1, 1997, to expand reengineering to all RMP core business processes. This is the most comprehensive review of RMP's business processes and organization since its creation in 1982.

When a company or individual enters into a contract to develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the United States, Indian tribe, or allottee a share (royalty) each month of the full value received for the minerals taken from leased lands. The Report of Sales and Royalty Remsittance, Form MMS–2014, is the only document used for reporting royalties, certain rents, and other lease-related transactions to MMS.

As part of our reengineering effort, we analyzed current information collection requirements for the existing Form MMS–2014 and built upon the RPC's earlier recommendations. As a result of our analysis, we developed and incorporated revised reporting requirements for Form MMS–2014 which will reduce the volume of lines reported and processed, minimize errors and related error correction workloads, simplify reporting and lower costs for both industry and RMP. The revised Form MMS–2014 incorporates RPC's recommendations and input received from States, Indian Tribes, and other industry groups.

Industry will not begin using the revised Form MMS–2014 until October 1, 2001, when we implement our new financial accounting system. However, we are requesting approval of this revised form immediately, so that industry can begin work on the necessary systems development and reprogramming adjustments and changes that may be required as they prepare for the new reporting requirements that will be effective October 1, 2001. Please note that the existing Form MMS–2014 will continue to be used until the change over to the revised Form MMS–2014 in the fall of 2001.

Failure to collect the information provided by Form MMS–2014 would render it impossible to ensure that MMS is collecting and disbursing the full value of royalties received from production of leased lands. Collection of royalties directly impacts the amount of funds made available to the United States Treasury, to State governments, and to Indian Tribes and allottees.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. As required in 5 CFR 1320.8(d), MMS published a 60-day **Federal Register** Notice on February 23, 1999 (64 FR 8835), soliciting comments from the public on this revised Form MMS–2014.

Respondents/Affected Entities: Payors-companies or individuals who enter into a contract to develop, produce, and dispose of minerals from Federal or Indian lands.

Frequency of Response: Monthly.

Estimated Number of Respondents: 2,300 payors.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 124,500 hours.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: $4.7 million.

Comments: Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * * .'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality,

usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this Notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by June 19, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, telephone (202) 208–7744.

Dated: March 27, 2000.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 00–12485 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of Information Collection Request (OMB Control Number 1010–NEW).

SUMMARY: Under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), we are notifying you that an information collection request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Submit written comments on or before June 19, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (OMB Control Number 1010–NEW), 725 17th Street, NW, Washington, DC 20503; telephone (202) 395–7340. You should also send copies of these comments to us. Our mailing address for written comments regarding this information collection is David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

Public Comment Procedure

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the offices listed in the **ADDRESSES** section. You may also comment via the Internet to *RMP.comments@mms.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Include Attn: OMB Control Number 1010–NEW, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov.* You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. 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 of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: Production Accounting and Auditing System Reports.

OMB Control Number: 1010–NEW.

Bureau Form Numbers: Forms MMS–4054, MMS–4055, MMS–4056, and MMS–4058.

Abstract: The Secretary of the Interior is responsible for the collection of royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is authorized to manage lands, to collect royalties due, and to distribute royalty funds. MMS is responsible for the royalty management functions assigned to the Secretary and is developing a financial accounting system which includes royalty and production reporting as a part of an overall effort to improve management of the nation's resources. This new system will be effective October 1, 2001, and will replace both the Accounting and Financial System and the Production Accounting and Auditing System. MMS' proposal was published in the **Federal Register** on February 23, 1999 (64 FR 8844). We received 15 comments related to production reporting. We responded to these comments in the ICR that we submitted to OMB.

In April 1996, MMS undertook a compliance reengineering initiative. The principal reengineering objective was to define and implement a new compliance strategy ensuring that Federal and Indian mineral lease revenues were accurately and timely paid in the most cost-effective manner possible.

The Royalty Policy Committee (RPC), which includes representatives from industry, States, Indian Tribal and allottee groups, and MMS, issued recommendations in June 1996 to streamline both royalty and production reporting. An action plan was developed to implement many of the recommendations. However, in August 1996, the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA) of 1996, was enacted into law. RSFA significantly changed many of the Royalty Management Program's (RMP) historical operating assumptions as well as some fundamental Federal oil and gas mineral revenue financial activities. Although near-term changes in processes and systems were made to implement the law, long-term strategies, business processes, and aging systems needed to be addressed for RMP to be cost-effective and responsive to customer needs. The decision was made April 1, 1997, to expand reengineering to all RMP core business processes. This is the most comprehensive review of RMP's business processes and organization since its creation in 1982.

As part of our reengineering effort, we analyzed current information collection requirements for existing Forms MMS–3160, MMS–4051, MMS–4054, MMS–4055, MMS–4056, and MMS–4058 (OMB control Number 1010–0040) to confirm the presence of data needed to

support future RMP processes. As a result, RMP deleted Forms MMS–3160 and MMS–4051 and streamlined and modified required data elements on Forms MMS–4054 through MMS–4058. These revised forms will not be used until RMP implements it's new financial accounting system, currently scheduled for implementation in October 2001.

MMS proposes to use these four revised forms for gathering oil and gas production data from industry as follows:

a. Form MMS–4054, Oil and Gas Operations Report (OGOR),

b. Form MMS–4055, Gas Analysis Report (GAR),

c. Form MMS–4056, Gas Plant Operations Report (GPOR), and

d. Form MMS–4058, Production Allocation Schedule Report (PASR).

The data from these forms are matched with sales and royalty data reported to MMS. The production reports provide MMS with ongoing information on lease, agreement (property) and facility production, sales volumes, and inventories. The reports summarize all operations on a property or facility during a reporting period. They identify production by API well number and sales by product. Data collected are used as a method of cross checking reported production with reported sales.

Industry will not begin using the revised forms until October 2001 when we implement our new financial accounting system. However, we are requesting approval of these revised forms immediately, so that industry can begin work on the necessary systems development and reprogramming adjustments and changes that may be required as they prepare for the new reporting requirements that will be effective October 2001. Please note that the existing forms (Forms MMS–4054, MMS–4055, MMS–4056, and MMS–4058) will continue to be used until the change over to the revised forms in the fall of 2001.

Failure to collect all of this information will prevent MMS from ensuring that all royalties owed on lease production are paid. Additionally, the data are shared electronically with the MMS's Offshore Minerals Management program, Bureau of Land Management, Bureau of Indian Affairs, and tribal and State governments so they can perform their lease management responsibilities.

Respondents/Affected Entities: Operators of Federal or Indian leases.

Frequency of Response: Monthly.

Estimated Number of Respondents: 2,450 operators.

Estimated Total Annual Reporting and Recordkeeping ''Hour'' Burden: 89,717 hours.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: $1.5 million.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. . . .'' Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. As required in 5 CFR 1320.8(d), MMS published a 60-day **Federal Register** Notice on February 23, 1999 (64 FR 8835), soliciting comments from the public on these revised forms.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by June 19, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, telephone (202) 208–7744.

Dated: May 11, 2000.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 00–12486 Filed 4–17–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: To meet the requirements of the Central Valley Project Improvement Act (CVPIA) of 1992 and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans, dated April 30, 1993. In September 1996 Reclamation revised the document and renamed it to Criteria for Evaluating Water Management Plans (Criteria). The Criteria have been revised again in 1999.

The City of Roseville and El Dorado Irrigation District have developed Water Management Plans (Plan) which Reclamation has evaluated and preliminarily determined to meet the requirements of the Criteria.

The 1999 Criteria were developed based on information provided during public scoping and review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all Plans developed by Central Valley Project contractors. The Criteria were developed and the Plans have been evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination of the adequacy of each contractor's Plan in the **Federal Register** to allow the public a minimum of 30 days to comment on its preliminary determinations.

DATES: All public comments must be received by June 19, 2000.

ADDRESSES: Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, 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. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Please mail comments to Lucille Billingsley, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Lucille Billingsley at the address above,

or by telephone at (916) 978–5215 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: Under provision of Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575), ''The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.'' Also, according to Section 3405(e)(1), these criteria will be developed ''* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.''

The Criteria states that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contracts over 2,000 irrigable acres) will prepare Plans which will be evaluated by Reclamation based on the following required information detailed in the sections listed below to develop, implement, monitor, and update their Plans. The sections are:

1. Description of the District
2. Inventory of Water Resources
3. Best Management Practices (BMPs) for Agricultural Contractors
4. BMP's for Urban Contractors
5. Plan Implementation
6. Exemption Process
7. Regional Criteria
8. 5-Year Revisions

Public comment on Reclamation's preliminary (*i.e.,* draft) determination of both the City of Roseville's and El Dorado Irrigation District's Plans are invited at this time. A copy of both Plans will be available for review at Reclamation's MP Regional Office located in Sacramento, California, and MP's Central California Area Office located in Folsom, California. If you wish to review a copy of the plan, please contact Ms. Billingsley to find the office nearest you.

Dated: May 11, 2000.

Mary Johannis,

Acting Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 00–12350 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Refuge Water Supply Long-Term Water Service Agreements

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Bureau of Reclamation (Reclamation) has scheduled the first meeting for long-term water service contracts with the California Department of Fish and Game, Grassland Water District (representing the Grasslands Resources Conservation District), and long-term memoranda of understanding with the U.S. Fish and Wildlife Service. This first meeting will include distribution of the draft agreements, establishing each party's negotiation team, and setting the schedule for future negotiation sessions. The public is welcome to observe the meeting process.

DATES: The first meeting will be held on Thursday, May 18, 2000 from 10 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Expo Inn, 1413 Howe Avenue, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Stan Yarborough, Reclamation, at (916) 978–5516.

SUPPLEMENTARY INFORMATION: The water service contractual agreements are to provide ''firm water supplies of suitable quality to maintain and improve wetland habitat areas on units of the National Wildlife Refuge System in the Central Valley of California; on the Gray Lodge, Los Banos, Volta, North Grasslands, and Mendota state wildlife management areas; and on the Grasslands Resources Conservation District in the Central Valley of California,'' in accordance with the requirements of section 3406(d) of the Central Valley Project Improvement Act (CVPIA). Before the enactment of the CVPIA, most of the Federal, State and local refuges identified above did not have firm water supplies to meet optimum refuge water management needs (Level 4 needs). The negotiation process that commences on May 18, 2000, is intended to yield new long-term refuge water service agreements to supply up to Level 4 needs. In some cases, these new agreements may replace existing agreements.

Dated: May 11, 2000.

Mary Johannis,

Acting Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 00–12349 Filed 5–15–00; 5:09 pm]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Act Cost Recovery Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Cytec Industries, Inc., Ford Motor Company, and SPS Technologies, Inc.,* Civil Action No. 00–CV–2248 was lodged with the United States District Court for the Eastern District of Pennsylvania on May 2, 2000. This Consent Decree resolves certain claims of the United States against Cytec Industries, Inc., Ford Motor Company, and SPS Technologies (''Settling Defendants'') under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9606 and 9607(a), for performance of Operable Unit 1 response action and for Operable Unit 1 future response costs at the Boarhead Farms Superfund Site located in Bridgeton Township, Pennsylvania. The Consent Decree requires the Settling Defendants to perform all Operable Unit 1 activities (as defined in the Decree) and to pay all Future Response Costs relating to Operable Unit 1 activities at the Boarhead Farms Superfund Site.

The Department of Justice will accept written comments on the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Cytec Industries, Inc., Ford Motor Company, and SPS Technologies, Inc.,* DOJ #90–11–2–06036.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Philadelphia, PA 19106 and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Consent Decree may be obtained by mail from the U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC

20044–7611. When requesting a copy of the proposed Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''Consent Decree Library'' in the amount of $21.00 (for Decree without appendices) or $50.00 (for Decree with appendices), and please reference *United States* v. *Cytec Industries, Inc., Ford Motor Company, and SPS Technologies, Inc., DOJ No. 90–11–2–06036.*

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 00–12482 Filed 5–17–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Roger D. Williams*, Civil Action No. 2:00CV296 (E.D. Va.), was lodged with the United States District Court for the Eastern District of Virginia, Norfolk Division, on April 21, 2000. This proposed Consent Decree concerns a complaint filed by the United States against Roger D. Williams, pursuant to sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), to obtain injunctive relief and impose civil penalties against Roger D. Williams for alleged violation of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, by unlawfully discharging and/or controlling and directing the discharge of dredged and fill materials into waters of the United States at a 40-acre site located on Sondej Avenue immediately east of Bowers Hill Auto Parts and south of South Military Highway in the city of Chesapeake, Norfolk County, Virginia. The proposed Consent Decree requires Roger D. Williams to perform a restoration project at the site.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to: Yvette M. Wilkerson-Barron, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and refer to *United States* v. *Roger D. Williams*, DJ Reference No. 90–5–1–1–4518.

The proposed Consent Decree may be examined at the Clerk's Office of the United States District Court for the Eastern District of Virginia, 193 Walter E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, Virginia.

Letitia J. Grishaw,

Chief Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 00–12481 Filed 5–17–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Membership of the 2000 Senior Executive Service Performance Review Boards

AGENCY: Department of Justice.

ACTION: Notice of Department of Justice's 2000 Senior Executive Service Performance Review Boards.

SUMMARY: Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of SES performance appraisals and bonus and recertification recommendations. The PRBs will make recommendations regarding the final performance ratings to be assigned, SES bonuses to be awarded, and the recertification of SES career appointees.

FOR FURTHER INFORMATION CONTACT: Joanne W. Simms, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514–6788.

Department of Justice, 2000 Senior Executive Service Performance Review Board Members

Community Oriented Policing Services

Dennis E. Greenhouse, Deputy Director

Office of the Solicitor General

Lawrence G. Wallace, Deputy Solicitor General

Office of Legal Counsel

Robert J. Delahunty, Special Counsel

Office of Professional Responsibility

H. Marshall Jarrett, Counsel on Professional Responsibility

Office of Intelligence Policy and Review

James A. Baker, Deputy Counsel for Intelligence Operations

Office of Policy Development

Kevin R. Jones, Deputy Assistant Attorney General

Office of Information and Privacy

Daniel J. Metcalfe, Director (Policy and Litigation)

Antitrust Division

Willie L. Hudgins, Assistant Chief, Litigation II Section
Mary Jean Moltenbrey, Deputy Director of Operations
Anthony V. Nanni, Chief, Litigation I Section
Kenneth Heyer, Chief, Competition Policy Section

Civil Division

Gary W. Allen, Director, Aviation and Admiralty Litigation, Torts Branch
Felix V. Baxter, Director, Federal Programs Branch
JoAnn J. Bordeaux, Deputy Director, Environmental Tort Litigation, Torts Branch
Vito J. Dipietro, Director, Intellectual Property Litigation, Commercial Litigation Branch
J. Patrick Glynn, Director, Environmental Tort Litigation, Torts Branch
Thomas W. Hussey, Director, Office of Immigration Litigation
J. Christopher Kohn, Director, Corporate/Financial Litigation, Commercial Litigation Branch
Neil H. Koslowe, Special Litigation Counsel, Federal Programs Branch
Sheila M. Lieber, Deputy Director, Federal Programs Branch
Mark B. Stern, Appellate Litigation Counsel, Appellate Staff

Civil Rights Division

Merrily A. Friedlander, Chief, Coordination and Review Section
Katherine A. Baldwin, Chief, Employment Litigation Section
David K. Flynn, Chief, Appellate Section
Joan A. Magagna, Chief, Housing and Civil Enforcement Section

Criminal Division

Joseph E. Gangloff, Principal Deputy Chief, Public Integrity Section
Terry R. Lord, Chief, Chief Exploitation & Obscenity Section
Maureen H. Killion, Senior Associate Director, Office of Enforcement Operations
Thomas G. Snow, Deputy Director, Office of International Affairs

Environment and Natural Resources Division

Virginia P. Butler, Chief, Land Acquisition Section
Robert L. Bruffy, Executive Officer
Walker B. Smith, Deputy Section Chief, Environmental Enforcement Section

Pauline H. Millius, Chief, Policy, Legislation & Special Litigation Section

Justice Management Division

Linda A. Cinciotta, Director, Office of Attorney Personnel Management
Stuart Frisch, General Counsel
Michael A. Perez, Associate Director for Financial Management

Tax Division

Stephen J. Csontos, Senior Legislative Counsel
Robert S. Watkins, Section Chief, Civil Trial Section, Central Region
Joseph E. Young, Executive Officer

Bureau of Prisons

Keith E. Hall, Assistant Director, Human Resources Management Division
James B. Jones, Deputy Assistant Director, Administration Division
Thomas R. Kane, Assistant Director, Information, Policy, and Public Affairs
Bruce K. Sasser, Assistant Director, Administration Division
Morris L. Thigpen, Sr., Director, National Institute of Corrections
Ronald J. Waldron, Senior Deputy Assistant Director, Industries, Education, and Vocational Training

Immigration and Naturalization Service

John P. Chase, Director of Internal Audit
Gustavo De La Vina, Assistant Commissioner for Border Patrol
Carol A. Hall, Assistant Commissioner for Human Resources and Development
Michel A. Pearson, Executive Associate Commissioner for Field Operations
Jeffrey L. Weiss, Director, Asylum Division
David A. Yentzer, Assistant Commissioner for Administration

United States Marshals Service

Suzanne D. Smith, Assistant Director for Human Resources

Office of Justice Programs

Gary N. Silver, Director, Office of Administration

Executive Office for Immigration Review

Jack E. Perkins, Chief Administrative Hearing Officer

Executive Office for United States Attorneys

Michael W. Bailie, Director, Office of Legal Education
David W. Downs, Deputy Director for Operations
Frank M. Kalder, Deputy Director for Financial Management

Executive Office for United States Trustees

Jeffrey M. Miller, Associate Director

Valerie M. Willis,

Executive Secretary, Senior Executive Resources Board.

[FR Doc. 00–12480 Filed 5–17–00; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1274]

Announcement of the Availability of the National Institute of Justice Solicitation for a National Evaluation of the Domestic Violence Victims' Civil Legal Assistance Program.

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''National Evaluation of the Domestic Violence Victims' Civil Legal Assistance Program.''

DATES: Proposals must be received by close of business July 10, 2000.

ADDRESSES: National Institute of Justice, 810 Seventh Street NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center, 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

This announcement solicits proposals for a National Evaluation of the Violence Against Women Office's (VAWO) Domestic Violence Victims' Civil Legal Assistance Program. A description of this VAWO program can be found at http://www.ojp.usdoj.gov/vawo/grants/civil/descrip.htm.

The purpose of this national evaluation is to: (1) Document the range of local activities and programs supported by the FY1998, FY1999, and FY2000 Violence Against Women Office (VAWO) grants to provide civil legal assistance; (2) document local programs funded by other sources of assistance, the gaps these programs fill, whom they serve, and how VAWO funded programs fit into the larger funding picture in a jurisdiction; (3) examine and document grantee planning and implementation efforts; (4) evaluate the need for the adequacy of special conditions imposed on grantees to preserve victim safety and confidentiality, while simultaneously enhancing the professional services offered by grantees; and (5) determine the effectiveness of these programs in meeting the needs of the women they serve.

Under this solicitation, one evaluation project of up to $800,000 will be funded for a period of up to 36 months.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–3420 to obtain a copy of ''National Evaluation of the Domestic Violence Victims' Civil Legal Assistance Program'' (refer to document No. SL000424). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Julie E. Samuels,

Acting Director, National Institute of Justice.

[FR Doc. 00–12564 Filed 5–17–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1273]

Announcement of the Availability of the National Institute of Justice Solicitation for a National Evaluation of Grants To Combat Violent Crimes Against Women on Campus

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the Availability of the National Institute of Justice ''National Evaluation of Grants to Combat Violent Crimes Against Women on Campus.''

DATES: Proposals must be received by close of business July 5, 2000.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

This solicitation is based on the Congressional reporting requirements of the Higher Education Amendments of 1998 for an evaluation of the effectiveness of the Grants to Combat Violent Crimes Against Women on Campuses Program (VAW Campus Program). The National Institute of Justice (NIJ), in collaboration with the Office of Justice Programs' Violence Against Women Office (VAWO), is soliciting proposals for this national evaluation. The evaluation should examine impact issues regarding those institutions of higher education that are VAW Campus Program grantees; implementing comprehensive, coordinated responses to violence against women, including sexual assault, domestic violence, and stalking. One grant of up to $850,000 will be awarded. The duration of the evaluation is up to 36 months, with summary reports required for each component of the evaluation—baseline data, process, and impact.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''National Evaluation of Grants to Combat Violent Crimes Against Women on Campus'' (refer to document no. SL000422). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Julie E. Samuels,

Acting Director, National Institute of Justice.

[FR Doc. 00–12565 Filed 5–17–00; 8:45 am]

BILLING CODE 4410–18–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,579 and TA–W–35,579A]

Mitchell Energy and Development Corporation Headquartered in the Woodlands, Texas, Operating Throughout the State of Texas and Mitchell Louisiana Gas Services L.P., and Operating Throughout the State of Louisiana; Termination of Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

On March 24, 1999, the Department issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance for the workers and former workers of Mitchell Energy and Development Corporation and Mitchell Louisiana Gas Services L.P. (TA–W–35,579.) Notice of the determination was published in the **Federal Register** on May 21, 1999 (64 FR 27811).

The certification was based on information supplied by the company which the Department concluded to indicate that crude oil production was approximately half of total company revenues. The Department issued the certification on the basis of increased aggregate U.S. imports of crude oil.

Following receipt of a request from the company that coverage of the certification be expanded to include workers not covered by the certification, the Department on December 6, 1999 instituted an investigation on behalf of workers employed in the following organizational subdivisions of the subject firm which had not been specifically identified in the certification as covered: Mitchell Energy Corporation, Mitchell Gas Services, L.P., and MND Services. The Department determined it appropriate to institute a new investigation with respect to the three above-mentioned subsidiary entities and that investigation was instituted as TA–W–37, 142.

Following the receipt and review of additional information requested by the Department in conjunction with its investigation with respect to the subsidiary entities, it was concluded less than six percent of revenues of Mitchell Energy and Development Corporation are derived from production of crude oil and that such crude oil is in fact a by-product of the subject firm's primary activities: the acquisition and processing of natural gas and natural gas liquids. Thus, upon the review of more detailed information than that initially submitted by the subject firm, it was concluded that a certification of eligibility to apply for worker adjustment assistance cannot be based upon increased imports of crude oil.

Based upon the additional evidence obtained and in accordance with Section 223(d) of the Act, on February 9, 2000, the Director of the Division of Trade Adjustment Assistance instituted an investigation to determine separations of workers from Mitchell Energy and Development Corporation and Mitchell Louisiana Gas Services L. P. (TA–W–35,579 and TA–W–35,579A) continue to be attributable to the conditions for certification specified in Section 222 of the Act. Notice of the investigation was published in the **Federal Register** on February 25, 2000.

The Department has surveyed customers of the primary products of Mitchell Energy and Development Corporation—natural gas and natural gas liquids—in order determine to whether imports of such products contributed importantly to the worker separations. None of the surveyed customers purchased imported natural gas or natural gas liquids.

Conclusion

Upon the review of the evidence it is determined that the Certification of Eligibility to Apply for Worker Adjustment Assistance with respect to workers of Mitchell Energy and Development Corporation, headquartered in the Woodlands, Texas operating throughout the state of Texas (TA–W–35,579) and Mitchell Louisiana Gas Services L.P. and operating throughout the state of Louisiana (TA–W–579A) is terminated. The effective date of this termination is May 18, 2000.

Signed at Washington, DC, this 10th day of May 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–12508 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,553]

Swank, Inc., Attleboro, Massachusetts; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 10, 2000, in response to a petition filed on the same date on behalf of workers at Swank, Inc., Attleboro, Massachusetts.

The petitioning group of workers are covered by an existing certification issued on April 30, 2000 (TA–W–37,531). Consequently, further investigation in this case would serve no purpose, and this investigation has been terminated.

Signed in Washington, DC, this 5th day of May, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–12509 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,243]

Whizard Protective Ware Corporation, Birmingham, Ohio; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Whizard Protective Ware Corporation, Birmingham, Ohio. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,243; Whizard Protective Ware Corporation, Birmingham, Ohio (May 10, 2000.

Signed at Washington, DC, this 12th day of May, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–12507 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request; Submitted for Public Comment and Recommendations; Business Confidential Data Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the information collection of the Business Confidential Data Request, ETA 9014.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before July 17, 2000. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses:

ADDRESSES: Edward A. Tomchick, Division of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210, 202–219–5555 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Sections 222, 223 and 249 of Title II, Chapter 2 of the Trade Act of 1974, as amended, authorizes the Secretary of Labor to collect the data necessary for the Secretary to determine worker eligibility of apply for Trade Adjustment Assistance (TAA). The Business Confidential Data Request is submitted to the workers' firm upon receipt of a TAA petition. The information requested is used by the investigative work group of the Division of Trade Adjustment Assistance to present an objective set of facts for the Secretary to determine whether increased imports of articles like or directly competitive with those produced by the petitioning workers' firm contributed importantly to declines in sales or production, and employment at the subject firm plant.

II. Current Actions

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] for a extension of collection of information previously approved and assigned OMB Control No. 1205–0197. There is no change in burden.

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Business Confidential Data Request.

OMB Number: 1205–0197.

Agency Number: ETA 9014.

Affected Public: Businesses.

Frequency: On occasion.

Number of Respondents: 1,500 (Estimated 1,400 plus the carry over of 100 cases from the previous year.)

Estimated Time Per Respondent: 3 hours per response.

Total Burden Hours: 4,500.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 12, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–12511 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Customer Survey

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public

and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the information collection of the Customer Survey, ETA 8562.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before July 17, 2000. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Edward A. Tomchick, Division of Trade Adjustment Assistance, Employment and Training Administration, Department of labor, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210, 202–219–5555 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Division of Trade Adjustment Assistance is required under the Trade Act of 1974 to conduct investigations to determine whether increased imports have contributed importantly to actual or threatened decreases in employment at firms whose workers have petitioned for Trade Adjustment Assistance benefits. The Customer Survey is designed to provide information on which determinations are based.

II. Current Actions

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A))] for a extension of collection of information previously approved and assigned OMB Control No. 1205–0190. There is no change in burden.

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Customer Survey.

OMB Number: 1205–0190.

Agency Number: ETA 8562.

Affected Public: Businesses.

Frequency: On occasion.

Number of Respondents: 2,220.

Estimated Time Per Resondent: 1.78 hours.

Total Burden Hours: 3,951.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 12, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–12512 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Oil and Gas Drilling and Exploration Oilfield Services

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the information collection of the Oil and Gas Drilling and Exploration Oilfield Services, ETA 9018.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before July 17, 2000. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumption used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

ADDRESSES: Edward A. Tomchick, Division of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210, 202–219–5555 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Division of Trade Adjustment Assistance is required under the Trade Act of 1974 to conduct investigations to determine whether increased imports have contributed importantly to actual or threatened decreases in employment at firms whose workers have petitioned for Trade Adjustment Assistance benefits. The ''Oil and Gas Drilling and Exploration Oilfield Services'' Business Confidential Data Request is designed to provide information on which determinations are based.

II. Current Actions

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] for an

extension of collection of information previously approved and assigned OMB Control No. 1205–0272. There is no change in burden.

Type of Review: Extension without change.

Agency: Employment and Training Administration.

Title: Oil and Gas Drilling and Exploration Oilfield Services.

OMB Number: 12205–0272.

Agency Number: ETA 9018.

Affected Public: Businesses.

Frequency: On occasion.

Number of Respondents: 75.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 225.

Total Burden Cost: (capital/startup) None.

Total Burden Cost: (operating/maintaining) None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 12, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–12513 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–003790]

3–I, Incorporated Murrells Inlet, South Carolina; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act Public Law 103–1 concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on March 8, 2000, in response to a petition filed on behalf of workers at 3–I, Inc., Murrells Inlet, South Carolina. Workers produced t-shirts.

The petitioner has requested that the petition be withdrawn due to lack of significant worker separations. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 10th day of May, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–12510 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of the following: (1) Rehabilitation Maintenance Certificate (OWCP–17); and Application to Employ Homeworkers (WH–46), Piece Rate Measurements, and Homeworker Handbook (WH–75). Copies of the proposed information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before July 17, 2000.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

Rehabilitation Maintenance Certificate (OWCP–17)

I. Background

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act and the Federal Employees' Compensation Act. These Acts provide employment rehabilitation benefits to eligible injured workers. The OWCP–17 is a form which is submitted, signed, and dated by an injured worker receiving rehabilitation services to request reimbursement from OWCP for expenses incurred as a result of participation in an approved rehabilitation effort. The form requires the signature of a facility official to verify that the employee is in attendance at the program.

II. Review Focus

The Department of Labor is particularly interested in comments which:

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

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to provide vocational rehabilitation services to injured workers currently unemployed as a result of their injury, to enhance their employment potential.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Rehabilitation Maintenance Certificate.

OMB Number: 1215–0161.

Agency Number: OWCP–17.

Affected Public: Individuals or households, Businesses or other for-profit; Not-for-profit institutions.

Total Respondents: 1,300.

Frequency: Monthly.

Total Responses: 15,600.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 2,605.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Application to Employ Homeworkers, (WH–46), Piece Rate Measurements, and Homeworker Handbook (WH–75)

I. Background

Section 11(d) of the Fair Labor Standards Act (FLSA) authorizes the Secretary of Labor to regulate, restrict, or prohibit industrial homework as necessary to prevent evasion of the minimum requirements of the Act. Restrictions exist on seven homework industries, (knitted outerwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries). Homework in these industries is permitted only in certain hardship cases. Homework is permitted under the FLSA in all other industries, provided the employer maintains homeworker handbooks for such employees which record hours of work and certain other required payroll information. Further, employers of homeworkers in certain restricted industries must first obtain a certification from the Department of Labor authorizing the employment of such workers. Employers in the restricted industries under the certification program who pay workers based on piece rates must maintain documentation of the work measurements used to establish such piece rates and the circumstances under which measurements were conducted.

II. Review Focus

The Department of Labor is particularly interested in comments which:

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

III. Current Actions

The Department of Labor seeks the extension of approval to collect this information in order assure compliance with the FLSA in homework employment.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Application to Employ Homeworkers.

OMB Number: 1215–0013.

Affected Public: Business or other for-profit; Individuals or households; Not-for-profit institutions.

Frequency: On occasion.

Reporting Burden:

Title	Agency No.	No. of respondents	No. of responses	Average time per response	Burden hours
Application To Employ Homeworkers	WH–46	71	36	30 min.	18
Homeworker Handbooks	WH–75	4,684	18,736	30 min.	9,368

Recordkeeping Burden:

Title	No. of record-keepers	No. of records	Average time per response	Burden hours
Piece Rate Measurement	71	213	60½ min.	215
Homeworker Handbook	1,171	18,736	½ min.	156

Total Respondents (Recordkeeping and Reporting): 4,755.

Total Annual Responses (Recordkeeping and Reporting): 18,772.

Estimated Total Burden Hours (Recordkeeping and Reporting): 9,757.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 12, 2000.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 00–12506 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–47–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Freeman United Coal Mining Company

[Docket No. M–2000–037–C]

Freeman United Coal Mining Company, 1999 Wabash Avenue, Suite 200B, Springfield, Illinois 62704–5364 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) to its Crown II Mine (I.D. No. 11–02236) located in Macoupin County, Illinois. The petitioner requests a modification of the standard to permit a diesel-powered road grader to be operated without front wheel brakes. The petitioner proposes to operate its diesel grader at a maximum speed of 10 miles per hour, lower the grader blade (mold board) to increase stopping capability in emergencies, and provide training for the grader operators on how to recognize appropriate levels of speed for

different road and slope conditions. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Neumeister Coal Company

[Docket No. M–2000–038–C]

Neumeister Coal Company, 28 Frank Lane, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 49.2(b) (availability of mine rescue teams) to its #2 Slope Mine (I.D. No. 36–07166) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams with three members and one alternate for either team. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and members of the rescue team, and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Tito Coal

[Docket No. M–2000–039–C]

Tito Coal, 118 Fairview Lane, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 49.2(b) (availability of mine rescue teams) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams with three members and one alternate for either team. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and members of the rescue team, and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Canyon Fuel Company, L.L.C.

[Docket No. M–2000–040–C]

Canyon Fuel Company, L.L.C., HC 35 Box 380, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Skyline Mine No. 3 (I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests a modification of the standard to permit the belt entry to be used as the return entry during two-entry longwall panel development, and the operator the option to use the belt haulage entry as an intake entry for additional face ventilation during longwall panel retreat mining. The petitioner asserts that this modification will provide maximum protection for the miners during longwall panel development and retreat mining under adverse ground conditions, multiple seam mining conditions, and deep cover. Upon granting of this petition, the petitioner requests that the terms and conditions contained in the Decision and Order not apply in any panel during the period from completion of development mining of the two-entry longwall panel until the beginning of the longwall equipment set-up activities, and conditioned on the conveyor belt in the two-entry panel not being energized. The petitioner asserts that during this time, all other existing standards will apply. The petitioner proposes to install a low-level carbon monoxide or equivalent product of combustion detection system in all longwall panel belt entries used as an intake or return air course and in the primary intake entry. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and that application of the existing standard would result in a diminution of safety to the miners.

5. Canyon Fuel Company, L.L.C.

[Docket No. M–2000–041–C]

Canyon Fuel Company, L.L.C. has filed a petition to modify the application of 30 CFR 75.352 (return air courses) to its Skyline Mine No. 3 (I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests a modification of the standard to permit the belt entry to be used as the return entry during two-entry longwall panel development, and to allow the operator the option to use the belt haulage entry as an intake entry for additional face ventilation during longwall panel retreat mining. The petitioner asserts that this modification will provide maximum protection for the miners during longwall panel development and retreat mining under adverse ground conditions, multiple seam mining conditions, and deep cover. Upon granting of this petition, the petitioner requests that the terms and conditions contained in the Decision and Order not apply in any panel during the period from completion of development mining of the two-entry longwall panel until the beginning of the longwall equipment set-up activities, and conditioned on the conveyor belt in the two-entry panel not being energized. The petitioner asserts that during this time, all other existing standards will apply. The petitioner proposes to install a low-level carbon monoxide or equivalent product of combustion detection system in all longwall panel belt entries used as an intake or return air course and in the primary intake entry. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard, and that application of the existing standard would result in a diminution of safety to the miners.

6. Marfork Coal Company, Inc.

[Docket No. M–2000–042–C]

Marfork Coal Company, Inc., P.O. Box 457, Whitesville, West Virginia 25209 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Brushy Eagle Mine (I.D. No. 46–08315) located in Raleigh County, West Virginia. The petitioner requests a modification of the standard to permit the use of an automatic fire detection system based on carbon monoxide monitoring of the underground belt conveyor entries. The petitioner proposes to install a low-level carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Elk Run Coal Company, Inc.

[Docket No. M–2000–043–C]

Elk Run Coal Company, Inc., P. O. Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Castle Mine (I.D. No. 46–08055) located in Boone County, West Virginia. The petitioner proposes to use continuous mining machines with nominal voltage of the power circuits not to exceed 2,300 volts. The petitioner asserts that its alternative method would not result in a diminution of safety to the miners, and would provide at least the same measure of protection as the existing standard.

8. Appalachian Eagle, Inc.

[Docket No. M–2000–044–C]

Appalachian Eagle, Inc., P.O. Box 751, Bradley, West Virginia 25818–0772 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Mine No. 1 (I.D. No. 46–05437) located in Kanawha County, West Virginia. The petitioner requests a modification of the

standard to permit the use of a carbon monoxide monitoring system to monitor belt air used in the face. The petitioner proposes to use a carbon monoxide monitoring system as an early warning fire detection in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

9. Roberts Bros. Coal Company, Inc.

[Docket No. M–2000–045–C]

Roberts Bros. Coal Company, Inc., 660 B. John Hardy Road, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Cardinal #2 Mine (I.D. No. 15–17216) located in Hopkins County, Kentucky. The petitioner proposes to use a 200KW, 480-volt, diesel powered generator set with an approved diesel drive engine to move equipment in and out of the mine and to perform rehab work in areas outby section loading points. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 19, 2000. Copies of these petitions are available for inspection at that address.

Dated: May 8, 2000.

Carol J. Jones,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 00–12530 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Hopkins County Coal, LLC

[Docket No. M–2000–027–C]

Hopkins County Coal, LLC, P.O. Box 711, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Island Mine (I.D. No. 15–17515) located in Madisonville County, Kentucky. The petitioner proposes to use a spring-loaded device with specific fastening characteristics instead of a padlock to secure plugs and electrical type connectors to batteries, and to permissible mobile powered equipment, to prevent the battery plugs from accidentally separating from the receptacle during normal operation of battery equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Elk Run Coal Company, Inc.

[Docket No. M–2000–028–C]

Elk Run Coal Company, Inc., P.O. Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its White Knight Mine (I.D. No. 46–08055) located in Sylvester County, West Virginia. The petitioner proposes to use continuous mining machines with nominal voltage of the power circuits not to exceed 2,300 volts. The petitioner asserts that its alternative method would not result in a diminution of safety to the miners and would provide at least the same measure of protection as the existing standard.

3. B & B Anthracite Coal Company

[Docket No. M–2000–029–C]

B & B Anthracite Coal Company, 225 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 49.2(b) (availability of mine rescue teams) to its Rock Ridge Slope Mine (I.D. No. 36–07741) located in Schuylkill County, West Virginia. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams of three members with one alternate for either team. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and members of the rescue team and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. West Ridge Resources, Inc.

[Docket No. M–2000–030–C]

West Ridge Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.500(d) (permissible electric equipment)to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner proposes to use the following nonpermissible low-voltage or battery powered electronic testing and diagnostic equipment inby the last open crosscut: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, electronic tachometers and battery operated drills. The petitioner has listed in this petition for modification specific procedures that would be followed when using this equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

5. Genwal Resources, Inc.

[Docket No. M–2000–031–C]

Genwal Resources, Inc., P.O. Box 1420, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.500(d) (permissible electric equipment) to its Crandall Canyon Mine (I.D. No. 42–01715) located in Carbon County, Utah. The petitioner proposes to use the following nonpermissible low-voltage or battery powered electronic testing and diagnostic equipment inby the last open crosscut: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, electronic tachometers and battery operated drills. The petitioner has listed in this petition for modification specific procedures that would be followed when using this equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

6. Sidney Coal Company, Inc.

[Docket No. M–2000–032–C]

Sidney Coal Company, Inc., P.O. Box 299, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Rockhouse Energy Mining Company, Mine No. 1 (I.D. No.

15–17651) located in Sidney County, Kentucky. The petitioner requests a modification of the standard to allow air coursed through belt haulage entries to be used to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide detection system in all belt entries at certain locations as an early warning fire detection system. The petitioner also proposes to adhere to other conditions. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

7. Sidney Coal Company, Inc.

[Docket No. M–2000–033–C]

Sidney Coal Company, Inc., P.O. Box 299, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Rockhouse Energy Mining Company, Mine No. 1 (I.D. No. 15–17651) located in Sidney County, Kentucky. The petitioner proposes to use 4,160 volt longwall face equipment, and to submit proposed revisions for its approved part 48 training plans to the District Manager that would specify initial and refresher training. The petitioner has listed specific procedures in this petition for modification that would be followed when using the longwall equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

8. Sidney Coal Company, Inc.

[Docket No. M–2000–034–C]

Sidney Coal Company, Inc., P.O. Box 299, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Rockhouse Energy Mining Company, Mine No. 1 (I.D. No. 15–17651) located in Sidney County, Kentucky. The petitioner proposes to plug and mine through oil and gas wells using the specific procedures listed in this petition for modification, and notify the District Manager or designee prior to mining within 300 feet of a plugged oil and gas well. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and will not result in a diminution of safety to the miners.

9. West Ridge Resources, Inc.

[Docket No. M–2000–035–C]

West Ridge Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.352 (return air courses) to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner proposes to use the belt entry as a return air course during two-entry longwall development, and an intake during longwall extraction, to ensure adequate ventilation to dilute and render harmless any methane or other noxious gases that may accumulate. The petitioner asserts that the application of the existing standard would result in a diminution of safety and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

10. West Ridge Resources, Inc.

[Docket No. M–2000–036–C]

West Ridge Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.500(d) (permissible electric equipment)to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner submitted this petition on March 22, 2000. This petition is a duplicate of a previously submitted petition. Therefore, the petitioner has rescinded this petition.

11. National Gypsum Company

[Docket No. M–2000–001–M]

National Gypsum Company, 2550 M Street, NW, Washington, DC 20037 has filed a petition to modify the application of 30 CFR 56.11001 (safe access) to its Kaufman-George Pit (I.D. No. 13–01615) located in Webster County, Iowa. The petitioner requests a modification of the standard to: permit the equipment operator to move between two parked pieces of mobile equipment provided that each piece of equipment is parked on level ground with the parking brakes engaged; the equipment operator has ensured that the pieces of equipment are no further than 36 inches apart; and the equipment operator uses the equipment's platforms, handholds, and foot supports to maintain three-point contact at all times when moving between the pieces of equipment. The petitioner asserts that application of the existing standard would result in a diminution of safety and that the proposed alternative method would provide equivalent or superior protection as the existing standard.

12. Original Sixteen to One Mine, Inc.

[Docket No. M–2000–002–M]

Original Sixteen to One Mine, Inc., P.O. Box 1621, Alleghany, California 95910 has filed a petition to modify the application of 30 CFR 57.11059 (respirable atmosphere for hoist operators underground) to its Sixteen to One Mine (I.D. No. 04–01299) located in Sierra County, California. The petitioner requests a modification of the standard to permit continued use of its ''permissible combination self-contained breathing apparatus (SCBA) and pressure demand Type C supplied air respirator'' (MSHA approved TC–13F–146 issued 4–13–88 and NIOSH approved). The petitioner states that in the interest of the health and safety of the hoist operator and miners, an exemption from the standard would allow the equipment to be used without modification, and continue to meet safety standards specific to the Sixteen to One Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and that application of the existing standard would result in a diminution of safety to the miners.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov,'' or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 19, 2000. Copies of these petitions are available for inspection at that address.

Dated: May 8, 2000.

Carol J. Jones,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 00–12529 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (''PRMPA'', 44 U.S. C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), NARA has identified, inventoried, and prepared for public access integral file segments

among the Nixon Presidential historical materials. In addition, NARA is preparing for public access approximately 400 pages of documents among the Nixon Presidential materials that are responsive to a February 1, 1999 interagency memo from the National Security Council (NSC) to declassify and release documents concerning human rights abuses in Chile from 1968–1991.

DATES: Except with respect to the materials responsive to the NSC memo on Chile, NARA intends to make these materials described in this notice available to the public beginning June 30, 2000. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials must notify the Archivist of the United States in writing of the claimed right, privilege, or defense before June 19, 2000. The Chile material will be released no sooner than 30 days after the date of publication, at times determined by the NSC.

ADDRESSES: The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland beginning at 8:45 a.m. on June 30, 2000. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301–713–6950.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened on June 30, 2000, consist of 4 cubic feet.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. Some of the materials are from the White House Central Files, Subject Files. The Subject Files are based on an alphanumerical file scheme of 61 primary categories. Listed below are the integral file segments from the White House Central Files, Subject Files in this opening.

Subject Category: Volume: 3 cubic feet.
Federal Government (FG):

FG 66 Administrative Conference of the United States
FG 70 Advisory Commission on Postal Distribution Service
FG 71 Advisory Council on Historic Preservation
FG 73 American Battle Monuments Commission
FG 74 American Red Cross
FG 91 Commission on Executive, Legislative, and Judicial Salaries
FG 92 Commission on Fine Arts
FG 96 Commission on Presidential Scholars
FG 97 Commission to Study Mortgage Interest Rates
FG 98 Commission on Economic Development
FG 99 Committee on Population and Family Planning

Public access to some of the items in the file segments listed in this notice will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

In response to the February 1, 1999, interagency memo from the National Security Council, documents concerning human rights abuses located among the Nixon Presidential materials previously classified will be made available at times determined by the NSC.

Additionally, other documents which were previously withheld from public access have been reviewed and/ or declassified under the Mandatory Review provisions of Executive Order 12958 and will be made available.

Previously restricted materials: Volume: 1 cubic feet.

Dated: May 12, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–12493 Filed 5–17–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

Date/Time: June 8–9, 2000; 8 am–5 pm.

Place: Room 120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Fred G. Heineken, Program, Director, Division of Bioengineering and Environmental Systems, NSF, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1318.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Purpose of Meeting: To review and evaluate Biochemical Eng./Biotechnology POWRE + Large proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12458 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems (1205).

Date and Time: June 14, 2000 and June 15, 2000, 8 a.m. to 5 p.m.

Place: NSF, 4201 Wilson Boulevard, Room 580, Arlington, Virginia 22230.

Type of Meeting: Closed.

Contact Person: Dr. Joy Paushcke, Program Director, National Earthquake Engineering Simulation Program, Room 545, 4201 Wilson Boulevard, Arlington, VA (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate nominations for the FY'00 National Earthquake Engineering Simulation Review Panel proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12456 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, manufacture, and Industrial Innovation—(1194).

Date and Time: June 5–8, and June 13–14, 2000, 8 am–5:30 pm.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Kamalakar Rajurkar, Program Director, Manufacturing Machines, and Equipment, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Unsolicited proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 522b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12447 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings of the Special Emphasis Panel in Electrical and Communications Systems (1196):

Date and Time: May 23, 2000, 8:30 am to 5 pm.

Place: Room 580, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Paul Werbos, Program Director, Control, Networks, and Computational Intelligence, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1339.

Agenda: To review and evaluate CNCI proposals submitted to the Division as part of the selection process for awards.

Date and Time: June 1–2, 2000, 8:30 am to 5 pm.

Place: Room 580, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. James Mink, Program Director, Electronics, Phonics, and Device Technologies, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1339.

Agenda: To review and evaluate EPDT proposals submitted to the Division as part of the selection process for awards.

Purpose of Meetings: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Reason for Closing: The proposals being viewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12455 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems (1196).

Date and Time: June 8–9, 2000—8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, Room 580, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. Usha Varshney, Program Director, Electronic, Photonics and Device Technologies (EPDT), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230, Telephone: (703) 306–1339.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals in the Electronics, Photonics and Device Technologies program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c), (4) and (6) the Government in the Sunshine Act.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12457 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date and Time: June 29, 2000, 8 a.m.–5:30 p.m.

Place: Room 1235 and 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Anthony Maddox, CISE Educational Innovation, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE Educational Innovation proposals submitted in response to the program announcement (NSF) 00–33).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12448 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date and Time: July 24, 2000, 8 am–5 pm.

Place: Room 310, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Caroline Wardle, Information Technology Workforce, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate information Technology Workforce proposals submitted in response to the program announcement (NSF 00–77).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12453 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Genetics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science announces the following meeting.

Name: Advisory Panel for Genetics (1149) (Panel C).

Date and Time: Monday & Tuesday, June 5–6, 2000, 9 A.M.—5 P.M.

Place: National Science Foundation, 4201 Wilson Blvd., Room 320, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Philip Harriman, Program Director, (703) 306–1439, Program Director for Microbial Observatories, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals submitted to the Microbial Observatories Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12452 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (1756).

Date & Time: June 5–6, 2000, 8 A.M.

Place: Room 730, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Michael Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1557.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Geoscience Education Panel, as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12449 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Information and Intelligent Systems (#1200).

Dates of meetings	Locations
June 1–2, 2000.	National Science Foundation, Arlington, VA.
June 5–6, 2000.	National Science Foundation, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Michael Lesk and Richard Hilderbrandt, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1930.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Information Technology Research (ITR) proposals submitted to the Information Technology Research Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in Sunshine Act.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12450 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Committee of Visitors; Special Emphasis Panel in Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee of Visitors, Special Emphasis Panel in Integrative Activities (1373).

Date and Time: June 14–15, 2000; 8:30 a.m.–5 p.m.; June 16, 2000; 8:30 a.m.–12 p.m.

Place: Room 390, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part-Open.

Agenda:

Dates	Meeting times	Type of session	Agenda topic
6/14	8:30–11:00	Open	Program overview.
	11:00–5:00	Closed	Review of proposals, proposal processing.
6/15	8:30–5:00	Closed	Review of proposals, proposal processing.
6/16	8:30–11:00	Closed	Review of proposals, proposal processing.
	11:00–12:00	Open	Presentation of Findings.

Contact: Joseph F. Burt, Office of Integrative Activities, Room 1270, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, (703) 306–1040.

Purpose of Meeting: The Committee of Visitors for the Major Research Instrumentation Program (MRI) will meet to conduct a review of the process by which MRI proposals are reviewed and the outcomes achieved by funded MRI projects.

Reason for Closing: During clsoed sessions, the Committee of Visitors will examine proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12451 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208.

Date and Time: July 10–12, 2000 from 8 am to 5 pm.

Place: Laboratori Nazionali del Gran Sasso (LNGS) I–67010 Asergi (L'Aquila) Italy.

Type of Meeting: Closed.

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, Room 1015N, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. (703) 306–1891.

Purpose of Meeting: To provide advice and recommendations concerning the development and construction of the Borexino Solar neutrino detector.

Agenda: To hear presentations and write recommendations concerning the development and construction of the Borexino Solar neutrino detector.

Reason for Closing: The proposals being reviewed include information of a proprietary of confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12459 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: June 9, 2000 from 8:00 a.m. to 5:00 p.m.

Place: Department of Physics, Princeton University.

Type of Meeting: Closed.

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, Room 1015N, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230, (703) 306–1891.

Purpose of Meeting: To provide advice and recommendations concerning the activities of the Princeton group in the development and Construction of the Borexino Solar neutrino detector.

Agenda: To hear presentations and write recommendations concerning the activities of the Princeton group development and Construction of the Borexino Solar neutrino detector.

Reason for Closing: The proposals being reviewed include information of a proprietary or Confidential nature, including technical information; information on personnel and proprietary data for Present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12460 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Research, Evaluation and Communication (1210).

Date/Time: June 26, 2000—Rooms 380 & 390 (8am–6pm)

June 27, 2000—Rooms 380 & 390 (8am–6pm)

July 13, 2000—Rooms 380 & 390 (8am–6pm)

July 14, 2000—Rooms 380 & 390 (8am–6pm)

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Elizabeth VanderPutten, Program Director, Research Evaluation and Communications Division National Science Foundation, Room 855, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1650.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate ROLE Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and(6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12446 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

U.S. National Assessment Synthesis Team; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National

Science Foundation announces the following meeting.

Name: U.S. National Assessment Synthesis Team (#5219).

Date and Time: May 31, 2000, 8:30 a.m.–5:30 p.m., June 1, 2000, 8:30 a.m.–3:30 p.m.

Place: Renaissance Hotel, 999 Ninth Street, NW, Washington DC 20001.

Type of Meeting: Open.

Contact Person: Dr. Thomas Spence, National Science Foundation, 4201 Wilson Blvd., Suite 705, Arlington, VA 22230. Tel. 703–306–1502; Fax: 703–306–0372; E-mail: tspence@nsf.gov. Interested persons should contact Ms. Susan Henson at the above number as soon as possible to ensure space provisions are made for all participants and observers.

Minutes: May be obtained subsequent to the meeting from the contact person listed above.

Purpose of Meeting: To review preparation of the report the National Assessment Synthesis Team is preparing for the interagency Subcommittee on Global Change Research to report on the findings of the National Assessment of the potential consequences of climate variability and climate change for the United States.

Agenda: Day 1 (May 31): Members will review technical comments received and will discuss revisions to report; and opportunity for public comment will be provided in later afternoon. Day 2 (June 1): Discussion of technical comments and revisions will continue.

Dated: May 12, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–12454 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Notice

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 65, No. 90/Tuesday, May 9, 2000.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, May 16, 2000.

CHANGE IN MEETING: A majority of the Board Members determined by recorded vote that the business of the Board required moving the Board Meeting date from Tuesday, May 16, 2000 to Wednesday, May 17, 2000 at this time and that no earlier announcement was possible.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: May 15, 2000.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 00–12592 Filed 5–15–00; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423–LA–3; ASLBP No. 00–771–01–LA]

In the Matter of Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit No. 3; Facility Operating License NPF–49); Notice of Oral Argument and Opportunity for Oral Limited Appearance Statements

May 12, 2000.

This proceeding involves the proposed increase in capacity (through the addition of high-density storage racks) of the spent fuel storage pool of the Millstone Nuclear Power Station, Unit No. 3, in New London County, Connecticut. Notice is hereby given that, as described in the Atomic Safety and Licensing Board's Memorandum and Order (Schedules for Proceeding), dated April 19, 2000, the oral argument prescribed by 10 CFR Part 2, Subpart K, §§ 2.1109 and 2.1113 will take place at the Richard Martin Center Auditorium, 120 Broad Street, New London, CT, on Wednesday, July 19, 2000, beginning at 9:00 a.m. To the extent necessary, the oral argument will continue on Thursday, July 20, 2000, at the same location, beginning at 9:00 a.m.

As set forth in the February 9, 2000 Notice of Hearing for this proceeding, 65 FR 7573 (Feb. 15, 2000), the Atomic Safety and Licensing Board, pursuant to 10 CFR 2.715(a), will entertain limited appearance statements from any person who is not a party to the proceeding, for the purpose of stating his or her views on the issues involved in this proceeding. Although these statements are not testimony or evidence and do not become part of the decisional record, they may assist the Licensing Board and the parties in their consideration of matters at issue in this proceeding.

Limited appearance statements may be submitted in writing at any time during this proceeding. In addition, in conjunction with the aforesaid oral argument, the Board has determined to hear oral limited appearance statements, at the Radisson Hotel, Ballroom 1 and 2, 35 Governor Winthrop Blvd., New London, Connecticut, from 7:00–9:00 p.m. on Tuesday, July 18, 2000 (or such lesser time as is necessary to accommodate speakers who are present). Further oral limited appearance statements will be heard on Thursday, July 20, 2000, at the Richard Martin Center Auditorium, for a two-hour period (or such lesser time as is necessary to accommodate speakers who are present) beginning at 9:00 a.m. or following conclusion of the oral argument, if such argument is not completed on July 19. Each oral statement may normally extend for up to approximately 5 minutes.

Written limited appearance statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Rulemaking and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of such statement or request should also be served on the Chairman of this Atomic Safety and Licensing Board, T–3 F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or CXB2@nrc.gov. Those who have filed written requests to make statements will be given preference as to the time of their statements.

Documents related to this proceeding, issued prior to December 1, 1999, are available in print form for public inspection at the Commission's Public Document Room (PDR), 2120 L St. NW, Washington, DC. Documents issued subsequent to November 1, 1999 are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, <http://www.nrc.gov/NRC/ADAMS/index.html>).

For the Atomic Safety and Licensing Board.

Dated at Rockville, Maryland, May 12, 2000.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 00–12550 Filed 5–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–193]

Rhode Island Atomic Energy Commission, Nuclear Research Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of a license amendment to Facility Operating License No. R–95, issued to Rhode Island Atomic Energy Commission (the licensee) for operation of the Rhode Island Atomic Energy Commission Research Reactor.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow extension of the license expiration time from August 27, 2002, to November 28,

2004, for the Rhode Island Atomic Energy Commission Research Reactor. By letter dated March 4, 2000, and supplement dated March 21, 2000, the licensee requested this license extension in accordance with the provisions of 10 CFR 50.90. The licensee submitted an Environmental Report with their supplement dated March 21, 2000.

Need for the Proposed Action

The proposed action is needed to allow continued operation of the Rhode Island Atomic Energy Commission Research Reactor for medical, environmental and physical science research, and development activities beyond the current term of the license.

Environmental Impact of the Proposed Action

The Rhode Island Atomic Energy Commission Research Reactor is on the Narragansett Bay Campus of the University of Rhode Island, in Narragansett, Rhode Island. The research reactor is housed in a metal and concrete building.

The Rhode Island Atomic Energy Commission Research Reactor is a moderate power (2 megawatts), pool-type research reactor. The NRC licensed the facility for operation up to 1 megawatt power level in 1964 and authorized operations up to 2 megawatts in 1968. Since 1964, the facility has operated 1625.4 megawatt-hours per year on average. The NRC ordered conversion from high-enriched to low-enriched uranium fuel in 1993. Data from recent operations, from 1995 to 1999, was assessed. The gaseous radiological release of Argon-41, the primary airborne effluent, has ranged from a high of 236.52 curies (Ci) in 1995 to a low of 50 Ci in 1999. Liquid effluents have been relatively small with the highest value in 1999 at 0.55 mCi. Low-level solid radioactive waste between 1995 and 1999 was 11.6 mCi in 56.8 cubic feet of material.

The Commission concludes that the radiological effects of the continued operation will be minimal based on past radiological releases. The radiological exposures for facility operations have been within regulatory limits. Conditions are not expected to change significantly.

As for potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological effluents and has no other environmental impact. Therefore, no significant non-radiological environmental impacts are associated with the proposed action.

In addition, the environmental impact associated with operation of research reactors has been generically evaluated by the staff and is discussed in the attached generic evaluation. This evaluation concludes that no significant environmental impact is associated with the operation of research reactors licensed to operate at power levels up to and including 2 megawatts thermal. We have determined that this generic evaluation is applicable to operation of the Rhode Island Atomic Energy Commission Research Reactor and that there are no special or unique features that would preclude reliance on the generic evaluation.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action. The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

An alternative to the proposed action for the Research Reactor Facility is to deny the application (*i.e.,* ''no action'' alternative). If the applications is denied, the licensee has indicated that it would apply for license renewal and operate under the timely renewal provisions of 10 CFR 2.109 until the Commission renewed or denied the license renewal application. With operation under timely renewal or renewal, the actual conditions of the reactor would not change. If the Commission denied license renewal, Rhode Island Atomic Energy Commission Research Reactor Operations would stop and decommissioning would be required with a likely small impact on the environment. The environmental impacts of the proposed action and alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Hazards Analysis prepared for the issuance of the license in April 1963.

Agencies and Persons Contacted

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

On March 22, 2000, the staff consulted with the State of Rhode Island Division of Occupational & Radiological Health Official, Charles McMahon, regarding the environmental impact of the proposed action. The State official had no comment.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the 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 March 4, 2000, and supplement dated March 21, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 5th day of April 2000.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Chief, Events Assessment, Generic Communications, and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

Attachment—Environmental Considerations Regarding the Licensing of Research Reactors and Critical Facilities

Introduction

This discussion deals with research reactors and critical facilities which are designed to operate at low power levels, 2 MWt and lower, and are used primarily for basic research in neutron physics, neutron radiography, isotope production, experiments associated with nuclear engineering, training and as a part of a nuclear physics curriculum. Operation of such facilities will generally not exceed a 5-day week, 8-hour day, or about 2000 hours per year. Such reactors are located adjacent to technical service support facilities with convenient access for students and faculty.

Sited most frequently on the campuses of large universities, the reactors are usually housed in already existing structures, appropriately modified, or placed in new buildings that are designed and constructed to blend in with existing facilities. However, the environmental considerations discussed herein are not limited to those which are part of universities.

Facility

There are no exterior conduits, pipelines, electrical or mechanical structures or transmission lines attached to or adjacent to the facility other than for utility services, which are similar to those required in other

similar facilities, specifically laboratories. Heat dissipation is generally accomplished by use of a cooling tower located on the roof of the building. These cooling towers typically are on the order of 10′ × 10′ × 10′ and are comparable to cooling towers associated with the air-conditioning systems of large office buildings.

Make-up for the cooling system is readily available and usually obtained from the local water supply. Radioactive gaseous effluents are limited to Ar-41 and the release of radioactive liquid effluents can be carefully monitored and controlled. Liquid wastes are collected in storage tanks to allow for decay and monitoring prior to dilution and release to the sanitary sewer system. Solid radioactive wastes are packaged and shipped offsite for storage at NRC-approved sites. The transportation of such waste is done in accordance with existing NRC–DOT regulations in approved shipping containers.

Chemical and sanitary waste systems are similar to those existing at other similar laboratories and buildings.

Environmental Effects of Site Preparation and Facility Construction

Construction of such facilities invariably occurs in areas that have already been disturbed by other building construction and, in some cases, solely within an already existing building. Therefore, construction would not be expected to have any significant effect on the terrain, vegetation, wildlife or nearby waters or aquatic life. The societal, economic and aesthetic impacts of construction would be no greater than those associated with the construction of a large office building or similar research facility.

Environmental Effects of Facility Operation

Release of thermal effluents from a reactor of less than 2 MWt will not have a significant effect on the environment. This small amount of waste heat is generally rejected to the atmosphere by means of small cooling towers. Extensive drift and/or fog will not occur at this low power level.

Release of routine gaseous effluents can be limited to Ar-41, which Is generated by neutron activation of air. Even this will be kept as low as practicable by using gases other than air for supporting experiments. Yearly doses to un-restricted areas will be at or below established guidelines in 10 CFR part 20 limits. Routine releases of radioactive liquid effluents can be carefully monitored and controlled in a manner that will ensure compliance with current standards. Solid radioactive wastes will be shipped to an authorized disposal site in approved containers. These wastes should not require more than a few shipping containers a year.

Based on experience with other research reactors, specifically TRIGA reactors operating in the 1 to 2 MWt range, the annual release of gaseous and liquid effluents to unrestricted areas should be less than 30 curies and 0.01 curies, respectively.

No release of potentially harmful chemical substances will occur during normal operation. Small amounts of chemicals and/or high-solid content water may be released from the facility through the sanitary sewer during periodic blowdown of the cooling tower or from laboratory experiments.

Other potential effects of the facility, such as aesthetics, noise, societal or impact on local flora and fauna are expected to be too small to measure.

Environmental Effects of Accidents

Accidents ranging from the failure of experiments up to the largest core damage and fission product release considered possible result in doses that are less than 10 CFR part 20 guidelines and are considered negligible with respect to the environment.

Unavoidable Effects of Facility Construction and Operation

The unavoidable effects of construction and operation involve the materials used in construction that cannot be recovered and the fissionable material used in the reactor. No adverse impact on the environment is expected from either of these unavoidable effects.

Alternatives to Construction and Operation of the Facility

To accomplish the objectives associated with research reactors, there are no suitable alternatives. Some of these objectives are training of students in the operation of reactors, production of radioisotopes, and use of neutron and gamma ray beams to conduct experiments.

Long-Term Effects of Facility Construction and Operation

The long-tern effects of research facilities are considered to be beneficial as a result of the contribution to scientific knowledge and training. Because of the relatively small amount of capital resources involved and the small impact on the environment, very little irreversible and irretrievable commitment is associated with such facilities.

Costs and Benefits of Facility Alternatives

The costs are on the order of several millions of dollars with very little environmental impact. The benefits include, but are not limited to, some combination of the following: conduct of activation analyses, conduct of neutron radiography, training of operating personnel, and education of students. Some of these activities could be conducted using particle accelerators or radioactive sources which would be more costly and less efficient. There is no reasonable alternative to a nuclear research reactor for conducting this spectrum of activities.

Conclusion

The staff concludes that there will be no significant environmental impact associated with the licensing of research reactors or critical facilities designed to operate at power levels of 2 MWt or lower and that no environmental impact statements are required to be written for the issuance of construction permits or operating licenses for such facilities.

[FR Doc. 00–12554 Filed 5–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Experts' Meeting on High-Burnup Fuel Behavior Under Postulated Accident Conditions

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission will hold a meeting to further develop a Phenomena Identification and Ranking Table (PIRT) for fuel rod response to loss of coolant accidents (LOCAs). PIRTs have been used at NRC since 1988, and they provide a structured way to obtain a technical understanding that is needed to address certain issues. About twenty of the world's best technical experts are participating in this activity, and the experts represent a balance between industry, universities, foreign researchers, and regulatory organizations. The current PIRT activity is addressing postulated LOCAs in a BWR and a PWR.

DATES: May 31–June 2, 2000, 8:30 a.m.–5:30 p.m.

ADDRESSES: Room T10A1 (TWFN) of the Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD.

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted on the NRC Web site at *http://www.nrc.gov/RES/meetings.htm* by May 25, 2000. The meeting is open to the public. Attendees will need to obtain a visitor badge at the TWFN building lobby.

FOR FURTHER INFORMATION CONTACT: Dr. Ralph Meyer, SMSAB, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Washington, DC 20555–0001, telephone (301) 415–6789.

Dated at Rockville, Maryland, this 12th day of May 2000.

For the Nuclear Regulatory Commission.

Charles E. Rossi,

Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.

[FR Doc. 00–12555 Filed 5–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Severe Accident Management; Cancellation

The meeting of the ACRS Subcommittee on Severe Accident Management scheduled for May 18, 2000, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland has been canceled. Notice of this meeting was previously published in the **Federal Register** on Monday, May 8, 2000 (65 FR 26644).

Further information contact: Mr. Paul A. Boehnert, cognizant ACRS staff engineer, (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: May 11, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–12552 Filed 5–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Risk Analysis and Evaluation of Regulatory Options for Nuclear Byproduct Material Systems

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG/CR–6642, ''Risk Analysis and Evaluation of Regulatory Options for Nuclear Byproduct Material Systems,'' dated December 1999.

ADDRESSES: Copies of NUREG/CR–6642 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Torre Taylor, Mail Stop TWFN 9-C–24, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7900, e-mail: tmt@nrc.gov.

SUPPLEMENTARY INFORMATION: On August 25, 1999 (64 FR 46456), NRC published draft NUREG/CR–6642, ''Risk Analysis and Evaluation of Regulatory Options for Nuclear Byproduct Material Systems,'' for public comment. All comments received during the comment period were reviewed in the preparation of the final NUREG report. The final version of NUREG/CR–6642 is now available. NUREG/CR–6642 presents a detailed, comparative risk analysis of nuclear byproduct materials, organized into groups of activities or ''systems,'' such as nuclear pharmacy, pool irradiators, and industrial radiography. It also describes the methodology used in the risk analysis and provides the results of the analysis.

Electronic Access

NUREG/CR–6642 will also be available at NRC's web site under Reference Library—Technical Reports or directly at http://www.nrc.gov/NRC/NUREGS/CR6642/index.html.

Dated at Rockville, Maryland, this 10th day of March, 2000.

For the Nuclear Regulatory Commission.

Catherine Haney,

Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 00–12553 Filed 5–17–00; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Statement of Claimant or other Person: OMB 3220–0183.

To support an application for an annuity under Section 2 of the Railroad Retirement Act (RRA) or for unemployment benefits under Section 2 of the Railroad Unemployment Insurance Act (RUIA), pertinent information and proofs must be furnished for the RRB to determine benefit entitlement. Circumstances may require an applicant or other person(s) having knowledge of facts relevant to the applicant's eligibility for an annuity or benefits to provide written statements supplementing or changing statements previously provided by the applicant.

Under the railroad retirement program these statements may relate to changes in annuity beginning date(s), dates for marriage(s), birth(s), prior railroad or non-railroad employment, an applicants request for reconsideration of an unfavorable RRB eligibility determination for an annuity or various other matters. The statements may also be used by the RRB to secure a variety of information needed to determine eligibility to unemployment and sickness benefits. Procedures related to providing information needed for RRA annuity or RUIA benefit eligibility determinations are prescribed in 20 CFR parts 217 and 320 respectively.

The RRB utilizes Form G–93, Statement of Claimant or Other Person to obtain the supplemental or corrective information from applicants or persons needed to determine applicant eligibility for an RRA annuity or RUIA benefits.

The RRB proposes non-burden impacting formatting and editorial changes to Form G–93. The completion time for Form G–93 is estimated at 15 minutes per response. The RRB estimates that approximately 90 Form G–93's are received annually. Completion is voluntary. One response is requested of each respondent.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 00–12531 Filed 5–17–00; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting

Notice of Public Meeting

The meeting of the Railroad Retirement Board which was to be held on May 17, 2000, 9 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611, has been canceled.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board. Phone No. 312–751–4920.

Dated: May 15, 2000.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–12607 Filed 5–16–00; 9:50 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 11a–3; SEC File No. 270–321; OMB Control No. 3235–0358.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 11a–3 Under the Investment Company Act of 1940; Offers of Exchange by Open-End Investment Companies Other Than Separate Accounts

Rule 11a–3 under the Investment Company Act of 1940 [17 CFR 270.11a–3] is an exemptive rule that permits open-end investment companies (''funds''), other than insurance company separate accounts, and funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things: (i) To disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years; and (iii) to give the fund's shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, to provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and to enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

It is estimated that approximately 2,900 funds may choose to rely on the rule, and each fund may spend one hour annually complying with the recordkeeping requirement and another one hour annually complying with the notice requirement. The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N–1A registration statement for funds. The total annual burden associated with the rule thereof, is limited to the recordkeeping and notice requirements under the rule, which is estimated to be 5,800 hours. This estimate represents an increase of 800 hours over the prior estimate of 5,000 hours. This increase in burden hours is attributable to an increase in the estimated number of funds from 2,500 to 2,900. The estimate of average burden hours is made solely for the purposes of the PRA, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: May 11, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–12514 Filed 5–17–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42773; File No. SR–Phlx–00–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending the Exchange's Certificate of Incorporation

May 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2000, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, III, below, which Items have been prepared by the Exchange. On May 3, 2000, the Phlx filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Article Twentieth of its Certificate of Incorporation to add the words ''owner'' and ''member organization'' to the text of Article Twentieth and define the term ''owner.''[4] Article Twentieth authorizes the Phlx Board of Governors (''Board'') to (1) assess fees, dues, and other charges upon members, lessors and lessees of memberships, and holders of permits as the Board may adopt by resolution or set forth in the Rules of the Board, and (2) assess penalties for failure to pay any fees, dues, or other charges owed to the Exchange, including cancellation of a membership or permit and forfeiture of all rights as a member, lessor, lessee, or holder of a permit. Under Article Twentieth the Board may delegate its powers with respect to the assessment of fees, dues, other charges, and penalties to any committee of the Board or the Chairman of the Board. Article Twentieth also provides that fees, dues, other charges, and penalties authorized under the Article are in addition to any fees, dues, other charges or penalties imposed under the By-Laws of the Phlx.

The proposed amendment to Article Twentieth adds ''owners'' and ''member organizations'' to the categories that will be subject to the Board's authority to assess fees, dues, and other charges. In addition, the amendment defines the term ''owner'' for purposes of the Phlx's Certificate of Incorporation and rules. As proposed, ''owner'' is defined as any person or entity who or which is a holder of equitable title to a membership in the Phlx.

The Exchange represents that ''owners'' and ''member organizations'' are implicitly covered under the current text of Article Twentieth; however, the Exchange believes that a direct reference to owners and member organizations will nevertheless help clarify matters relating to the interpretation of those terms. For example, a leasing agreement may expire, resulting in a situation where an owner who formerly leased its membership is not currently leasing that membership. The Exchange believes that the owner remains classified as a ''lessor'' even though the membership currently is not leased,[5] and, therefore, would be included in the current classes specified in Article Twentieth. However, the Exchange believes it is in the best interests of the members, owners and the Exchange to clarify the original intent of Article Twentieth by expanding the classes to include ''owners.''

The Exchange also believes that it is desirable to clarify that ''member organizations'' are intended to be within the scope of entities subject to fees, dues, and other charges imposed pursuant to Article Twentieth. For example, although member organizations are ''owners'' for purposes of Article Twentieth, there may be situations where the Exchange may wish to charge fees, dues, or other charges under Article Twentieth that affect certain classes of owners, such as member organizations, but not others. In such circumstances, an explicit reference to member organizations in Article Twentieth would be helpful.

II. Self-Regulatory Organization's Statement Regarding the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Certificate of Incorporation to specifically permit the Board to impose fees, dues, and other charges upon ''member organizations'' and ''owners.'' The proposed rule change clarifies the Board's authority to allocate dues, fees, and other charges among the Exchange's various constituents, thereby ensuring appropriate distribution of costs relating to maintaining and enhancing the competitive operations of the Exchange.

In addition, the amendment defines the term ''owner'' for purposes of the Exchange's Certificate of Incorporation and rules as any person or entity who or which is a holder of equitable title to a membership in the Exchange. The term ''owner'' is intended to encompass lessors and member organizations who are parties to A-B-C Agreements.[6] Lessors and member organizations that have provided all or part of the funds for the purchase of a membership pursuant to an A-B-C Agreement, are sometimes referred to in the Certificate of Incorporation and rules of the Exchange as holders of equitable title.[7] Therefore, defining the term ''owner'' as a holder of equitable title is consistent with the provisions relating to lessors and member organizations who are parties to A-B-C Agreements (both of whom are types of owners) and should

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Cindy Hoekstra, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 2, 2000 (''Amendment No. 1''). Amendment No. 1 defines the term ''owner'' for purposes of the Certificate of Incorporation. Because of the substantive nature of the amendment, the Commission deems the filing date of the proposed rule change to be the date the amendment was filed, May 3, 2000.

[4] The Commission approved the proposed rule change adopting Article Twentieth. *See* Securities Exchange Act Release No. 42317 (January 5, 2000), 65 FR 2215 (January 13, 2000) (SR–Phlx–99–48).

[5] *See e.g.,* Phlx By-Law, Article I, Section 1–1(f): ''The term 'lessor' means a holder of equitable title to a membership in the Exchange, including a former member of the Exchange, who has leased legal title to his membership to a lessee and has retained equitable title to such membership.'' *See also* Phlx Rule 17.

[6] The parties to an A-B-C Agreement are an employee, general partner, or officer, and the member organization with which such person is associated. *See* Phlx Rule 940.

[7] *See e.g.* Phlx Rules 17 and 940.

provide consistency throughout the Phlx's Certificate of Incorporation and rules.

2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[8] in general, and with Section 6(b)(4)[9] in particular in that it provides for the equitable allocation of reasonable dues, fees and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule imposes no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11] The Exchange represents that the proposed rule change:

''(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition; and

(iii) Does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.''[12]

The Exchange has requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description of the proposed rule change, more than five business days prior to the date of filing the proposed rule change.

The Exchange represents that the operative date of this proposed rule change should be accelerated because the Exchange intends to implement the monthly capital funding fee on all seat owners as part of a long term financing plan.[13] Prior to implementing this fee, the Exchange wants to ensure that it is clear exactly who will be subject to the fee by amending Article Twentieth to add the two categories, ''owner'' and ''member organization,'' and defining ''owner.''[14]

The Commission finds that it is appropriate to designate this proposal to become operative today because such designation is consistent with the protection of investors and the public interest.[15] Specifically, the Commission believes that adding the two additional categories and defining ''owner'' will clarify the original intent of Article Twentieth, and that it is appropriate to accelerate the operative date of the proposed rule change.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW, Washington DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–30 and should be submitted by June 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–12515 Filed 5–17–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release No. 42714 (April 24, 2000), 65 FR 25782 (May 3, 2000).

[14] Telephone conversation between Cindy Hoekstra, Counsel, Phlx, and Marla Chidsey, Attorney, Division of Market Regulation, Commission (May 11, 2000).

[15] 17 CFR 240.19b–4(f)(6)(iii). For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 240.19b–4(f)(6)(iii).

DEPARTMENT OF STATE

[Public Notice #3281]

Shipping Coordinating Committee Council and Technical Cooperation Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:30 a.m. on Thursday, 1 June 2000, in Room 6319, 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 84th session of Council and the 48th Session of the Technical Cooperation Committee of the International Maritime Organization (IMO) which is scheduled for 12–16 June 2000, at the IMO Headquarters in London. Discussions will focus on papers received and draft U.S. positions.

Among other things, the items of particular interest are:

—Reports of Committees;
—Financial Matters;
—Work Program and Budget Prospects for 2000;
—Integrated Technical Cooperation Program/Technical Cooperation Fund

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Director, International Affairs, U.S. Coast Guard Headquarters, Commandant (G–CI), Room 2114, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling: (202) 267–2280.

Dated: May 5, 2000.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 00–12569 Filed 5–17–00; 8:45 am]

BILLING CODE 4710–07–U

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement—Land Between the Lakes Public Use Plan, Lyon and Trigg Countries, Kentucky and Stewart County, Tennessee

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Cancellation Notice.

SUMMARY: On March 1, 1995, TVA published in the **Federal Register** (60 FR 11161–11162) a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) on alternatives for public use at the Land Between The Lakes (LBL) National Recreation Area. On October 1, 1999, pursuant to the Land Between The Lakes Protection Act of 1998, LBL was established as a unit of the National Forest System and administrative responsibility was transferred from TVA to the U.S. Department of Agriculture. The 1995 NOI is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Harold M. Draper, NEPA Administration, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499; telephone (865) 632–6889 or e-mail hmdraper@tva.gov.

Dated: May 5, 2000.

Kathryn J. Jackson,

Executive Vice President, River System Operations and Environment.

[FR Doc. 00–12483 Filed 5–17–00; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week of May 5, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

Docket Number: OST–2000–7333.

Date Filed: May 4, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC12 NMS–ME 0105 dated 18 April 2000, North Atlantic-Middle East Resolution 002L, Special Readopting/Amending Resolution, between Canada, Mexico, USA and Middle East, Intended effective date: 31 May 2000.

Docket Number: OST–2000–7334.

Date Filed: May 4, 2000.

Parties: Members of the International Air Transport Association.

Subject: PTC12 NMS–ME 0106 dated 18 April 2000, North Atlantic-Middle East Resolutions r1–r18, PTC12 NMS–ME 0110 dated 20 April 2000 (Technical Correction), PTC12 NMS–ME 0107 dated 18 April 2000, North Atlantic-Israel Resolution r19–r37, Minutes—PTC12 NMS–ME 0109 dated 20 April 2000, Tables—PTC12 NMS–ME FARES 0057 dated 20 April 2000, Intended effective date: 1 June 2000.

Andrea M. Jenkins,

Federal Register Liaison.

[FR Doc. 00–12557 Filed 5–17–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than July 17, 2000.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number ____.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding: (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce the information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Hours of Service Regulations.

OMB Control Number: 2130–0005.

Abstract: The collection of information is due to the railroad hours of service regulations set forth in 49 CFR Part 228 which require railroads to collect the hours of duty for covered employees, and records of train movements. Railroads whose employees have exceeded maximum duty limitations must report the circumstances. Also, a railroad that has developed plans for construction or reconstruction of sleeping quarters (Subpart C of 49 CFR part 228) must obtain approval of the Federal Railroad Administration (FRA) by filing a petition conforming to the requirements of Sections 228.101, 228.103, and 228.105.

Form Number(s): FRA F 6180.3.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
228.11—Hours of Duty Records	632 railroads	27,375,000 records..	10 min./2 min.	3,735,166	$130,730,810
228.17—Dispatchers of Train Movements	150 Dispatch Offices.	54,750 records.	6 hours	328,500	11,497,500
228.19—Monthly Reports of Excess Service	300 railroads	1,800 reports	2 hours	3,600	63,000
228.103—Construction of Employee Sleeping Quarters	632 railroads	1 petition	16 hours	16	560
45 U.S.C. 61–641—Hours of Service Act	15 railroads	15 petitions	10 hours	150	5,250

Total Responses: 27,431,566.

Estimated Total Annual Burden: 4,067,432 hours.

Status: Regular Review.

Title: Railroad Operating Rules.

OMB Control Number: 2130–0035.

Abstract: The collection of information is due to the railroad operating rules set forth in 49 CFR part 217 which require Class I and Class II railroads to file with FRA copies of their operating rules, timetables, and timetable special instructions, and subsequent amendments thereto. Class III railroads are required to retain copies of these documents at their system headquarters. Also, the collection of information is due to 49 CFR 220.21 (b) which requires railroads to retain one copy of their current operating rules with respect to radio communications and one copy of each subsequent amendment thereto. These documents must be available to FRA upon request.

Affected Public: Businesses.

Respondent Universe: 633 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
217.7—Copy-FRA-operating rules, timetables-ClassI/II.	1 new railroad	2 submission	1 hour	1 hour	$35
—Amendments	32 railroads	96 amendments	20 minutes	32 hours	$1,120
—Copy of operating rules, etc.—ClassIII	20 new railroads	20 submissions	.92 hour	18 hours	$630
—Amendments	632 railroads	1,896 amendment.	.25 hour	474 hours	$16,590
217.9—Copy—prog. for perf. of Operational tests	20 new railroads	20 programs	9.92 hours	198 hours	$6,930
—Amendments	633 railroads	3,165 amendments.	1.92 hours	6,077 hours	$212,695
—Op. Test Records	633 railroads	495,000 test records.	.25 hour	123,750 hours	$4,331,250
—Summary-Tests, etc	55 railroads	55 summaries	7 hours	385 hours	$13.475
217.11–Copy—Inst Prog.—Employees	20 new railroads	20 programs	9.92 hours	198 hours	$6,930
—Amendments	633 railroads	75 amendments	.92 hour	69 hours	$2,380
220.21(b)-Copy-Op. Rules—Radio	Incl. under 217.7	Incl. under 217.7	Incl. under 217.7.	Incl. under 217.7	Incl. under 217.7
—Amendments.					

Total Responses: 500,348

Estimated Total Annual Burden: 131,202 hours.

Status: Regular Review.

Title: State Safety Participation Regulations and Remedial Actions.

OMB Control Number: 2130–0509.

Abstract: The collection of information is set forth under 49 CFR Part 212, and requires qualified state inspectors to provide various reports concerning state investigative, inspection, and and surveillance activities regarding railroad compliance with Federal railroad safety laws and regulations to FRA for monitoring and enforcement purposes. Additionally, railroads are required to report to FRA actions taken to remedy certain alleged violations of law.

Form Number(s): FRA F 6180. 10, 6180.29/29A/33, 6180.61/67/68/68A/69/96/96A/96B

Affected Public: Businesses

Respondent Universe: States and Railroads

Frequency of Submission: On occasion

Reporting Burden:

CFR section	Respondent universe (States)	Total annual responses	Average time per response (hours)	Total annual burden hours	Total annual burden cost
—Application For Participation	15	15 Updates	2.5	38	$1,330
—Training Funding Agreement	30	30 Agreement	1	30	1,050
—Inspector Training Reimbursement	30	300 Vouchers	1	300	10,500
—Annual Work Plan	30	30 reports	15	450	15,750
Inspection Form (FRA F 6180.96)	30	18,000 forms	.25	4,500	126,000
Motive Power and Equipment Violation Report (FRA F 6180.68, 6180.68A/69).	19	150 reports	1	150 hours	4,200
Violation of Oper. Practices Insp. Rpt (Form FRA F 6180.67).	13	40 reports	1	40	1,120
—Application For Participation	15	15 Updates	2.5	38	$1,330
—Training Funding Agreement	30	30 Agreements	1	30	1,050
—Inspector Training Reimbursement	30	300 Vouchers	1	300	10,500
Violation of Hazardous Materials Inspection Rept (Form FRA F 6180.67).	14	100 reports	13	1,300	36,400
Violation of Locomotive Inspection Act Rept. (Form FRA F 6180.10).	17	50 reports	1	50	1,400
Violation of Safety Appliance Law Rpt. (Form FRA F 6180.29/29A).	19	53 reports	1	53	1,484
Violation of Hours of Service Law Rpt. (Form FRA F 6180.33).	13	21 reports	1	21 reports	588
Violation of Accident/Incident Reporting Rules Rpt (Form FRA F 6180.61).	13	10 reports	1	10	280
Remedial Actions Rpt (209.405/407)	32	5,048 reports	.25	1,262	42,908
—Violation Rpt Challenge	[1] 685	1,010 challenges.	1	1,010	34,340
Delayed Reports (209.407)	[1] 685	505 reports	.50	253	8,602

[1] Railroads.

Total Responses: 25,362.

Estimated Total Annual Burden: 9,467 hours.

Status: Regular Review.

Title: Rear-End Marking Devices.

OMB Control Number: 2130–0523.

Abstract: The collection of information is set forth under 49 CFR part 221 which requires railroads to furnish a detailed description of the type of marking device to be used for the trailing end of rear cars in order to ensure rear cars meet minimum standards for visibility and display. Railroads are required to furnish a certification that the device has been tested in accordance with current ''Guidelines for Testing of FRA Rear End Marking Devices.'' Additionally, railroads are required to furnish detailed test records which include the testing organizations, description of tests number of samples tested, and the test results in order to demonstrate compliance with the performance standard.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response (hours)	Total annual burden hours	Total annual burden cost
Requests for Approval of Marking Devices & Signed Certification by Chief Operating Officer.	685 railroads	2 requests	4	8	$280
Recordkeeping—Requests for Marking Devices	685 railroads	2 records	.10	.20	7
Recordkeeping—Detailed Test Records	685 railroads	1 test record	20	20	700

Total Responses: 5.

Estimated Total Annual Burden: 28.2 hours.

Status: Regular Review.

Title: Certification of Glazing Materials.

OMB Control Number: 2130–0525.

Abstract: The collection of information is set forth under 49 CFR part 223 which requires the certification and permanent marking of glazing materials by the manufacturer along with the responsibility of the manufacturer to make available test verification data to railroads and FRA upon request.

Affected Public: Businesses.

Respondent Universe: 5 manufacturers.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe (manufacturers)	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
Requests—Glazing Certification Info	5	75 requests	15 minutes	19	$475
Preparing/Recording Glazing Marking Information	5	25,000 pieces ...	.0021 minutes ...	52	1,300
Certification Test	5	1 test	14 hours	14	1,120

Total Responses: 76.

Estimated Total Annual Burden: 85 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, D.C. on May 12, 2000.

Margaret B. Reid,

Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 00–12568 Filed 5–17–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Alaska Railroad Corporation

[Docket Number FRA–2000–7350]

The Alaska Railroad Corporation (ARR) seeks a temporary waiver of compliance with a provision of the Passenger Equipment Safety Standards (49 CFR part 238). ARR has been transporting full-length dome cars owned by Westours Motorcoaches, Inc. since 1987. ARR states that the cars currently have two emergency exits on each side of the car located in the staggered hallways (a total of four emergency exits per car located mid-way between the upper main level and a small lower level). Westours Motorcoaches, Inc. determined that the placement of the current emergency exits did not comply with 49 CFR 238.113(a) which addresses the number and location of emergency exits. Accordingly, Westours contracted for retrofit of existing dome cars to comply with section 238.1139(a). Although delivery of compliant emergency windows was originally scheduled for April 1, 2000, due to technical problems, delivery may not be accomplished until as late as August 1, 2000.

ARR is therefore requesting a temporary waiver from section 238.113(a) until August 1, 2000 to permit it to use Westours Motorcoaches, Inc. dome cars in revenue and non-revenue service until that time.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g. Docket No. FRA–2000–7350) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590. Communications received within 15 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 am—5:00 pm) at the above facility.

All documents in the public docket are also available for inspection and copying on the internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on May 11, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–12567 Filed 5–17–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2000–7354; Notice 1]

Honda Motor Co., Ltd.; Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

Honda Motor Co. Ltd. (''Honda''), a Japanese corporation, through American Honda Motor Co., Inc., of Torrance, California, has applied for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays.* The basis of the request is that ''compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles,'' 49 U.S.C. 30113(b)(3)(B)(iv).

We are publishing this notice of receipt of an application in accordance with the requirements of 49 U.S.C. 30113(b)(2). This action does not represent any judgment of the agency on the merits of the application.

Honda has applied on behalf of its NSS250 motor scooters. The scooters are defined as ''motorcycles'' for purposes of compliance with the Federal motor vehicle safety standards.

If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control (the left handlebar is permissible only for a motor driven cycle (Item 11, Table 1), i.e., a motorcycle with a motor that produces 5 brake horsepower or less).

Honda petitions that it be allowed to use the left handlebar as the control for the rear brakes of its NSS250, which is a motorcycle and not a motor driven cycle. The model features an automatic transmission that eliminates the left-hand clutch lever as well as any left-foot gearshift lever. This leaves the left hand of the rider free to operate a brake lever. In Honda's opinion, ''removal of the left-handlebar clutch lever, left-foot-controlled gearshift lever and right-foot-controlled rear brake pedal result in simpler operation.'' Honda points out that NHTSA exempted three other motorcycle manufacturers from this requirement of S5.2.1. in 1999 (Aprilia, 64 FR 44262; Vectrix, 64 FR 45585; and Italjet, 64 FR 58127).

Honda argues that the overall level of safety of the scooters equals or exceeds that of a motorcycle that complies with the brake control location requirement of Standard No. 123. Unlike the other exempted motorcycles, the NSS250 is equipped with a ''combined brake system'' which ''provides single-point, front- and rear-wheel braking action.'' The vehicle meets the braking performance requirements ''of both FMVSS 122 and ECE78.'' The company submitted test results demonstrating that the braking performance of the NSS250 with its combined brake system is better than that of a scooter without the combined brake system. For the second effectiveness test, for example, the NSS250 stopped in shorter distances than a Honda model equipped with a foot brake, that is to say, from a maximum speed of 65.4 mph in 165 feet (compared with 178 feet), and, from 30 mph, in 38 feet (compared with 40 feet).

Honda has developed the NSS250 for the world market. In Europe, Japan, and other Asian countries, scooters are equipped with handlebar-mounted front and rear brakes. Absent an exemption, then, Honda will be unable to sell the NSS250 in the United States. The cost to conform the NSS250 to comply with Standard No. 123 ''would add considerable cost to the product'' and result in a motorcycle that would not be competitive.

Honda will not sell more than 2,500 scooters a year while an exemption is in effect. It believes that an exemption would be in the public interest and consistent with the objectives of traffic safety because ''the level of safety is equal to similar vehicles certified under FMVSS No. 123.''

You may submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. You should send at least two copies.

We shall consider all comments received before the close of business on the comment closing date indicated below. Comments will be available for examination in the docket at the above address both before and after that date. The Docket Room is open from 10:00 a.m. until 5:00 p.m. To the extent possible, comments filed after the closing date will also be considered.

We shall publish a notice of final action on the application pursuant to the authority indicated below.

Comment closing date: June 19, 2000.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on May 11, 2000.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 00–12556 Filed 5–17–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–32 (Sub-No. 89)]

Boston and Maine Corporation—Abandonment—In Middlesex County, MA

On April 28, 2000, the Boston and Maine Corporation (B&M) filed with the Surface Transportation Board (Board), Washington, DC 20423, an application for permission to abandon and discontinue service on a line of railroad known as the Bemis Branch in Waltham and Watertown, MA, extending from milepost 8.83 to milepost 10.94, a distance of 2.11 miles, in Middlesex County, MA. The line traverses U.S. Postal Service Zip Codes 02451 and 02472. Applicant indicated that there are no agency stations located on the line.

The line does not contain federally granted rights-of-way. Any documentation in B&M's possession will be made available promptly to those requesting it. The applicants' entire case for abandonment and discontinuance was filed with the application.

The line of railroad has appeared on B&M's system diagram map or has been included in its narrative in category 1 since January 26, 1999.

The interest of railroad employees will be protected by *Oregon Short Line Railroad Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment and discontinuance or protests (including the protestant's entire opposition case), by June 12, 2000. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29 of the Board's rules) must be filed by June 12, 2000. Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance, pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

Parties seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB No. AB–32 (Sub-No. 89) and should be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, no later than June 12, 2000. Interested persons may file a written comment or protest with the Board to become a party to this proceeding. A copy of each written comment or protest shall be served upon the applicant's representative, Robert B. Culliford, Boston and Maine Corporation, Iron Horse Park, North Billerica, MA 10862. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned and discontinued will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment and discontinuance, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Decided: May 15, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–12587 Filed 5–17–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–57 (Sub–No. 51)]

Soo Line Railroad Company—Abandonment—in Roberts County, SD

On April 28, 2000, Soo Line Railroad Company, d/b/a Canadian Pacific Railway (Soo) filed with the Surface Transportation Board (Board) an application for permission to abandon a portion of its line of railroad known as the Veblen Line, extending from milepost 208.8 near Rosholt to the end of the line at milepost 228.2 west of Claire City, a distance of 19.4 miles, in Roberts County, SD. The line includes the stations of Victor (milepost 213.8), New Effington (milepost 218.3), Hammer (milepost 223.4), Claire City (milepost 227.3), and Veblen (milepost 236.3), and traverses U.S. Postal Service ZIP Codes 57260, 57255, and 57224.

The line does not contain federally granted rights-of-way. Any documentation in Soo's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment (case-in-chief) was filed with the application.

The line of railroad has appeared on Soo's system diagram map or has been included in its narrative in category 1 since 1998.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), by June 12, 2000. All interested persons should be aware that, following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) or for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by June 12, 2000. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27). Applicant's reply to any opposition statements and its response to trail use requests must be filed by June 27, 2000. *See* 49 CFR 1152.26(a).

Persons opposing the abandonment that wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25. Persons interested only in seeking public use or trail use conditions should also file comments.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance (OFA) for continued rail service under 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

All filings in response to this notice must indicate the proceeding designation STB Docket No. AB–57 (Sub-No. 51) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Diane P. Gerth, Leonard, Street, and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,000 filing fee. See 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: May 10, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–12308 Filed 5–17–00; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register
Vol. 65, No. 97
Thursday, May 18, 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.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27174]

Filings Under the Public Utility Holding Company Act of 1935, As Amended (''Act'')

Correction

In notice document 00–11961 beginning on page 30650 in the issue of Friday, May 12, 2000, make the following correction:

On page 30650, in the third column, in the first paragraph under the heading *Financings*, in the seventh line down, ''March 31, 2000'' should read ''March 31, 2002.''

[FR Doc. C0–11961 Filed 5–17–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
May 18, 2000

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 922

Florida Keys National Marine Sanctuary Regulations; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 000510129–0129–01]

RIN 0648–A018

Florida Keys National Marine Sanctuary Regulations

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; proposed boundary expansion; summary of draft supplemental management plan for expansion area; public availability of draft supplemental management plan of expansion area; public hearings.

SUMMARY: By this document, NOAA is proposing to expand the boundary of the Florida Keys National Marine Sanctuary (FKNMS or Sanctuary) in the remote westernmost portion of the Sanctuary by 96 square nautical miles (nm^2) and to establish a 151 nm^2 no-take ecological reserve in the expanded area and in 55 nm^2 of the existing Sanctuary, to protect important coral reef resources.

This action is necessary to comprehensively protect some of the healthiest and most diverse coral reefs in the Florida Keys. The intended effect of this proposed rule is to protect the deepwater coral reef community in this area from being degraded by human activities.

DATES: Comments will be considered if received by July 31, 2000. For dates of hearings, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Written comments must be submitted to Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, Florida, 33050. Comments may also be sent by facsimile to: (305) 743–2357. Comments will not be considered if submitted by e-mail or internet. For addresses of hearings, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Billy Causey, Sanctuary Superintendent, (305) 743–2437.

SUPPLEMENTARY INFORMATION: NOAA proposes to establish a no-take ecological reserve in the Tortugas region of the Florida Keys to protect nationally significant coral reef resources and to protect an area that serves as a source of biodiversity for the Sanctuary as well as for the southwest shelf of Florida. Establishment of the proposed reserve would include expansion of the Sanctuary boundary to ensure that the reserve protects sensitive coral habitats lying outside the existing boundary of the Sanctuary.

This document publishes the coordinates for the proposed expansion area and for the proposed ecological reserve, summarizes the draft supplemental management plan for the proposed ecological reserve and publishes the text of the Proposed Revised Designation Document for the Sanctuary. The draft supplemental management plan details the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities, for the proposed ecological reserve. By this document, NOAA also proposes regulations to implement the proposed boundary expansion and establishment of an ecological reserve and to regulative activities in the reserve consistent with the purposes of its establishment and to make minor revisions to the existing Sanctuary boundary and to the boundaries of various zoned areas within that boundary to correct errors, provide clarification, and reflect more accurate data. NOAA will announce shortly the public availability of the Draft Supplement Environmental Impact Statement/Draft Supplemental Management Plan (DSEIS/SMP) prepared for the proposed expansion and proposed establishment of the ecological reserve.

Public hearings on the proposed actions and on the DSEIS/SMP will be held on the following locations on the dates and times indicated:

June 12, 2000: Homestead Senior High School, SE 12th Avenue, Homestead, FL, Main Cafeteria; 3:00–8:00 p.m.

June 13, 2000: Comfort Inn Executive Suites, 3860 Toll Gate Blvd., Naples, FL, 2nd Floor Conference Room; 3:00–8:00 p.m.

June 14, 2000: University of South Florida, Campus Activities Center, 2nd Street and 6th Avenue South, St. Petersburg, FL, CAC Central Room; 3:00–8;00 p.m.

June 21, 2000: The Sombrero Country Club, 4000 Sombrero Blvd., Marathon, FL Nautilus Room, 3:00–8:00 p.m.

June 22, 2000: Holiday Inn Beachside, 3841 N. Roosevelt Blvd., Key West, FL, Main Ballroom; 3:00–8:00 p.m.

July 11, 2000: U.S. Department of Commerce, Herbert C. Hoover Building, First Floor, HCHB Auditorium, Washington, D.C., 2:00–5:00 p.m.

The FKNMS, which was designated by the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA, Pub. L. 101–605) on November 16, 1990, consists of aproximately 2800 nm^2 (9500 square kilometers) of coastal and oceanic waters, and the submerged lands thereunder, surrounding the Florida Keys and the Dry Tortugas. These waters contain the marine equivalent of tropical rain forests in that they support high levels of biological diversity, are fragile and easily susceptible to damage from human activities, and possess high value to human beings if properly conserved. These environments support a vibrant tourist-based economy worth more than $1.2 billion per year. The management plan (MP) for the Sanctuary was implemented by regulations that became effective on July 1, 1997.

The FKNMS currently contains a network of 23 no-take zones, one of which is an ecological reserve (Western Sambo Ecological Reserve). This proposal would establish a second ecological reserve to protect the nationally significant coral reef resources of the Tortugas area. This proposal is being made to further the objectives of the National Marine Sanctuaries Act (NMSA, 16 U.S.C. § 1431 *et seq.*) and the FKNMSPA and to meet the objectives of Executive Order 13089, Coral Reef Protection.

The Torugas is located in the westernmost portion of the FKNMS approximately 70 miles west of Key West, a very strategic position oceanographically that makes it an ideal location for an ecological reserve. It contains the healthiest coral reefs found in the Sanctuary. Coral pinnacles as high as forty feet with the highest coral cover (>30%) found in the Keys jut up from the ocean floor. These coral formations are bathed by some of the clearest and cleanest waters found in the Florida Keys. This occurs where the tropical waters of the Caribbean mingle with the more temperate waters of the Gulf of Mexico.

Recent studies reveal that the Tortugas region is unique in its location and the extent to which oceanographic processes impact the area. The Tortugas plays a dynamic role in supporting marine ecosystems throughout south Florida and the Florida Keys. Larvae that are spawned from adult populations in the Tortugas are spread throughout the Keys and south and southwest Florida by a persistent system of currents and eddies that provide the retention and current pathways necessary for successful recruitment of both local and foreign spawned

juveniles with larval stages remaining from hours for some coral species up to one year for spiny lobster. In addition, the upwellings and convergences of the current systems provide the necessary food supplies in concentrated frontal regions to support larval growth stages.

The Tortugas is located at the transition between the Gulf of Mexico and the Atlantic and is strongly impacted by two major current systems, the Loop Current in the eastern Gulf of Mexico and the Florida Current in the Straits of Florida, as well as by the system of eddies that form and travel along the boundary of these currents. Of particular importance to the marine communities of the Tortugas and Florida Keys is the formation of a large counterclockwise rotating gyre (large eddy) that forms just south of the Tortugas where the Loop Current turns abruptly into the Straits of Florida. This gyre can persist for several months before it is forced downstream along the Keys decreasing in size and increasing in forward speed until its demise in the middle Keys. This gyre serves as a retention mechanism for local recruits and as a pathway to inshore habitats for foreign recruits. It may also serve as a potential food provider through plankton production and concentration.

The Tortugas is also located adjacent to two coastal current systems, including the wind-driven currents of both the Florida Keys coastal zone and the west Florida Shelf. Persistent westward winds over the Keys create a downwelling system that drives a westward coastal countercurrent along the lower Keys to the Tortugas. The countercurrent provides a return route to the Tortugas and its gyre-dominated circulation, and onshore surface Ekman transport (a process whereby wind-driven upwelling bottom water is transported 45 degrees to the left of the actual wind direction in the northern hemisphere) provide a mechanism for larval entry into coastal habitats. Circulation on the west Florida shelf is strongly influenced by wind forcing, but there also appears to be a significant southward mean flow, possibly due to the Loop Current. The effect of these currents on the Tortugas is to provide a larval return mechanism to the Florida Bay nursery grounds during periods of southeast winds, as well as the transport mechanism for low-salinity shelf waters from the north when the mean southward flow is strong.

The combination of downstream transport in the Florida Current, onshore Ekman transport along the downwelling coast, upstream flow in the coastal countercurrent and recirculation in the Tortugas gyre forms a recirculating recruitment pathway stretching from the Dry Tortugas to the middle Keys that enhances larval retention and recruitment into the Keys coastal waters of larvae spawned locally or foreign larvae from remote upstream areas of the Gulf of Mexico and Caribbean Sea. Convergences between the Florida Current front and coastal gyres provide a mechanism to concentrate foreign and local larvae, as well as their planktonic food supply. Onshore Ekman transport and horizontal mixing from frontal instabilities enhance export from the oceanic waters into the coastal zone. A wind- and gyre-driven countercurrent provides a return leg to aid larval retention in local waters. Seasonal cycles of the winds, countercurrent and Florida Current favor recruitment to the coastal waters during the fall when the countercurrent can extend the length of the Keys from the Dry Tortugas to Key Largo, onshore Ekman transport is maximum and downstream flow in the Florida Current is minimum. The mix and variability of the different processes forming the recruitment conveyor provide ample opportunity for local recruitment of species with larval stages ranging from days to several months. For species with longer larval stages, such as the spiny lobster, which has a six to 12-month larval period, a local recruitment pathway exists that utilizes retention in the Tortugas gyre and southwest Florida shelf and return via the Loop Current and the Keys conveyor system. Return from the southwest Florida shelf could also occur through western Florida Bay and the Keys coastal countercurrent, due to a net southeastward flow recently observed connecting the Gulf of Mexico to the Atlantic through the Keys.

Two coral reef areas of unusual biological diversity and abundance would be included in the proposed ecological reserve: Sherwood Forest and Riley's Hump. Sherwood Forest is an area of low relief but high coral cover on the northwest flank of Tortugas Bank, lying just outside the existing Sanctuary boundary. The area's name was inspired by the bizarre mushroom-shaped coral heads that are an adaptation to the low light conditions. There seem to be indications that the mushroom shape is the result of a composite of two coral species. The coral reef is so well developed, that it forms a veneer over the true bottom approximately three feet (ft) below the reef. This veneer is riddled with holes and caves, providing ideal habitats for a high diversity of fish. Soft corals, gorgonian forests, sponges, and black corals are also present. Coral abundance exceeds 30% cover in many areas, compared to 10% for the rest of the Florida Keys.

Riley's Hump is a deep reef terrace (22–27 meters (m) deep) dominated by algae interspersed with coral, located approximately 10 nm southwest of the dry Tortugas National Park (DRTO). It is not known for spectacular coral formations but for its richness of fish and other marine life. A small population of sargassum, or red-tailed triggerfish, is among the unique species found in the area. Large pelagic fish (tunas, jacks, and sharks) are common in the area as well as dolphins. Evidence suggests that this low profile reef is an aggregation or spawning site for snapper-grouper species, including gray, cubera, mutton, dog, red and yellowtail snapper, black grouper and ocean triggerfish. The deeper water habitats to the south of Riley's Hump contain important habitat for red and goldeye snapper, tilefish, golden crab and snowy grouper.

Despite its beauty and productivity, the Tortugas has been exploited for decades, greatly diminishing its potential as a source of larval recruits to the downstream portion of the Florida Keys and to itself. Fish and lobster populations have been significantly depleted thus threatening the integrity and natural dynamics of the ecosystem. Currently large freighters use Riley's Hump as a secure place to anchor between port visits. The several-ton anchors and chains of these ships are devastating large areas of fragile coral reef habitat that provide the foundation for economically important fisheries.

Visitation to the Tortugas region has increased dramatically over the past 10 years. Visitation in the DRTO increased 400% from 1984 through 1998. The population of South Florida is projected to increase from the current 6.3 million people to more than 12 million by 2050. With continued technological innovations such as global positioning systems (GPS), electronic fish finders, better and faster vessels, this increase in population will translate to more pressure on the resources in the Tortugas. By designating this area an ecological reserve, NOAA hopes to create a seascape of promise—a place where the ecosystem's full potential can be realized and a place that humans can experience, learn from and respect. This goal is consistent with E.O. 13089, Coral Reef Protection, and the U.S. Coral Reef Task Force's recommendations.

This DSEIS/SMP supplements the FEIS/MP for the Sanctuary. Further, because this proposed reserve includes a Sanctuary boundary expansion, this

DSEIS/SMP is developed pursuant to section 304(a)(2) of the NMSA, 16 U.S.C. § 1434(a)(2), consistent with, and in fulfillment of, the requirements of the National Environmental Policy Act of 1969.

Four other actions under various jurisdictions are underway to ensure comprehensive protection of the unique resources of the Tortugas region (Fig. 1):

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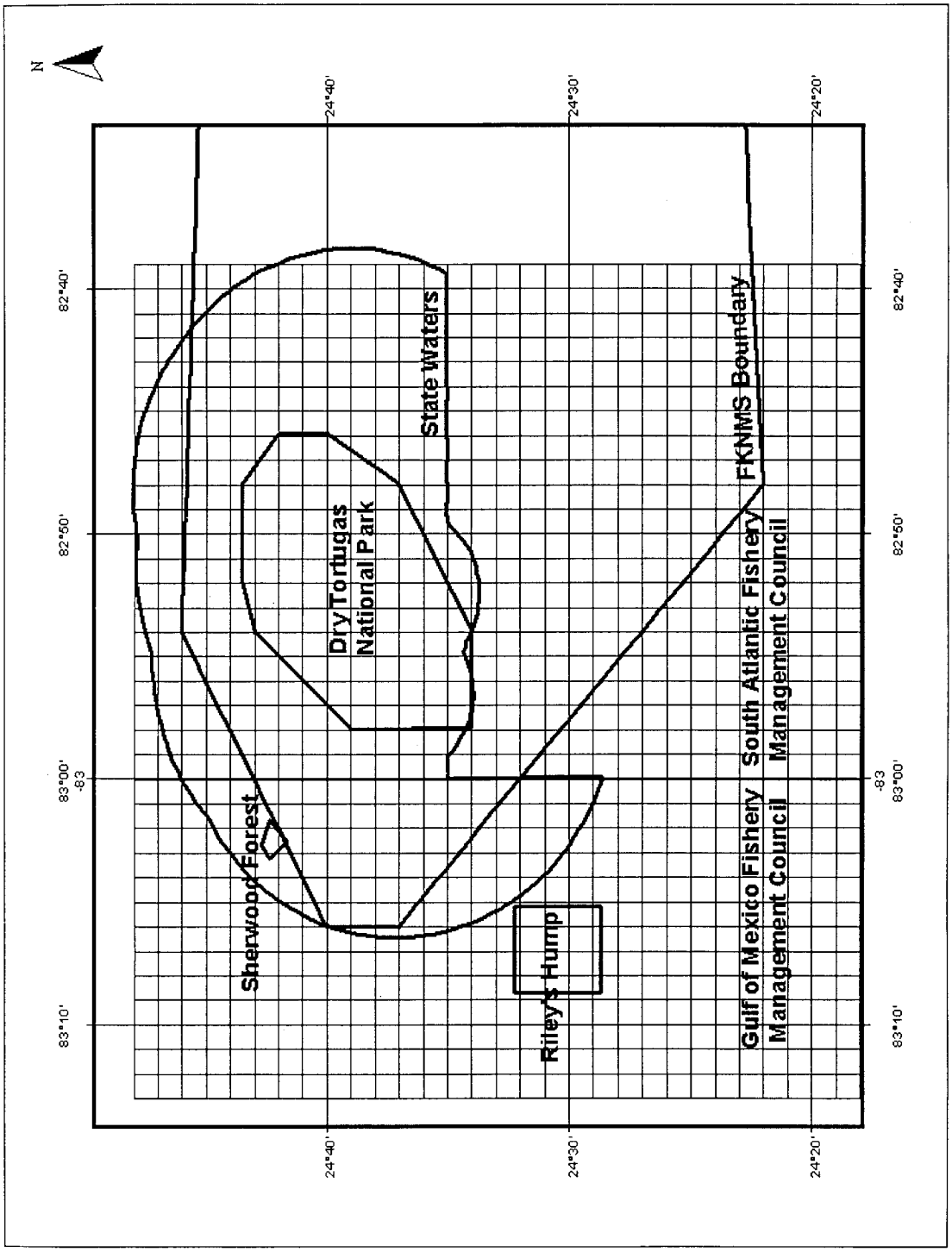

Figure 1. Tortugas Ecological Reserve Study Area (TERSA) showing resource agency jurisdictions and two coral banks: Sherwood Forest and Riley's Hump. The grid represents the study area for the proposed reserve and was used as a framework for collecting and organizing data and designing the proposed reserve (each grid cell represents one minute by one minute of latitude or approximately one square nautical mile.

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• The National Park Service (NPS) is revising the General Management Plan for the DRTO that will include as the preferred alternative a proposal to create a Research/Natural Area (RNA) within the Park. The proposed boundary and regulations for the RNA will be compatible with NOAA's proposed ecological reserve.

• Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Gulf of Mexico Fishery Management Council (GMFMC) has primary federal responsibility and expertise for the development of fishery management plans (FMPs) throughout the Gulf of Mexico and has developed an Essential Fish Habitat Amendment to the Gulf of Mexico Fishery Management Plan (GMFMP) which includes the area of the proposed ecological reserve. The GMFMP is implemented by regulations promulgated by the National Marine Fisheries Service (NMFS) (50 CFR part 622). At the GMFMC's meeting on November 9, 1999, the FKNMS and NMFS requested that the GMFMC take steps to prohibit fishing, consistent with the purpose of the proposed ecological reserve. The GMFMC accepted this request and is now working toward amending the GMFMP to prohibit fishing in the proposed area. At its meeting on March 21, 2000, the GMFMC considered an options paper on the proposed Tortugas Ecological Reserve and voted to proceed with a preferred alternative that would be consistent with the no-take status of the reserve. Based on the GMFMC's action, the regulations for the ecological reserve proposed by the FKNMS would also prohibit fishing. Because the GMFMC's action is not yet final and NMFS has not issued final regulations to implement that action, the proposed ecological reserve regulations would state that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that the GMFMC's action and NMFS implementation would prohibit fishing in the location of the proposed Tortugas Ecological Reserve). The FKNMS regulations prohibiting fishing would be consistent with the GMFMC's preferred alternative.

• NMFS is amending the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks to be consistent with the no-take status of the proposed reserve.

• The State of Florida is drafting fishing regulations to prohibit fishing in those portions of Tortugas North that lie within State waters. Sanctuary regulations implementing the reserve would not become effective in State waters until approved by the State of Florida.

Combined with the establishment of the proposed ecological reserve, these actions would result in comprehensive protection for the nationally significant coral reef habitats from shallow to deep water extending from the Park into Sanctuary and GMFMC waters.

Process To Define a Proposed Ecological Reserve Boundary

Since 1991, NOAA has been concerned about the need to better protect the Tortugas area. This need is documented in the Draft and Final Environmental Impact Statement (EIS)/ Management Plans for the Sanctuary (DOC 1995 and 1996). In the Draft Environmental Impact Statement and Draft Management Plan (DEIS/MP), NOAA proposed a boundary for a 110 nm^2 Replenishment Reserve (Ecological Reserve) in the Tortugas area to protect significant coral resources while minimizing or avoiding adverse impacts to users. Public comment indicated that the then-proposed boundary would not protect the most significant coral reef resources and identified serious adverse economic impacts on commercial fishers from the then-proposed boundary and then-proposed no-take regulations. Accepting these comments, NOAA postponed establishing a reserve and went back to the drawing board by convening an *ad hoc* 25-member Working Group (WG) of the Sanctuary Advisory Council (SAC), composed of key stakeholder representatives, eight SAC members, and government agency representatives with resource management authority in the Tortugas area to recommend a ''preferred boundary alternative'' for the reserve.

One of the key stakeholders in the WG process was the NPS because of its stewardship of the DRTO which is surrounded by but jurisdictionally separate from the FKNMS. The NPS's involvement in the design of the reserve was critical because of the important shallow water coral reef resources found within the Park and the connectivity of those resources with surrounding Sanctuary waters. Coordination with the NPS was further motivated by the fact that the Park is revising its general management plan concurrent with the design of the ecological reserve and is considering making part of the Park a no-take area.

The process to develop the proposed ecological reserve can be described in three phases. The design phase (Phase I) took place from April 1998 to June 1999 and culminated with the SAC's recommendation and NOAA's acceptance of a preferred boundary. Phase II is the development of this DSEIS/SMP and solicitation of public comments on them. Phase III will be the development of a Final Supplemental Environmental Impact Statement/Final Supplemental Management Plan (FSEIS/MP), responding to public comment and establishing the reserve.

The WG collaborated and reached agreement on a recommendation to the State of Florida and the SAC regarding a preferred alternative for an ecological reserve in the Tortugas area. The WG developed criteria for evaluating a broad range of location, size and regulatory alternatives.

Over a 13-month period, the WG met five times and built up a knowledge base on the Tortugas region using scientific information provided by Sanctuary staff, personal knowledge, information received from constituents, and anecdotal information. To inform the WG of the resources and human uses of the area, two forums were held: one on ecological aspects of the region and one on socioeconomic uses. Scientists and knowledgeable locals were invited to present their information to the WG. The Tortugas 2000 website (http://www.fknms.nos.noaa.gov/tortugas) was a critical tool for disseminating information and was constantly updated as the process evolved and products were produced.

The Sanctuary and the NPS commissioned an ecological site characterization document composed of three chapters covering: physical oceanography and recruitment; fish and fisheries; and benthic communities. The information contained in these analyses was used to inform the WG of the resources and uniqueness of the Tortugas region and the data was used to create geographic information system (GIS) maps of the resources.

In addition to the ecological information, socioeconomic data was gathered from the commercial and recreational users of the area. It was first determined that approximately 105–110 commercial fishermen used the area. Information was collected on catch, costs, and trips from 90 of the fishermen. These 90 fishermen caught more than 90% of the total harvest from the Tortugas. The entire population of recreational charter users was interviewed and data on trips and costs were obtained. The commercial and recreational data were input into a GIS format and maps were produced showing use intensity.

A critical aspect of this GIS data was the creation of maps with a consistent scale and a consistent grid cell

framework so comparisons could be made between the maps. The study area was partitioned into one minute by one minute (approximately one nm^2) grid cells which facilitated the collection and analysis of data and the creation of boundary alternatives.

In February, the WG developed criteria for the ecological reserve that addressed ecological and socioeconomic concerns. On April 7, 1999, a packet of GIS maps was sent to the WG to assist in formulating draft alternatives. At its April 22–23 meeting, the criteria were first prioritized by the entire WG and then, in order to develop a broad range of alternatives, the WG broke into two groups: those who were conservation-oriented and those who were use-oriented. The groups reprioritized the criteria according to their interests, resulting in a less protective profile and a more protective profile. This exercise produced a matrix of criteria profiles that were used to develop the draft alternatives. In order to develop alternatives, the WG was broken up into four groups of varied perspectives (this was done to facilitate the development of a consensus).

These groups convened around roundtables and were presented with large, blank grid maps with corresponding transparent overlays. They also had workbooks showing maps of resources and uses. Each group was instructed to develop one alternative for each criteria profile. Observers who were not WG members were allowed to provide input into the drawing of the maps. Twelve draft alternatives were produced representing a range of protection options.

At the May 22 meeting, the WG chose two of the 12 alternatives to focus on and from those two alternatives a compromise arose that was presented by members of the WG. After considerable deliberation, this compromise was ultimately endorsed by the WG through consensus as the recommended ''preferred alternative.''

The preferred alternative would expand the boundary of the Sanctuary by approximately 96 nm^2 to include two significant coral reef areas known as Sherwood Forest and Riley's Hump and establish a Tortugas Ecological Reserve of approximately 151 nm^2. This alternative would expand the boundary of the Sanctuary in its northwesternmost corner by approximately 36 nm^2 to include Sherwood Forest and would expand the boundary in its southwesternmost corner by adding a noncontiguous area of approximately 60 nm^2 to include Riley's Hump. The proposed ecological reserve would also incorporate approximately 55 nm^2 of the existing Sanctuary in its northwest corner. The area of the proposed Tortugas Ecological Reserve surrounding Sherwood Forest would encompass approximately 91 nm^2 and would be called Tortugas North; the area surrounding Riley's Hump would be called Tortugas South.

On June 15, 1999, a presentation on the WG's process and recommended preferred alternative was given to the SAC. Following a lengthy and thorough deliberation the SAC voted unanimously to adopt the recommendation of the WG and forward it to NOAA and the State of Florida.

In developing the boundary alternatives presented in this document, Sanctuary staff took into consideration the deliberations of the WG, the recommendation of the SAC, the requirements of the FKNMSPA, National Marine Sanctuaries Act and NEPA, and the NPS's proposed Research/Natural Area alternative. Sanctuary staff developed five boundary alternatives for analysis which represent a broad range of areas for protection. The basis for these alternatives was the SAC's recommended preferred boundary alternative as well as the two alternatives that the WG chose to focus on at their final meeting. The alternatives were modified in order to create a broad range of options for consideration.

Boundary Alternative I. This alternative would be taking no action, that is, not expanding the boundary of the Sanctuary and not establishing a Tortugas Ecological Reserve.

Boundary Alternative II (Fig. 2). This alternative would establish a Tortugas Ecological Reserve of approximately 55 nm^2 in the northwesternmost portion of the existing Sanctuary boundary.

Areas within the SAC's recommended reserve boundary that would be not protected by this alternative would have to be protected by the relevant management agency. This alternative includes a portion of Sherwood Forest and the coral pinnacles north of Tortugas Bank; it does not include Riley's Hump. It includes some coral and hardbottom habitat north of the DRTO.

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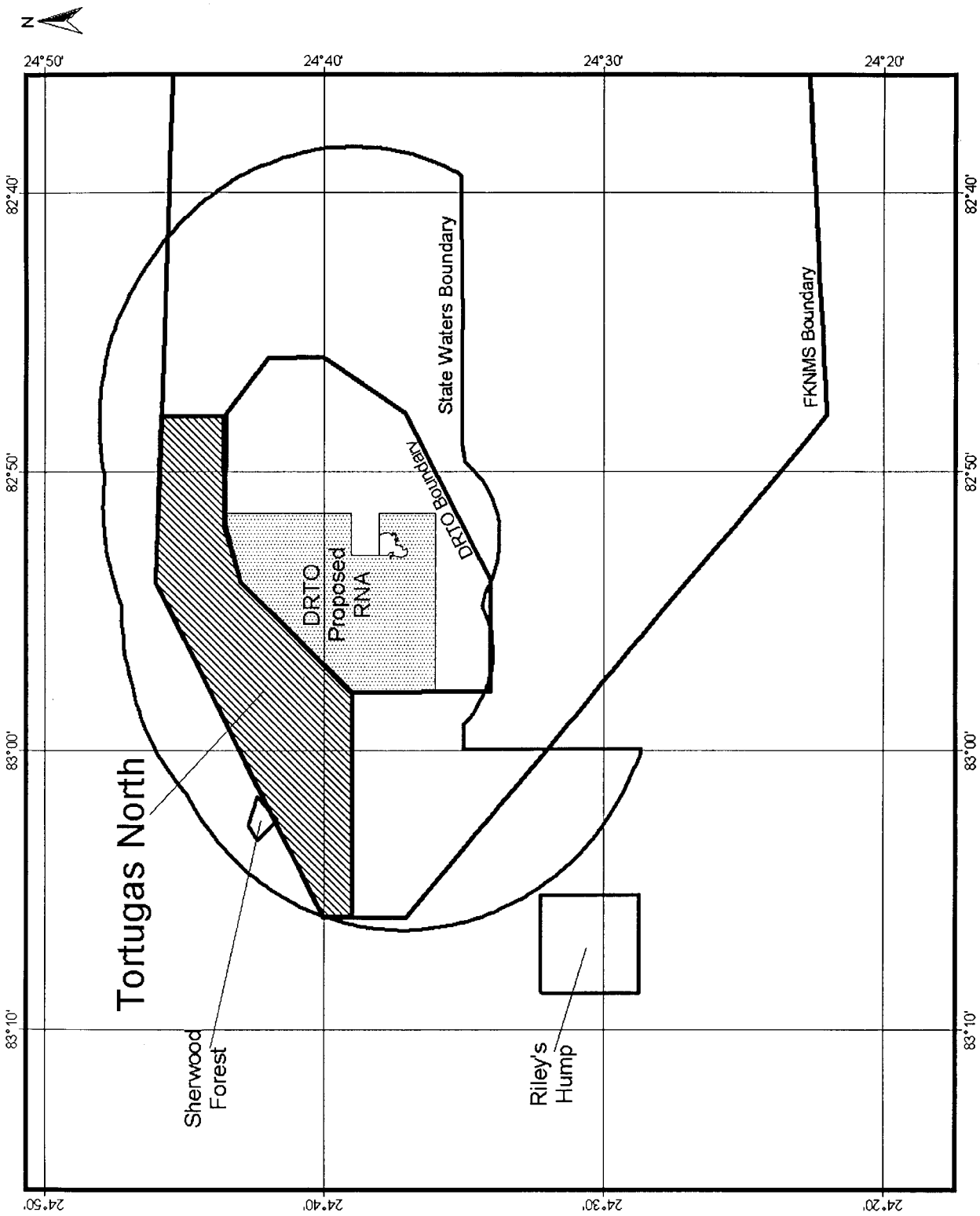

Figure 2. Boundary Alternative II

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Boundary Alternative III (Fig. 3—Preferred Boundary Alternative). This alternative would expand the boundary of the Sanctuary in its northwesternmost corner by approximately 36 nm^2 to include Sherwood Forest. In addition, this alternative would expand the boundary in its southwesternmost corner by adding a noncontiguous area of approximately 60 nm^2 to include Riley's Hump. The proposed ecological reserve would also incorporate approximately 55 nm^2 of the existing Sanctuary in its northwest corner, for a total Tortugas Ecological Reserve area of approximately 151 nm^2. The area of the proposed Tortugas Ecological Reserve surrounding Sherwood Forest would encompass approximately 91 nm^2 and would be called Tortugas North; the area surrounding Riley's Hump would be called Tortugas South. This alternative would involve four different management jurisdictions: FKNMS, State of Florida, GMFMC, and NMFS, all of which are in the process of taking steps to protect the areas within their respective jurisdictions. This alternative represents the WG's recommendation adopted by the SAC and recommended to NOAA and the State of Florida.

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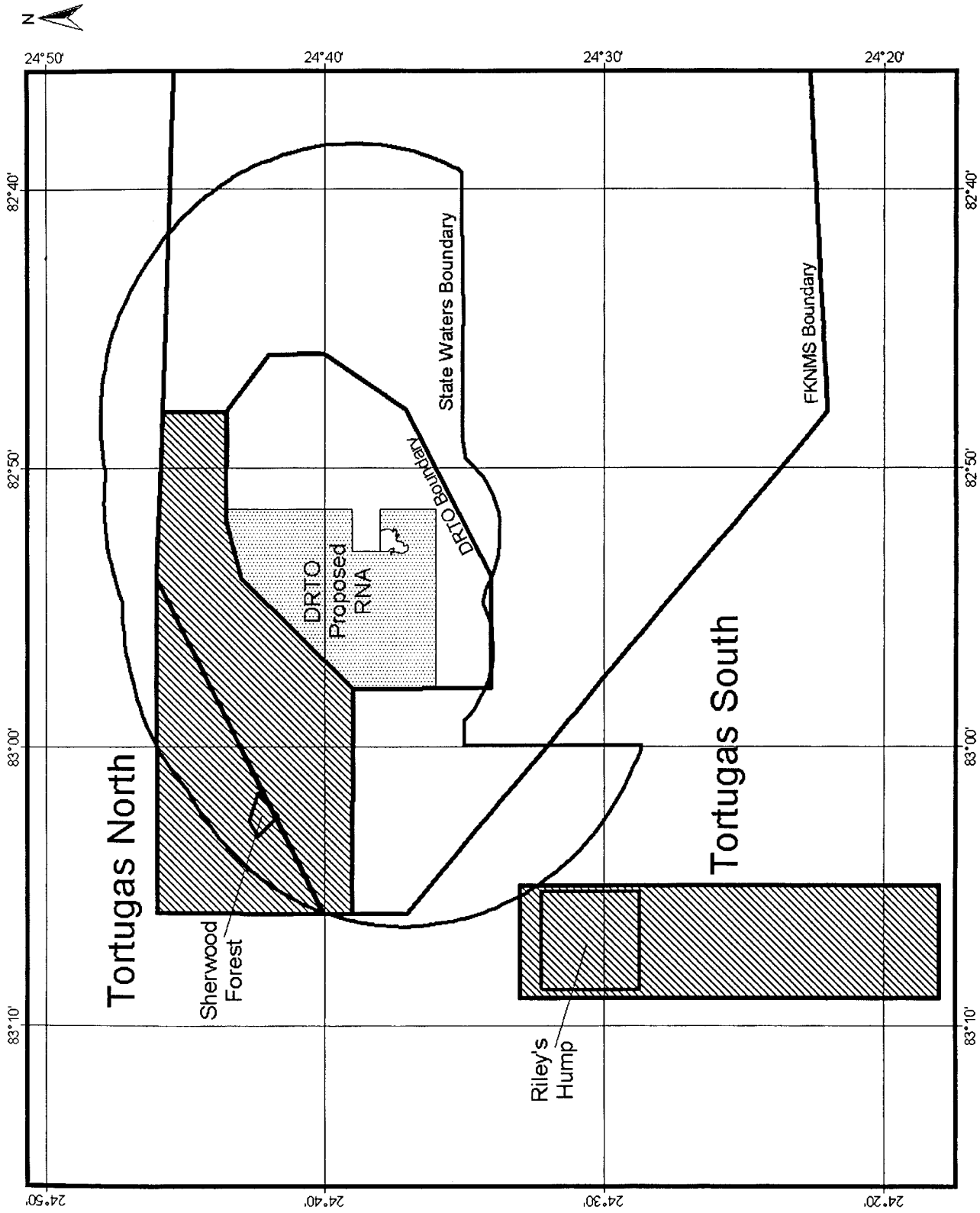

Figure 3. Boundary Alternative III (Preferred Boundary Alternative)

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Boundary Alternative IV (Fig. 4). This alternative would increase the area of Tortugas North over that in Alternative III by an additional 23 nm^2 to the south to make it conterminous with the NPS's proposed Research/Natural Area within the DRTO. The total area of the Tortugas North portion of the Tortugas Ecological Reserve would be approximately 115 nm^2. The Tortugas South area would be the same as in Alternative III. The total area for the Tortugas Ecological Reserve would be about 175 nm^2. This alternative would involve the same Sanctuary boundary expansion as in Alternative III.

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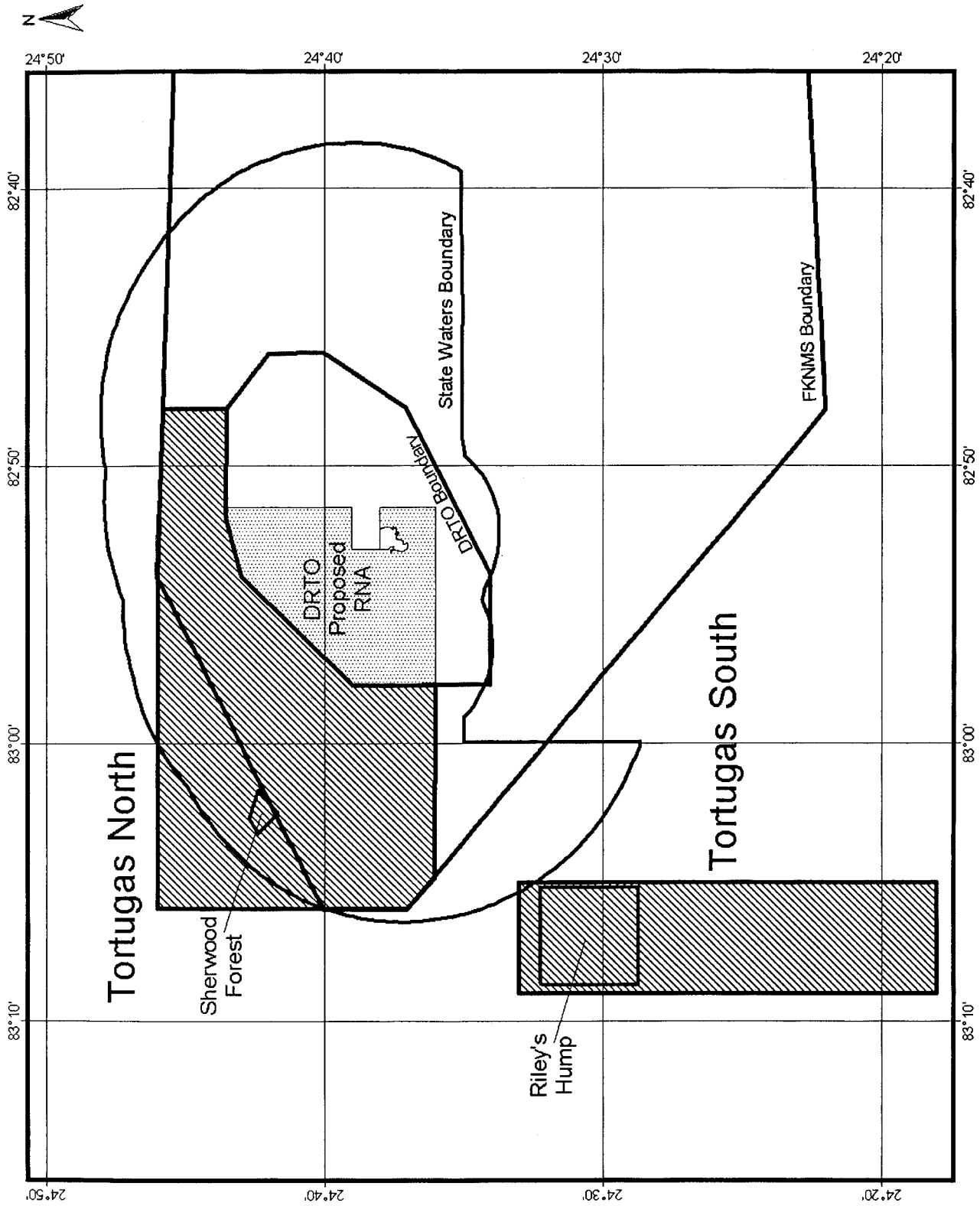

Figure 4. Boundary Alternative IV.

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Boundary Alternative V (Fig. 5). This alternative would expand the Sanctuary boundary over the expansions of Alternatives III and IV by three nm to the west in the northwesternmost corner of the Sanctuary. This would extend the western boundary of Tortugas North to the same longitude as the western boundary of Tortugas South. The area of Tortugas North would be increased by 31 nm^2 over Alternatives III and IV. The area of Tortugas North would be approximately 145 nm^2. Tortugas South would be reduced it in its southern extent over Alternatives III and IV by moving its southern boundary approximately 15 nm to the north. The area of Tortugas South would be approximately 45 nm^2 making the total area of the Tortugas Ecological Reserve approximately 190 nm^2.

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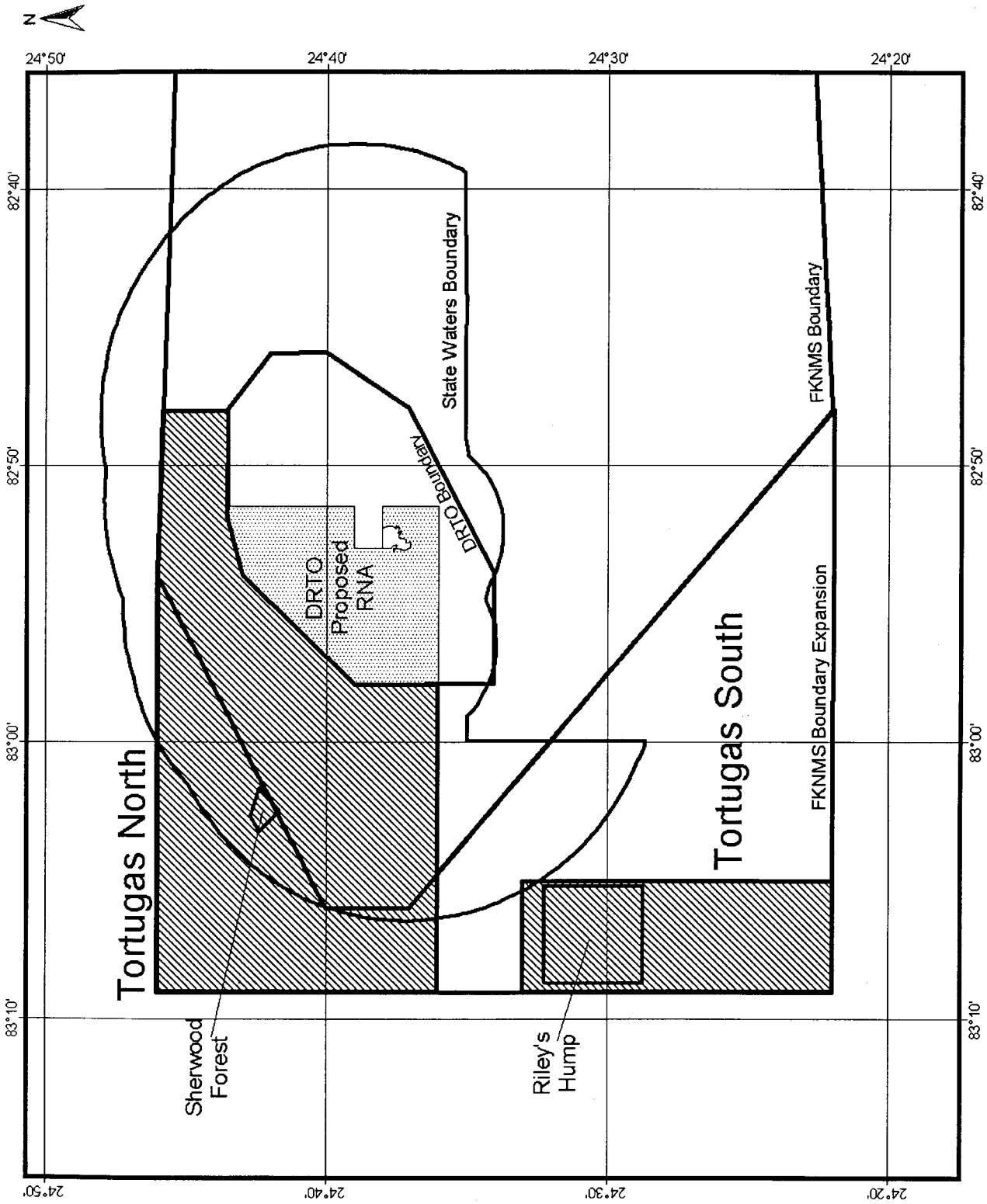

Figure 5. Boundary Alternative V

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Boundary Expansion (Fig. 6). Boundary Alternatives III, IV, and V would require expansion of the existing Sanctuary boundary. The original boundary in the western portion of the Sanctuary was drawn based on bathymetry as there was little information available at the time on significant ecological features. Consistent with E.O. 13089, Coral Reef Protection, and consistent with establishing an ecological reserve that comprehensively protects the resources, NOAA is now proposing to expand the boundary of the Sanctuary through the adoption of Boundary Alternative III to protect nationally significant coral reef resources that were unknown to the agency and to Congress at the time the Sanctuary was designated.

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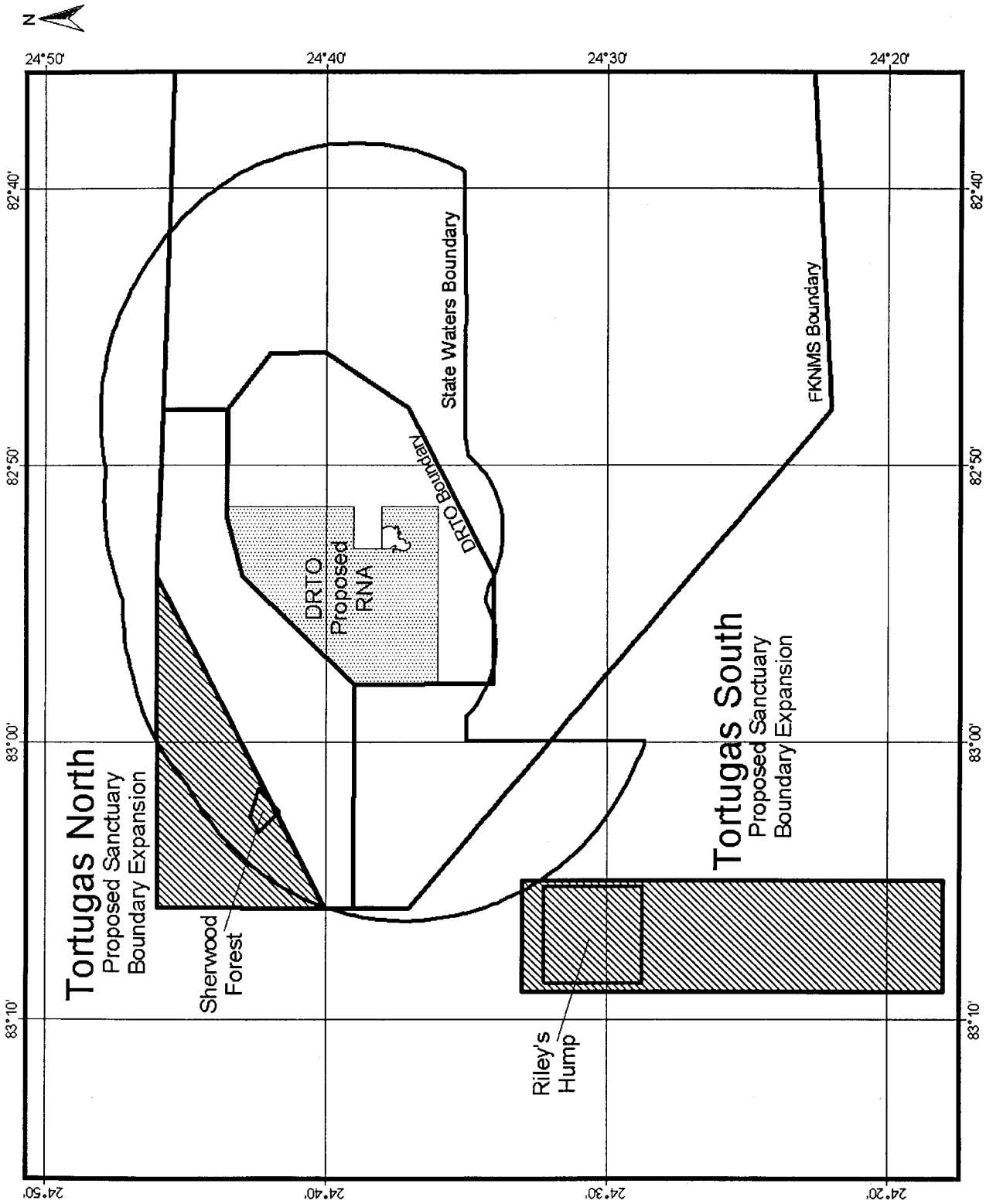

Figure 6. Proposed Sanctuary Boundary Expansion for Boundary Alternatives III and IV (shown in dark gray)

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Development and Description of Regulatory Alternatives

Four alternatives for regulating human activities within the reserve were developed. The regulatory alternatives are independent of the boundary alternatives (*i.e.,* regulatory alternatives can be paired with various boundary alternatives).

The foundation for these alternatives is the current FKNMS Sanctuary-wide regulations (15 CFR part 922, subpart P, in particular, § 922.163) and the additional regulations applicable to ecological reserves (15 CFR 922.164(d)). All of the alternatives begin with this foundation. In summary, the Sanctuary-wide regulations prohibit mineral and hydrocarbon exploration; removal of, injury to, or possession of coral or live rock; alteration of, or construction on, the seabed; discharge or deposit of materials or other matter; operation of vessels in a manner that endangers life, marine resources, or property; diving and snorkeling without flying a diver's down flag; releasing exotic species; damaging or removing markers; moving, removing, injuring, or possessing Sanctuary historical resources; taking or possessing protected wildlife; possessing or using explosives or electrical charges; harvesting or possessing marine life species not in accordance with the Florida Administrative Code; and interfering with law enforcement authorities.

In summary, the ecological reserve regulations prohibit the take or disturbance of any dead or living material; fishing; discharge or deposit of any material except cooling water or engine exhaust; anchoring when a mooring buoy is available or on living or dead coral; and touching living or dead coral. Transit by vessels is allowed provided that all fishing gear is stowed away. Currently, there is one ecological reserve in the Sanctuary (Western Sambo Ecological Reserve).

Other regulatory alternatives considered but rejected were taking no action, or making the entire proposed ecological reserve a no access, research/education-only area. The no-action alternative was rejected because it would not provide sufficient protection to coral reef resources from anchoring and other consumptive activities. Making the entire reserve a no access, research/education-only area appears to unnecessarily restrict non-consumptive activities.

Regulatory Alternative A

• Apply existing Sanctuary-wide and, with minor modifications described below, existing ecological reserve regulations, to Tortugas North and South.

Proposed regulations:

• *Tortugas North:* Apply existing Sanctuary-wide and, with minor modifications described below, existing ecological reserve regulations.

• *Tortugas South:* Apply existing Sanctuary-wide and, with minor modifications described below, existing ecological reserve regulations.

• The existing ecological reserve regulations would be revised at 15 CFR 922.164(d)(1) to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR Parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

• *Objective:* To minimize human disturbance in order to restore and maintain ecological integrity including a full assemblage of fishes, coral, and other benthic invertebrates.

Regulatory Alternative B

• Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Alternative A).

• Prohibit anchoring in, prohibit mooring by vessels more than 100 ft in length overall (LOA), and control access to Tortugas South via permit and require a call-in prior to entering or when leaving.

Proposed regulations:

• Tortugas North. Same as in Alternative A above.

• Tortugas South. Same as in Alternative A above. In addition, prohibit anchoring, prohibit mooring by vessels more than 100 ft LOA, require a permit to enter the reserve for other than continuous transit, and require permitted vessels to call-in prior to entering or when leaving.

Description of access permit: Permit would be free, no paperwork would be required, and Sanctuary staff would be available year-round to handle requests.

Application: Applicant must call the Key West or Marathon Sanctuary office to request a permit and would have to radio into the Sanctuary staff person at Fort Jefferson (DRTO) prior to entering and upon leaving the reserve.

Required Information:

1. Names, addresses, and telephone numbers of owner, captain, and applicant.
2. Vessel name and home port.
3. USCG documentation number, state license, or boat registration number.
4. Length of vessel and primary propulsion type (*i.e.,*s motor or sail).
5. Number of divers.
6. Requested effective date and duration of permit.

Permit duration: For the time the vessel is in the area, not to exceed two weeks.

Restrictions: Vessels longer than 100 ft LOA cannot use the mooring buoys. Advance reservations no more than one month in advance.

Special Conditions: Doubling-up on mooring buoys would be permissible, leave and return privileges (dive during day, stay at the park overnight) would be allowed within the time period covered by the permit.

Call-in requirement: Permit holders must notify FKNMS staff at Fort Jefferson by radio no less than 30 minutes and no more than six hours before entering the reserve and upon leaving.

Objective: To minimize human disturbance in order to restore and maintain ecological integrity including a full assemblage of fishes, coral, and other benthic invertebrates and to create a reference area for studying human impacts on the ecosystem. This alternative would better protect Tortugas South by prohibiting anchoring and by controlling access (except for continuous transit) by a new type of permit. Prohibiting anchoring would better protect the coral reef resources in Tortugas South because the high cover of coral and the deep water depths make it difficult to anchor without damaging coral. The prohibition on mooring by vessels more than 100 ft LOA would protect the buoys from being ripped off their moorings by vessels exceeding the buoy's mooring capacity. Making Tortugas South a controlled access area would enhance its utility as a reference site for research and would facilitate enforcement of the regulations by giving advance notice to enforcement officers of the presence of a user vessel in this remote area.

Regulatory Alternative C (Preferred Regulatory Alternative)

• Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Alternative A).

• Prohibit anchoring in, prohibit mooring by vessels more than 100 ft LOA, and control access to Tortugas North and South via permit and require call-in prior to entering and upon leaving (as described in Alternative B).

Proposed regulations:

• *Tortugas North.* Same as for Tortugas South in Alternative B above.

• *Tortugas South.* Same as for Tortugas South in Alternative B above.

Objective: To minimize human disturbance in order to restore and maintain ecological integrity including a full assemblage of fishes, coral, and other benthic invertebrates and to create a reference area for studying human impacts on the ecosystem. Over Regulatory Alternative B, this alternative provides increased protection to Tortugas North by prohibiting anchoring and by controlling access (except for continuous transit) by access permit. Prohibiting anchoring would better protect the coral reef resources in Tortugas North because of the difficulty of anchoring without damaging coral due to the high cover of coral and the deep water depths. Anchoring by vessels 50 m or greater in length is already prohibited in approximately 19% of Tortugas North. The prohibition on mooring by vessels more than 100 ft LOA would protect the buoys from being ripped off their moorings by vessels exceeding the buoy's mooring capacity. Making Tortugas North a controlled access area would enhance its utility as a reference site for researching and would facilitate enforcement of the regulations by giving advance notice to enforcement officers of the presence of a user vessel in this remote area. The existing ATBA already prohibits vessels 50 m or greater from accessing approximately 23% of Tortugas North.

Regulatory Alternative D

• Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Alternative A).

• Prohibit anchoring in, prohibit mooring by vessels more than 100 ft LOA, and control access to Tortugas North via permit and require call-in prior to entering and upon leaving (as described in Alternative B).

• Prohibit anchoring in, prohibit mooring by vessels more than 100 ft LOA, and restrict access to Tortugas South to research or educational activities only.

Proposed regulations:

• *Tortugas North.* Same as in Alternative C above.

• *Tortugas South.* Except for passage without interruption through the area with fishing gear stowed away or for law enforcement purposes, no person could enter Tortugas South except to conduct or cause to be conducted scientific research, or for educational use specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a valid National Marine Sanctuary General permit (see 15 CFR 922.166(a)).

Objective: To minimize human disturbance in order to restore and maintain ecological integrity including a full assemblage of fishes, coral, and other benthic invertebrates and to create a reference area for studying human impacts on the ecosystem. Tortugas North would have the same protections as outlined in Regulatory Alternative C above. This alternative provides increased protection to Tortugas South over Alternative C by making it a research/education-only area. Making Tortugas South a research/education-only area would greatly enhance its utility as a reference site for researching and monitoring the effects of human activities on the functioning of a coral reef ecosystem. The prohibition on mooring by vessels more than 100 ft LOA would protect the buoys from being ripped off their moorings by vessels exceeding a buoy's mooring capacity.

The regulations proposed by this action would implement Regulatory Alternative C and would amend 15 CFR 922.161 to expand the boundary of the FKNMS to be consistent with Boundary Alternative III. The revised Sanctuary boundary coordinates would be set forth in Appendix I to part 922 which would also be revised to make minor revisions in the existing boundary to correct errors, provide clarification, and reflect more accurate data and, in the area of Biscayne National Park, to provide a fixed enforceable boundary. Appendix IV to part 922 would be revised to make the area within the coordinates for Boundary Alternative III an ecological reserve, to provide clarification, and to remove no longer needed introductory text. Appendices II, V, VI, and VII would be revised to correct errors, provide clarification, and reflect more accurate data.

The proposed regulations would revise the ecological reserve regulations at 15 CFR 922.164(d)(1) to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these parts); to prohibit anchoring in the Tortugas Ecological Reserve; entering the Tortugas Ecological Reserve without a valid access permit (except for continuous transit, law enforcement purposes, or monitoring); or tying a vessel greater than 100 ft (30.48 meters) LOA to a mooring buoy in the Tortugas Ecological Reserve or tying more than one vessel (other than vessels carried on board a vessel), if the combined lengths would exceed 100 ft (30.48 meters) LOA, to a mooring buoy or to a vessel tied to a mooring buoy in the ecological reserve. The reason for the length restriction is to prevent a buoy from being ripped off its mooring.

Because all anchoring would be prohibited in the northern portion of the Tortugas Bank no-anchoring zone established by 15 CFR 922.164(g), the proposed regulations would revise the zone to be consistent. The existing zone is an area within the Sanctuary boundary where vessels 50 m or greater in LOA are prohibited from anchoring. The northern portion of the zone overlaps the proposed ecological reserve.

The proposed regulations would add a new section to provide for permits for access to the ecological reserve. A person with a valid access permit would be allowed to enter the Tortugas Ecological Reserve. Access permits would not require written applications or the payment of any fee. Access permits would have to be requested at least 72 hours but no longer than one month before the date the permit would be effective. Permits could be requested via telephone or radio by contacting FKNMS at the Sanctuary offices at Key West or Marathon. A permit applicant would be required to provide, as applicable, the following information: vessel name; the names, addresses, and telephone number of the owner, operator and applicant; USCG documentation, state license, or registration number; home port; length of vessel and propulsion type (*i.e.,* motor or sail); number of divers; and the requested effective date and duration of permit (two weeks, maximum). The Sanctuary Superintendent would issue a permit to the owner or to the owner's representative for the vessel when all applicable information has been provided. FKNMS would provide a permit number to the applicant and confirm the effective date and duration period of the permit. Written confirmation of permit issuance would be provided upon request. Permit holders would be required to notify FKNMS staff at the Dry Tortugas National Park office, by telephone or radio, no less than 30 minutes and no more than six hours before entering and upon leaving the Tortugas Ecological Reserve. Permit holders could leave and return to the ecological reserve during the time their permit is effective.

Finally, the proposed regulations would add a new definition to 15 CFR

922.162, to define ''length overall (LOA) or length of a vessel.''

Proposed Revised Designation Document

Because NOAA is proposing to expand the boundary of the Sanctuary, the Designation Document for the Sanctuary needs to be revised to incorporate the new boundary coordinates, to authorize the regulation of entering or leaving specified areas of the Sanctuary, and to make necessary technical and editorial corrections of the Designation Document. The text of the Proposed Revised Designation Document follows:

Proposed Revised Designation Document for the Florida Keys National Marine Sanctuary

Article I. Designation and Effect

On November 16, 1990, the Florida Keys National Marine Sanctuary and Protection Act, Pub. L. 101–605 (16 U.S.C. 1433 note), became law. That Act designated an area of waters and submerged lands, including the living and nonliving resources within those waters future as described therein, as the Florida Keys National Marine Sanctuary (Sanctuary). By this revised Designation Document, the boundary of the Sanctuary is expanded to include important coral reef resources in two areas known as Sherwood Forest and Riley's Hump, just beyond the westernmost portion of the statutory Sanctuary boundary.

Section 304 of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.*, authorizes the Secretary of Commerce to issue such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of a national marine sanctuary. Section 1 of Article IV of this Designation Document lists activities of the type that are presently being regulated or may have to be regulated in the future, in order to protect Sanctuary resources and qualities. Listing in section 1 does not mean that a type of activity will be regulated in the future; however, if a type of activity is not listed, it may not be regulated, except on an emergency basis, unless section 1 is amended following the procedures for designation of a sanctuary set forth in paragraphs (a) and (b) of section 304 of the NMSA, to include the type of activity.

Nothing in this Designation Document is intended to restrict activities that do not cause an adverse effect on the resources, or qualities of the Sanctuary or on Sanctuary property, or that do not pose a threat of harm to users of the Sanctuary.

Article II. Description of the Area

The Florida Keys National Marine Sanctuary boundary encompasses approximately 2900 nm² (9,800 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, surrounding the Florida Keys in Florida. The easternmost point of the Sanctuary is the northeasternmost point of Biscayne National Park and the westernmost point is approximately 15 kilometers to the west of the western boundary of Dry Tortugas National Park, a linear distance of approximately 335 kilometers. The contiguous area boundary on the Atlantic Ocean side of the Florida Keys runs south from Biscayne National Park generally following the 300-foot isobath, curving in a southwesterly direction along the Florida Keys archipelago until south of the Dry Tortugas. The contiguous area boundary on the Gulf of Mexico side of the Florida Keys runs from this southern point in a straight line to the northwest and then when directly west of the Dry Tortugas in a straight line to the north. The boundary then turns to the east and slightly south and follows a straight line to just west of Key West and then turns to the northeast and follows a straight line parallel to the Florida Keys approximately five miles to the south, and then follows the Everglades National Park boundary until Division Point where the boundary then follows the western shore of Manatee Bay, Barnes Sound, and Card Sound. The boundary then follows the southern boundary of Biscayne National Park and up its eastern boundary until its northeasternmost point. Starting just to the east of the most western boundary line of the contiguous portion of the Sanctuary, there is a vertical rectangular shaped area of 60 nm² just to the south.

The shoreward boundary of the Sanctuary is the mean high-water mark except around the Dry Tortugas where it is the boundary of the Dry Tortugas National Park. The Sanctuary boundary encompasses the entire Florida coral reef tract, all of the mangrove islands of the Florida Keys, and some of the sea grass meadows of the Florida Keys. The precise boundary of the Sanctuary is set forth at the end of this Designation Document.

Article III. Characteristics of the Area That Give It Particular Value

The Florida Keys extend approximately 223 miles southwest from the southern tip of the Florida peninsula. Adjacent to the Florida Keys land mass are located spectacular unique, nationally significant marine environments, including sea grass meadows, mangrove islands, and extensive living coral reefs. These marine environments support rich biological communities possessing extensive conservation, recreational, commercial, ecological, historical, research, educational, and aesthetic values which give this area special national significance. These environments are the marine equivalent of tropical rain forests in that they support high levels of biodiversity, are fragile and easily susceptible to damage from human activities, and possess high value to humans if properly conserved. These marine environments are subject to damage and loss of their ecological integrity from a variety of sources of disturbance.

The Florida Keys are a limestone island archipelago. The Keys are located at the southern edge of the Florida Plateau, a large carbonate platform made of a depth of up to 7000 meters of marine sediments, which have been accumulating for 150 million years and which have been structurally modified by subsidence and sea level fluctuation. The Keys region is generally divided into five distinct areas: the Florida reef tract, one of the world's largest coral reef tracts and the only barrier reef in the United States; Florida Bay, described as an active lime-mud factory because of the high carbonate content of its silts and muds; the Southwest Continental Shelf; the Straits of Florida; and the Keys themselves.

The 2.5 million-acre Sanctuary contains one of north America's most diverse assemblages of terrestrial, estuarine, and marine fauna and flora, including, in addition to the Florida reef tract, thousands of patch reefs, one of the world's largest sea grass communities covering 1.4 million acres, mangrove fringed shorelines, mangrove islands, and various hardbottom habitats. These diverse habitats provide shelter and food for thousands of species of marine plants and animals, including more than 50 species of animals identified under Federal or State law, as endangered or threatened. The Keys were at one time a major sea faring center for European and American trade routes to the Caribbean, and the submerged cultural and historic resources (*i.e.,* shipwrecks) abound in the surrounding waters. In addition, the Sanctuary may contain substantial archaeological resources of pre-European cultures.

The uniqueness of the marine environment draws multitudes of

visitors to the Keys. The major industry in the Florida Keys is tourism, including activities related to the Keys' marine resources, such as dive shops, charter fishing and dive boats and marinas, as well as hotels and restaurants. The abundance of the resources also supports a large commercial fishing employment sector.

The number of visitors to the Keys grows each year, with a concomitant increase in the number of residents, homes, jobs, and businesses. As population grows and the Keys accommodate ever-increasing resource-use pressures, the quality and quantity of Sanctuary resources are increasingly threatened. These pressures require coordinated and comprehensive monitoring and researching of the Florida Keys' region.

Article IV. Scope of Regulations

Section 1. Activities Subject to Regulation

The following activities are subject to regulation under the NMSA, either throughout the entire Sanctuary or within identified portions of it or, as indicated, in areas beyond the boundary of the Sanctuary, to the extent necessary and reasonable. Such regulation may include prohibitions to ensure the protection and management of the conservation, recreational, ecological, historical, research, educational, or aesthetic resources and qualities of the area. Because an activity is listed here does not mean that such activity is being or will be regulated. All listing means is that the activity can be regulated, after compliance with all applicable regulatory laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b). Further, no regulation issued under the authority of the NMSA except an emergency regulation issued with the approval of the Governor of the State of Florida may take effect in the area of the Sanctuary lying within the seaward boundary of the State of Florida if the Governor of the State of Florida certifies to the Secretary of Commerce that such regulation is unacceptable within the forty-five-day review period specified in NMSA. Detailed definitions and explanations of the following ''activities subject to regulation'' appear in the Sanctuary Management Plan:

1. Exploring for, developing, or producing oil, gas, and/or minerals (*e.g.,* clay, stone, sand, gravel, metalliferous ores, nonmetalliferous ores) in the Sanctuary;

2. Touching, climbing on, taking, removing, moving, collecting, harvesting, injuring, destroying or causing the loss of, or attempting to take, remove, move, collect, harvest, injure, destroy or cause the loss of, coral in the Sanctuary;

3. Drilling into, dredging or otherwise altering the seabed of the Sanctuary, except incidental to allowed fishing and boating practices or construction activities permitted by county, state or federal regulatory agencies; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as authorized by appropriate permits or incidental to allowed fishing practices;

4. Discharging or depositing, within or beyond the boundary of the Sanctuary, any material that subsequently enters the Sanctuary and injures a Sanctuary resource or quality;

5. Operating water craft in the Sanctuary

(a) In a manner that could injure coral, hardbottoms, seagrass, mangroves, or any other immobile organism attached to the seabed,

(b) In a manner that could injure or endanger the life of divers, fishermen, boaters or other users of the Sanctuary,

(c) In a manner that could disturb marine mammals, marine reptiles, or bird rookeries;

6. Diving or boating activities in the Sanctuary including anchoring that could harm Sanctuary resources, Sanctuary property, or other users of the Sanctuary;

7. Stocking within the Sanctuary or releasing within the Sanctuary or from beyond the boundary of the Sanctuary, native or exotic species of plant, invertebrate, fish, amphibian or mammals;

8. Defacing, marking, or damaging in any way or displacing, removing, or tampering with any markers, signs, notices, placards, navigational aids, monuments, stakes, posts, mooring buoys, boundary buoys, trap buoys, or scientific equipment in the Sanctuary;

9. Removal, injury, preservation, curation, and management of historic resources within the Sanctuary without the appropriate state and/or federal permits;

10. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying, or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of any marine mammal, marine reptile, or bird within the Sanctuary, without the appropriate state and/or federal permits;

11. Possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities in any area of the Sanctuary designated as an Existing Management Area, Wildlife Management Area, Ecological Reserve, Sanctuary Preservation Area, or Special-Use Area;

12. The carrying and possessing of specified fishing gear in any area of the Sanctuary designated as an Existing Management Area, Wildlife Management Area, Ecological Reserve, Sanctuary Preservation Area, or Special-Use Area except for passage without interruption through;

13. Entering or leaving any Wildlife Management Area, Ecological Reserve, Sanctuary Preservation Area, or Special-Use Area except for passage without interruption through or for law enforcement purposes;

14. Harvest of marine life as defined and regulated by the State of Florida under its marinelife rule;

15. Mariculture;

16. Possessing or using explosives or releasing electrical charges or substances poisonous or toxic to fish and other living marine resources within the Sanctuary or beyond the boundary of the Sanctuary (possession of ammunition shall not be considered possession of explosives);

17. Removal and disposal of lost, out-of-season, or illegal gear discovered within the Sanctuary; removal of vessels grounded, lodged, stuck or otherwise perched on coral reefs, hardbottom, or seagrasses within the Sanctuary; and removal and disposal of derelict or abandoned vessels or other vessels within the Sanctuary for which ownership cannot be determined or for which the owner takes no action for removal or disposal; and salvaging and towing of vessels abandoned or disabled within the Sanctuary vessels or of vessels within the Sanctuary otherwise needing salvaging or towing; and

18. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or deposition of seized property in connection with enforcement of the NMSA or any regulation or permit issued under the NMSA.

Section 2. Emergency Regulation

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or to minimize the imminent risk of such destruction, loss or injury, any activity, including any not listed in Section 1 of this article, is subject to immediate temporary regulation,

including prohibition. However, no such regulation may take effect in any area of the Sanctuary lying within the seaward boundary of the State of Florida without the approval of the Governor of the State of Florida.

Article V. Effect on Leases, Permits, Licenses, and Rights

Pursuant to paragraph (c)(1) of section 304 of the NMSA, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval or other authorization issued by any federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or his or her designee, as a result of a designation, or as a result of any sanctuary regulation, if such authorization or right was in effect on the effective date of the designation (November 16, 1990 with respect to the statutory Sanctuary boundary; , 2000 with respect to the expansion area made by this revision to the designation document).

In no event may the Secretary of Commerce or his or her designee issue a permit authorizing, or otherwise approving: (1) The exploration for, development of, or production of oil, gas, or minerals within the Sanctuary; or (2) The disposal of dredged materials within the Sanctuary (except by certification in accordance with applicable National Marine Sanctuary Program regulations of valid authorizations in existence on the effective date of Sanctuary designation). Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

Article VI. Alteration of This Designation

The terms of designation, as defined in paragraph (a) of section 304 of the NMSA, 16 U.S.C. 1434(a), may be modified only by the procedures outlined in paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b), including public hearings, consultation with interested federal, state, and local government agencies, review by the appropriate Congressional committees, review by the Governor of the State of Florida, and approval by the Secretary of Commerce, or his or her designee. No designation, term of designation, or implementing regulation may take effect in the area of the Sanctuary lying within the seaward boundary of the State of Florida if the Governor of the State of Florida certifies to the Secretary of Commerce that such designation or term of designation regulation is unacceptable within the forty-five-day review period specified in NMSA.

Florida Keys National Marine Sanctuary Boundary Coordinates (Based on North American Datum of 1983)

The boundary of the Florida Keys National Marine Sanctuary—

(a) Begins at the northeasternmost point of Biscayne National Park located at a point approximately 25 degrees 39 minutes north latitude, 80 degrees 05 minutes west longitude, then runs eastward to the point located at 25 degrees 39 minutes north latitude, 80 degrees 04 minutes west longitude; and

(b) Then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 04 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 05 minutes west longitude,

(iii) 25 degrees 21 minutes north latitude, 80 degrees 07 minutes west longitude, and

(iv) 25 degrees 16 minutes north latitude, 80 degrees 08 minutes west longitude;

(c) Then runs southwesterly and connects in succession the points at the following coordinates:

(i) 25 degrees 07 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,

(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

(vii) 24 degrees 37 minutes north latitude, 83 degrees 06 minutes west longitude,

(viii) 24 degrees 46 minutes north latitude, 83 degrees 06 minutes west longitude,

(ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,

(x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,

(xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and

(xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(d) Then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(e) After Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(f) Then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and

(g) Then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).

The shoreward boundary of the Florida Keys National Marine Sanctuary is the mean high-water mark except around the Dry Tortugas where the boundary is conterminous with that of the Dry Tortugas National Park, formed by connecting in succession the points at the following coordinates:

(i) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;

(ii) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 seconds west longitude;

(iii) 24 degrees 39 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 seconds west longitude;

(iv) 24 degrees 43 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;

(v) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 52 minutes 0 seconds west longitude;

(vi) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude;

(vii) 24 degrees 42 minutes 0 seconds north latitude, 82 degrees 46 minutes 0 seconds west longitude;

(viii) 24 degrees 40 minutes 0 seconds north latitude, 82 degrees 46 minutes 0 seconds west longitude;

(ix) 24 degrees 37 minutes 0 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude; and

(x) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude.

The Florida Keys National Marine Sanctuary also includes the area located within the boundary formed by connecting in succession the points at the following coordinates;

(i) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude,

(ii) 24 degrees 33 minutes north latitude, 83 degrees 05 minutes west longitude,

(iii) 24 degrees 18 minutes north latitude, 83 degrees 05 minutes west longitude,

(iv) 24 degrees 18 minutes north latitude, 83 degrees 09 minutes west longitude, and

(v) 24 degrees 33 minutes north latitude, 83 degrees 09 minute west longitude.

End of Proposed Revised Designation Document.

Summary of Draft Supplemental Management Plan

The draft supplemental management plan complements the existing Management Plan in several respects.

A supplement to the Administrative Action Plan targets the development of a memorandum of understanding to clearly define the roles and responsibilities if the various agencies responsible for resource management in the Tortugas region. The MOU would cover, at a minimum, the following activities: cooperative enforcement, research, and sharing of facilities. Management of the Tortugas Ecological Reserve would necessitate a high degree of coordination and cooperation between the affected agencies particularly the FKNMS and the NPS. Both agencies have similar missions and responsibilities. Consequently, cooperation would not only save money but would also improve resource protection. The NPS has a variety of assets, such as land, housing and dockage, that, under a workable agreement, could potentially be used to support management of the ecological reserve. An agreement on the use of these lands and facilities would be pursued by the FKNMS and NPS.

The State of Florida is the co-trustee for a significant portion of the waters and marine resources within the proposed reserve and would co-manage them with the FKNMS.

The NMFS has responsibility for regulating the fisheries in the federal waters of the reserve. NMFS has considerable expertise and some assets that could be utilized in managing the reserve, particularly in the areas of research and monitoring.

NOAA's Office of Law Enforcement also has responsibility for enforcing fishing and Sanctuary regulations and has assets and technology that could potentially be used for enforcement.

The U.S. Coast Guard has responsibility for enforcing federal laws within U.S. waters. It has several large offshore patrol vessels based in Key West that could be used in conjunction with Sanctuary patrol vessels for enforcement of the Sanctuary regulations within the reserve areas.

A supplement to the Education and Outreach Action Plan would facilitate the production of a documentary video or film on the development and environmental qualities and characteristics of the ecological reserve. In addition, the supplement to the Plan would develop a visitor's center in Key West to interpret the marine environment and resources of the reserve and the Tortugas region for the visiting public.

A supplement to the Enforcement Action Plan would be the hiring of additional enforcement officers to patrol the reserve; the installation, operation and maintenance of surveillance radar; the purchase and installation of housing for Sanctuary staff at Fort Jefferson; and the purchase, operation and maintenance of an offshore patrol vessel.

A supplement to the Mooring and Boundary Buoy Action Plan would be the installation and maintenance of mooring buoys in Tortugas North and South and boundary buoys in Tortugas North.

A supplement to the Regulatory Action Plan would be the issuance of final regulations to implement the boundary expansion and the establishment of the reserve. The supplement would call for extensive coordination with the State of Florida, the Gulf of Mexico Fishery Management Council, and NMFS to ensure that all approvals and required regulations are obtained and in place. A collateral aspect to the issuance of regulations would be publication on NOAA nautical charts of the new boundaries for the Sanctuary and the reserve.

A supplement to the Research and Monitoring Action Plan would be the hiring of additional support staff; the design and implementation of long-term ecological monitoring; the undertaking of a feasibility study in conjunction with the NPS on reestablishing the Dry Tortugas Marine Laboratory; establishment of a wireless data transfer capability using the existing two-way radio network; establishment of the Tortugas as a long-term ocean ecosystem observatory with continuous, automated collection of key physical and biological parameters; and the design and implementation of a non-use valuation study of the national significance of the coral reef resources in the Tortugas region.

Miscellaneous Rulemaking Requirements

Marine Protection, Research, and Sanctuaries Act

Paragraph (a)(4) of section 304 the NMSA, 16 U.S.C. 1434(a)(4), requires that the procedures specified in section 304 for designating a National Marine Sanctuary be followed for modifying any term of designation. Because this action would revise the Sanctuary boundary to include an additional 96 square nautical miles, it would revise the boundary terms of designation thus triggering the requirements of section 304. In particular, section 304 requires that the Secretary of Commerce to submit to the Committee on Resources of the United States House of Representatives and the Committee on Commerce, Science, and Transportation of the United States Senate, on the same day as this notice is published, a prospectus on the proposal, which must contain, among other things, the terms of the proposed designation, the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities for the area, and a draft environmental impact statement. In accordance with section 304, the required prospectus is being submitted to the specified Congressional Committees.

Executive Order 12866

This action has been determined to be significant for purposes of E.O. 12866. That Order requires a draft text of the regulations to be proposed, a reasonably detailed description of the need for the action, an explanation of how the action will meet that need, and an assessment of the potential costs and benefits, including an explanation of the manner in which the action is consistent with statutory mandates, and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions (referred to as a Regulatory Impact Review (RIR). In accordance with the requirements of the Executive Order, NOAA has prepared an RIR for this action. The RIR is contained in part V of the DSEIS/SMP. NOAA will announce shortly the public availability of the DSEIS/SMP.

Regulatory Flexibility Act

In accordance with the requirements of section 603(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), NOAA has prepared an initial regulatory flexibility analysis (IRFA) describing the

impact of this proposed action on small entities. Section 603(b) (5 U.S.C. 603(b)) requires that each IRFA contain a description of the reasons why the action is being considered, a succinct statement of the objectives of, and legal basis for, the action, a description of and, where feasible, an estimate of the number of small entities to which the proposed action will apply, a description of the projected reporting, recordkeeping and other compliance requirements of the proposed action, including an estimate of the classes of small entities which would be subject to the requirement and the type of professional skills necessary for preparation of the report or record, and an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed action. In addition, section 603(c) (5 U.S.C. 603(c)) requires that each IRFA contain a description of any significant alternatives to the proposed action which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed action on small entities. The complete IRFA is contained in Parts I, IV, and V of the DSEIS/SMP.

The following is a summary of the IRFA:

Statement of Need and Why Regulatory Action is being Considered

As previously set forth in this regulatory preamble.

Goals, Objectives, and Legal Basis

As previously set forth in this regulatory preamble.

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements.

The only record keeping or reporting requirements are the permit and call-in, call-out requirements for the reserve previously described in the Preamble under proposed regulations. There are two classes of users that would be affected by these proposed requirements: commercial dive boat operators and private boaters. The type of skills necessary to request an access permit and to provide notification when entering or leaving the proposed ecological reserve would be use of marine radio equipment.

Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Action.

The GMFMC is amending the GMFMP to prohibit fishing in the areas of Tortugas North and South that are beyond State of Florida waters in the Exclusive Economic Zone. NMFS would implement these amendments by issuing a no-fishing rule for those areas. Also, NMFS is amending the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and its implementing regulations to be consistent with the no-take status of the proposed reserve.

The State of Florida is drafting fishing regulations to prohibit fishing in those portions of Tortugas North that lie within State waters. Sanctuary regulations implementing the reserve would not become effective in State waters until approved by the State of Florida. These actions in conjunction with the Sanctuary rule on no-take would ensure comprehensive protection for the coral reef resources and to facilitate user awareness and compliance with the rules.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply.

It is estimated that there are up to 64 commercial fishers and 10 recreational charter vessel (fishing and/or diving) operators who could be affected by the proposed rule. All of these are considered small entities for purposes of the Regulatory Flexibility Act.

Description of Any Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize any Significant Economic Impact of the Proposed Action on Small Entities

Approach to the Analysis of Alternatives.

The analysis of the alternatives focuses on market economic impacts as measured by direct revenue, costs and profits of the business firms directly affected by the ''no-take'' regulations. These impacts are then translated into the secondary or multiplier impacts on the local economy. For the recreational industry, the impact area is defined as Monroe County, Florida and, for the commercial fisheries the impact areas are Monroe County and Lee/Collier counties. For the commercial fisheries, the results presented here are an aggregation of the impacts on both Monroe and Lee/Collier counties. The market economic impacts include estimates of output/sales, income and employment.

The approach begins by first analyzing the ''no-take'' regulation for each boundary alternative.

Analyses are presented for the recreation industry (broken down into consumptive and nonconsumptive), the commercial fisheries, commercial shipping, treasure salvors and then other benefits (nonusers, scientific and education values). The other regulations are then analyzed. These include the no anchoring regulation, access restrictions, and sanctuary-wide regulations (for boundary alternatives that include areas outside current Sanctuary boundary). For most of the sanctuary-wide regulations, there is no additional or incremental impact over the ''no-take'' regulation.

For the recreation industry and the commercial fishing industry, the impacts first are estimated by assuming a complete loss for any activity displaced. This is done by adding up all the activities within the geographic area defined by an ecological reserve boundary (*i.e.*, the no-take area) and applying the appropriate economic parameters. Next, a qualitative approach is used to assess whether the results from step 1 are likely to occur. Mitigating and offsetting factors are taken into account. With respect to the recreational industry sector, consumptive recreation is separated from non-consumptive recreation since consumptive recreation activities are displaced from the ''no-take'' areas and may potentially be negatively impacted, while non-consumptive activities would be beneficiaries of the ''no-take'' areas. With respect to the commercial fisheries, all would be displaced from the ''no-take'' areas and, potentially, would be negatively impacted in the short term. Over the long term, creation of the ecological reserve is expected to generate replenishment effects to the fisheries. Over the longer term, there would be long-term benefits even to commercial reef fishermen and related dependent businesses. The analysis assumes that all entities impacted are small entities within the meaning of the Regulatory Flexibility Act.

Definition of the Study Areas. For purposes of the analyses presented in this report, there are five basic study areas. The first is a 1,020 nm^2 area called the TERSA (see Fig.1). This was the area selected by the FKNMS for analyzing different alternatives for the proposed Tortugas Ecological Reserve. All socioeconomic information was collected and organized in the TERSA at geographical resolution of one nm^2. Detailed descriptions of the data are included for the recreation industry and for the commercial fisheries.

Boundary Alternatives

As described earlier in this Preamble.

No-take Regulations

Recreation Industry

Boundary Analysis

The interpretation of the estimates provided in this analysis is critical to understanding the ''true'' impact of the various alternatives proposed for the Tortugas Ecological Reserve. The estimates from the geographic information system (GIS) analysis for the different boundary alternatives are simply the sum of each measurement within the boundaries for a given alternative. The estimates therefore represent the maximum total potential loss from displacement of the consumptive recreational activities. This analysis ignores possible mitigating factors and the possibility of net benefits that might be derived if the proposed ecological reserve has replenishment effects. Although the extent of the mitigating factors or the potential benefits from replenishment are unknown, this analysis discusses these as well as other potential benefits of the proposed ecological reserve after the maximum potential losses from displacement of the current consumptive recreational uses are presented and discussed.

There are two types of potential losses identified and quantified in the analysis—non-market economic values and market economic values.

Non-Market Economic Values. There are two types of non-market economic values. The first is consumer's surplus, which is the amount of economic value a consumer receives by consuming a good or service over and above what he or she pays for the good or service. It is a net benefit to the consumer and in the context of recreation use of natural resources, where the natural resources go unpriced in markets, this value is often referred to as the net user value of the natural resource. The second type of non-market economic value is one received by producers or owners of the businesses providing goods or services to the users of the natural resources. This is commonly referred to as producer's surplus. The concept is similar to consumer's surplus in that the businesses do not pay a price for the use of natural resources when providing goods or services to users of the resources. However, this concept is a little more complicated because, in ''welfare economics,'' not all producers' surplus is considered a proper indicator in the improvement of welfare. Only that portion of producer's surplus called ''economic rent'' is appropriate for inclusion. Economic rent is the amount of profit a business receives over and above a normal return on investment (*i.e.*, the amount of return on investment that could be earned by switching to some alternative activity). Again, because businesses that depend on natural resources in the Tortugas do not have to pay for the use of them, there exists the possibility of earning above normal rates of return on investment or ''economic rent.'' This like consumer's surplus, would be additional economic value attributable to the natural resources (*i.e.*, another user value).

Economic rents are different from consumer's surplus in that supply and demand conditions are often likely to lead to dissipation of the economic rents. This is generally true for most open access situations. As new firms enter the industry because of the lure of higher than normal returns on investment, the net effect is to eliminate most if not all of the economic rent. However, given the remoteness of the TERSA, it is likely that all economic rents would not be eliminated. Accounting profits are used as a proxy for economic rents in the analysis. The absolute levels of accounting profits are not a good proxy for economic rents, however, they are used here as an index for assessing the relative impacts across the different boundary alternatives.

The estimates for consumer's surplus were derived by combining estimates of person-days from all the operators in the TERSA with estimates of consumer's surplus per person-day. The estimates were derived separately by season.

Market Economic Values. Revenues from the charter boat operations that provided service to the consumptive recreational users provide the basis for this portion of the analysis. Total output/sales, income and employment impacts on the Monroe County economy are then derived from these estimates. These impacts include the ripple or multiplier impacts. Total output/sales is equal to business revenue times the total-output multiplier of 1.12. Income was then derived by taking the total output/sales impact and dividing by the total output-to-income ratio (2.63). Total employment was derived by dividing the total income impact by the total income-to-employment ratio ($23,160).

Boundary Alternative I: No Action

The no-action alternative simply means that the proposed Tortugas Ecological Reserve would not be established and the corresponding no-take regulations would not be issued. The no-action alternative has a simple interpretation in that any costs of imposing the no-take regulations, for any given alternative with no-take regulations, would be the benefits of the no-action alternative. That is, by not adopting the no-take regulations, the costs are avoided. Similarly, any benefits from imposing the no-take regulations, for any given alternative with no-take regulations, would be the costs of the no action alternative. That is, by not adopting the no-take regulations, the costs are the benefits lost by not adopting the no-take regulations. Said another way, the opportunities lost. The impacts of the no-action alternative can only be understood by comparing them to the impacts of one of the alternatives.

Boundary Alternative II (See Fig. 2)

Non-Market Economic Values. This alternative would displace more than 26% of the total person-days of diving for lobsters, about 26% of the spearfishing, and just more than 2% of the fishing. Across all three consumptive recreational activities just less than 6% of the person-days would be displaced. This alternative is entirely within the existing Sanctuary boundary. Because of the way in which consumer's surpluses are calculated, they generally mirror the patterns in displaced use. Minor differences would be due to the distributions across activities by season. Only in the case of diving for lobsters are the impacts on person-days and profits equal. For spearfishing, the impacts on profits are lower than the affect on person-days (18.7% versus 25.9%), while for fishing the affect is greater on profits than on person-days (6.5% versus 1.2%). The GIS-generated maps show why diving for lobsters and spearfishing is relatively more affected than fishing. The reason is that diving for lobsters and spearfishing are concentrated on Tortugas Bank, while relatively little fishing currently takes place on the Tortugas Bank.

Market Economic Values. Presently, there are 12 charter boats operating within the TERSA, nine of which would be potentially affected by this alternative. Direct business revenue would include potential losses of 26.6% for diving for lobsters, 20% for spearfishing, and 3% for fishing. Across all three consumptive recreational activities, 9.5% of revenue would be potentially affected. Through the ripple or multiplier effects, 9.5% of output/sales, income and employment associated with all the consumptive recreational activities in the TERSA could potentially be lost. Although these costs could have an affect on the nine firms operating in the TERSA, the affect would not likely be noticed in the Monroe County economy because the affect would amount to only a fraction of a percent of the total economy

supported by recreating visitors to the Florida Keys.

Boundary Alternative III (Preferred Boundary Alternative—See Fig. 3)

Non-Market Economic Values. Because the portion of this alternative that is within the FKNMS boundary is exactly the same as Alternative II, the analysis for that portion of this alternative is exactly the same. The entire alternative would displace more than 26% of the total person-days of diving for lobsters, about 26% of the spearfishing, and just more than 3% of the fishing. Across all three consumptive recreational activities more than 7% of the person-days would be displaced. For fishing, 40% of the displaced activity would be from within the FKNMS boundary. Consumer's surpluses generally mirror patterns of displaced use. Again, minor differences would be due to the distributions across activities by season. Only in the case of diving for lobsters are the effects on person-days and profits equal. For spearfishing, the effect on profits is lower than the affect on person-days (18.7% versus 25.9%), while for fishing the effect is greater on profits than on person-days (10.2% versus 3.0%).

Market Economic Values. Nine of the twelve charter boats operating within the TERSA would be potentially affected by this alternative. Direct business revenue would include potential losses of 26.6% for diving for lobsters, 20.0% for spearfishing, and 6.3% for fishing. Across all three consumptive recreational activities, 11.7% of revenue would be potentially affected. Through the ripple or multiplier effects, 11.7% of output/sales, income and employment associated with all the consumptive recreational activities in the TERSA could potentially be lost. Although these costs could have an affect on the nine firms operating in the TERSA, the affect would not likely be noticed in the Monroe County economy because the affect would amount to only a fraction of a percent of the total economy supported by recreating visitors to the Florida Keys.

Boundary Alternative IV (See Fig. 4)

Non-Market Economic Values. This alternative would displace more than 73% of the total person-days of diving for lobsters, just less than 72% of the spearfishing, and more than 6% of the fishing. Across all three consumptive recreational activities more than 18% of the person-days would be displaced. All the diving for lobsters and spearfishing activity displaced would be from within the FKNMS boundary. For fishing, 71% of the displaced activity would be from within the FKNMS boundary. Similarly to the other alternatives, consumer's surpluses mirror the patterns in displaced use because of the way in which they are calculated. Minor differences would be due to the distributions across activities by season. Again, profits are only equal to the affect on person-days for diving for lobsters. For spearfishing, the effect on profits is lower than the affect on person-days (56.2% versus 71.7%), while for fishing the affect is greater on profits than on person-days (17.6% versus 6.3%).

Market Economic Values. Ten of the twelve charter boats operating within the TERSA would be potentially affected by this alternative. Direct business revenue would include potential losses of 73.4% for diving for lobsters, 59.0% for spearfishing, and 10.5% for fishing. Across all three consumptive recreational activities, 28.7% of revenue would be potentially affected. Through the ripple or multiplier effects, 28.7% of output/sales, income and employment associated with all the consumptive recreational activities in the TERSA could potentially be lost. Although these impacts could have significant affect on the ten firms operating in the TERSA, the affect would not likely be noticed in the Monroe County economy because the affect would amount to only a fraction of a percent of the total economy supported by recreating visitors to the Florida Keys.

Boundary Alternative V (See Fig. 5)

Non-Market Economic Values. This alternative would displace more than 86% of the total person-days of diving for lobsters, more than 84% of the spearfishing, and more than 7% of the fishing. Across all three consumptive recreational activities more than 21% of the person-days would be displaced. For diving for lobsters 85% of the displaced activity would be from within the FKNMS boundary, 59% of the fishing, and 85% of the spearfishing. Because of the way in which consumer's surpluses are calculated, they generally mirror the patterns in displaced use. Minor differences would be due to the distributions across activities by season. Profits are only equal to the affect on person-days for diving for lobsters. For spearfishing, the effects on profits are lower than the affect on person-days (65.5% versus 84.7%), while for fishing the affect is greater on profits than on person-days (21.9% versus 7.6%).

Market Economic Values. Eleven of the twelve charter boats operating within the TERSA would be potentially affected by this alternative. Direct business revenue would include potential losses of 86.7% for diving for lobsters, 69.0% for spearfishing, and 12.9% for fishing. Across all three consumptive recreational activities, 34.1% of revenue would be potentially affected. Through the ripple or multiplier effects, 34.1% of output/sales, income and employment associated with all the consumptive recreational activities in the TERSA could potentially be lost. Although these effects could have significant affect on the ten firms operating in the TERSA, the affect would not likely be noticed in the Monroe County economy because the affect would amount to only a fraction of a percent of the total economy supported by recreating visitors to the Florida Keys.

Mitigating Factors—Are the Potential Losses Likely? In the above GIS-based analysis, effects are referred to as ''potential losses.'' The reason is that there are several factors that could mitigate these potential losses and further there is a possibility that there might not be any losses at all. It is quite possible that there might be actual benefits to even the current displaced users. These factors are referred to only in qualitative terms because it is not possible to quantify them. Below two possible mitigating factors, how likely they might mitigate the potential losses from displacement, and further how this might differ for each of the three alternatives are discussed.

Substitution. If displaced users are simply able to relocate their activities, they may be able to fully or partially mitigate their losses. This of course depends on the availability of substitute sites and further depends on the substitute site qualities. Several scenarios are possible. Even when total activity remains constant (*i.e.,* person-days remain the same as they simply go to other sites), if the quality of the site is lower there could be some loss in consumer's surplus. If it costs more to get to the substitute sites, there could still be increases in costs and thus lower profits. If there is not a completely adequate supply of substitute sites, then there could be losses in total activity and in all the non-market and market economic measures referenced in our above analysis of displaced use. The possibilities for substitution vary by alternative.

Long-term benefits from Replenishment Effects. Ecological reserves or marine reserves may have beneficial effects beyond the direct ecological protection for the sites themselves. That is, both the size and

number of fish, lobster and other invertebrates both inside and outside the reserves may increase. Five spawning areas have been identified in the western portion of the TERSA. The long-term benefits from the reserve could offset any losses from displacement and may also result in long-term benefits and no costs to recreational users that would be displaced by the proposed Tortugas Ecological Reserve. Again, this conclusion may still vary by alternative.

Boundary Alternative II

Substitution. Complete mitigation by substituting to alternative sites has a high probability for this alternative because over half of the Tortugas Bank would still be available for all consumptive recreation activities. Given the equal distribution of use for diving for lobsters and spearfishing on the Tortugas Bank, it is not likely that increased costs of relocation would occur or that there would be losses from users forced to go to sites of lower quality. Crowding effects, by pushing all the use currently spread over the whole Tortugas Bank onto half the bank, would also be unlikely given the small absolute amounts of activity. For fishing, only 1% of the activity would be displaced, so for this activity we would also expect there would be no crowding effects and recreational fishermen would not likely suffer any losses.

Long-term Benefits from Replenishment Effects. One spawning area has been identified in the Alternative II boundary area. As previously described, Alternative II is the portion of the preferred alternative (Alternative III) that lies within the existing Sanctuary boundary. Therefore the long-term benefits to stocks derived from the portion of the preferred alternative that lies outside of the existing Sanctuary boundary would not be realized. This alternative is the smallest one analyzed and so the potential long-term benefits to stocks outside the protected area would be smaller than for the other alternatives. However, the displaced activity to be mitigated is also much smaller and thus on net there is a high likelihood that there would be long-term benefits to all the consumptive recreational users in the TERSA.

Boundary Alternative III (Preferred Boundary Alternative)

Substitution. As with Alternative II, complete mitigation by substituting to alternative sites has a high probability for this alternative because of the small proportion of the Tortugas Bank included in the alternative. Given the equal distribution of use for diving for lobsters and spearfishing on the Tortugas Bank, it is not likely that increased costs of relocation would occur or that there would be losses from users forced to go to sites of lower quality. Crowding effects, again, would be unlikely given the small absolute amounts of activity. For fishing, only 3% of the activity would be displaced, so recreational fishermen would not likely suffer any losses.

Long-term Benefits from Replenishment Effects. Three spawning areas have been identified in the Alternative III boundary area. Because this alternative includes areas outside the existing sanctuary boundary, the potential long-term benefits to stocks outside the protected area would be comparatively larger than it would be for Alternative II. The mitigating effort required on the part of operators in the boundary alternative also would be comparatively larger, but as mentioned above, because of the small percentage of the active recreational area included in the alternative, the effect is likely to be very small. Therefore, there is a high likelihood that there would be long-term benefits to all the consumptive recreational users in the TERSA.

Boundary Alternative IV

Substitution. Under this alternative, about 73% of the diving for lobsters and 72% of the spearfishing would be displaced. The potential for substituting to other sites is greatly reduced as compared with Alternatives II and III. The reason is that all of the Tortugas Bank lies within this boundary alternative. Some substitution is possible, but the probability of crowding effects rises considerably for diving for lobsters and spearfishing.

For fishing, substitution mitigating all the losses is still highly probable since only about 6% of the fishing activity would be displaced. This represents a relatively low amount of activity and given the wide distribution of this activity in the study area, crowding effects are still a low probability under this alternative.

Long-term Benefits from Replenishment Effects. Four spawning sites have been identified within the Alternative IV boundary area. For diving for lobsters and spearfishing, it is not clear whether there would be significant benefits offsite given that most of this activity currently takes place on the Tortugas Bank and none of the bank available for the activity. Not much is currently known about other areas which might benefit from the stock effect and where they could relocate to reap these benefits. Whether the activities displaced could find alternative sites where both the quantity and quality of activity could be maintained or enhanced seems less likely given the extent of displacement.

For fishing, however, the small amount of displacement relative to the entire area plus the wider distribution of fishing activity still makes it highly likely that the long-term benefits of replenishment would more than offset the potential losses from displacement resulting in net benefits to this group.

Boundary Alternative V

Substitution. This alternative displaces about 87% of the diving for lobsters and 85% of the spearfishing. Substitution possibilities for these activities are reduced even more, meaning that losses given are more likely to actually occur.

For fishing, mitigating all the losses through substitution is still highly probable since only about 8% of the fishing activity would be displaced. This again, represents a relatively low amount of activity and given the wide distribution of this activity in the study area, crowding effects are still a low probability under this alternative.

Long-term Benefits from Stock Effects. Four spawning sites have been identified in the Alternative V boundary area. However, because the entire Tortugas Bank would be closed to diving for lobsters and spearfishing and the additionally large area encompassed by the proposed reserve, it is highly unlikely that these two user groups would benefit from the enhanced stocks of lobster and fish. Therefore, under this alternative, the maximum potential losses are highly likely to occur.

For fishing, however, the stock effects for the reserve could be substantial. Whether the benefits would be large enough to offset the displacement cannot immediately be determined. But given the past experience with reserves, it is still somewhat likely that the long-term benefits would offset the displacement costs yielding net benefits.

Benefits of the Proposed Tortugas Ecological Reserve to Recreational Users on Entire Florida Keys Reef Tract. Above we discussed the possibility that consumptive recreational users could possibly benefit if there were long-term offsite impacts. But there is also the possibility that a protected area in the Tortugas could yield beneficial stock effects to a wide variety of species all along the entire Florida Keys reef tract and to species such as sailfish that are primarily offshore species. Even small increases in recreational tourist activities along the entire Florida Keys

reef tract could more than offset the total displacements from the most extreme alternative analyzed here. One-tenth of one percent increase in the total recreational visitor contribution along the entire Florida Keys reef tract would more than offset the maximum potential losses from Boundary Alternative V.

Non-consumptive Users (Divers) in Tortugas. Currently there is one operator who brings divers to the TERSA for non-consumptive diving. There were 1,048 person-days of non-consumptive diving which account for 4.98% of the total recreational activity in the TERSA (excluding the National Park). Of the total non-consumptive diving, 83.3% is currently done within the existing Sanctuary boundary. It is expected that this group would be benefitted by the ecological reserve. As the site improves in quality, we would expect that the demand for this site would increase and person-days, consumer's surplus, business revenues and profits would all increase. This would be expected to vary by alternative with the more protective alternatives having greater benefits.

Commercial Fishery

Boundary Analysis

Boundary Analysis Methodology. In performing the boundary analysis, the impact estimates for each alternative are broken out by ''within the FKNMS boundary'' and ''outside the FKNMS boundary.''

Commercial fishing is prohibited in the DRTO so these grid cells are ''true'' zeroes in the analysis. Before breaking out the impact, the status of each grid cell (*i.e.,* inside or outside of the boundary) had to be determined. Two methods were considered to carry out this task: The ''centroid method'' and the ''intersection method.'' The centroid method characterizes a grid cell as within a boundary if the centroid (*e.g.,* center point) of the cell is within the boundary. The intersection method characterizes a grid cell as within a boundary if any part of the cell is intersected by the boundary. The centroid method was selected because it was more consistent with how the data was collected (*i.e.,* 1 nm^2 grid cells was the finest resolution).

The interpretation of the estimates provided in this analysis is critical to understanding the ''true'' impact of the various alternatives proposed for the Tortugas Ecological Reserve. The estimates from the geographic information system (GIS) analyses for the different boundary alternatives are the sum of each measurement within the boundary for a given alternative. The estimates therefore represent the maximum total potential loss from displacement of the commercial fishing activities. This analysis ignores possible mitigating factors and the possibility of net benefits that might be derived if the proposed ecological reserve has replenishment effect. Although the extent of the mitigating factors or the potential benefits from replenishment cannot be quantified, these as well as other potential benefits of the proposed ecological reserve are discussed after presenting and discussing the maximum potential losses from displacement of the current commercial fisheries.

The boundary analysis is driven by the catch summed across grid cells within each boundary alternative. The set of relationships, measures and methods described in Leeworthy and Wiley (1999) are then used to translate catch into estimates of market and non-market economic values potentially affected. These estimates are broken-down by area both inside and outside FKNMS boundary and are done by species.

The boundary alternatives are ordered according to size and potential impact. Alternative I is the ''No Action'' alternative and is the least protective alternative. Alternative III is the ''Preferred Alternative.'' Alternatives IV and V are the largest and ''Most Protective'' alternatives. For catch, generally the higher the alternative number the greater the potential affect on catch, except for king mackerel and shrimp. Potential affect on king mackerel catch is the same for both Alternatives IV and V and, the potential affect on shrimp catch is the same for the preferred Alternative III and Alternative IV.

Both the market and non-market economic values potentially lost from displacement for each alternative, except the ''No-action'' Alternative (Boundary Alternative I), are summarized in Leeworthy and Wiley (1999), which includes greater detail by species/species groups, and for the market economic values, separate estimates for Monroe and Collier/Lee counties.

Boundary Alternative I: No Action

The no action alternative simply means that the proposed Tortugas Ecological Reserve would not be established and the corresponding no-take regulations would not be issued. The no action alternative has a simple interpretation in that any costs of imposing the no-take regulations, for any given alternative with no-take regulations, would be the benefits of the no action alternative. That is, by not adopting the no-take regulations, the costs are avoided. Similarly, any benefits from imposing the no-take regulations, for any given alternative with no-take regulations, would be the costs of the no action alternative. That is, by not adopting the no-take regulations, the costs are the benefits lost by not adopting the no-take regulations. Said another way, the opportunities lost. The effects of the no action alternative can only be understood by comparing it to one of the alternatives. Thus the effects of the no action alternative can be obtained by reading the effects from any of the alternatives in reverse.

Boundary Alternative II

Market Economic Values. This alternative could potentially affect 4.2% of the catch of king mackerel, 6% of the lobster catch, 12.96% of the reef fish catch, and 1% of the shrimp catch in the TERSA. This would lead to a reduction in about $411 thousand in harvest revenue or 6% of the TERSA harvest revenue. This reduction in revenue would result in a reduction of 5.8% of total output, income and employment generated by the TERSA fishery. Since this alternative was restricted to reside within FKNMS current boundary, the effects are all inside FKNMS boundary. Although these effects might seem significant to those firms that might potentially be affected, the overall affect on the local economies would be so small they would not be noticed. Harvest revenue potentially impacted was only 0.67% of all harvest revenue of catch landed in Monroe County. In addition, this lost revenue would translate (accounting for the multiplier effects) into only fractions of a percent of the total Monroe County economy; 0.035% of total output, 0.046% of total income and 0.045% of total employment.

Non-market Economic Values. For all species/species groups, this alternative could result in a potential loss of over $473 thousand in consumer's surplus. This was 6.28% of the consumer's surplus generated by the entire TERSA. Although producer's surplus or economic rents are estimated to be zero, about 5.54% of the return to labor and capital of the TERSA fishery is potentially affected by this alternative.

Boundary Alternative III (Preferred Boundary Alternative)

Market Economic Values. This alternative could potentially affect 14% of the catch of king mackerel, 11.58% of the lobster catch, 20.30% of the reef fish catch, and 8.16% of the shrimp catch in the TERSA. This would lead to a

reduction in about $844 thousand in harvest revenue or 12.26% of the TERSA harvest revenue. This reduction in revenue would result in a reduction of 12.16% of total output, income and employment generated by the TERSA fishery. The impacts are split almost evenly between the areas inside and outside the FKNMS boundary. Although these costs might seem significant to those firms that might potentially be affected, the overall affect on the local economies would be so small they would not be noticed. Harvest revenue potentially affected was only 1.16% of all harvest revenue of catch landed in Monroe County. In addition, this lost revenue would translate (accounting for the multiplier effects) into only fractions of a percent of the total Monroe County economy; 0.0596% of total output, 0.0779% of total income and 0.0785% of total employment.

Non-market Economic Values. For all species/species groups, this alternative could result in a potential loss of about $880 thousand in consumer's surplus. This was 11.7% of the consumer's surplus generated by the entire TERSA. Whereas the market economic values were almost evenly split inside and outside the FKNMS, 53.76% of the consumer's surplus potentially affected is from inside the FKNMS boundary. This is due to the distributions of lobster and reef fish catch where a higher proportion of the potentially affected catch come from inside the FKNMS boundary, whereas the distributions of shrimp and king mackerel come largely from outside the FKNMS boundary.

Although producer's surplus or economic rents are estimated to be zero, about 11.5% of the return to labor and capital of the TERSA fishery is potentially affected by this alternative. The distribution inside versus outside the FKNMS boundary follows that of the market economic values with 48% from catch inside the FKNMS boundary.

Boundary Alternative IV

Market Economic Values. This alternative could potentially affect 15.57% of the catch of king mackerel, 16.4% of the lobster catch, 28.19% of the reef fish catch, and 8.16% of the shrimp catch in the TERSA. This would lead to a reduction in about $1.126 million in harvest revenue or 16.45% of the TERSA harvest revenue. This reduction in revenue would result in a reduction of 16.05% of total output, income and employment generated by the TERSA fishery. About 61.65% of the harvest revenue and 60.34% of the output, income and employment impacts would come from catch displaced from within FKNMS boundary. Although the costs might seem significant to those firms that might potentially be affected, the overall impact on the local economies would be so small they would not be noticed. Harvest revenue potentially affected was only 1.82% of all harvest revenue of catch landed in Monroe County. In addition, this lost revenue would translate (accounting for the multiplier effects) into only fractions of a percent of the total Monroe County economy; 0.0968% of total output, 0.127% of total income and 0.1281% of total employment.

Non-market Economic Values. For all species/species groups, this alternative could result in a potential loss of about $1.1 million in consumer's surplus. This was 14.64% of the consumer's surplus generated by the entire TERSA and 63.14% of the consumer's surplus potentially affected is from catch from inside the FKNMS boundary. This is due to the distributions of lobster and reef fish catch where a higher proportion of the potentially affected catch come from inside the FKNMS boundary, whereas the distributions of shrimp and king mackerel come largely from outside the FKNMS boundary. Although producer's surplus or economic rents are estimated to be zero, about 15.6% of the return to labor and capital of the TERSA fishery is potentially affected by this alternative. The distribution inside versus outside the FKNMS boundary follows that of the market economic values with 61.68% from catch inside the FKNMS.

Boundary Alternative V

Market Economic Values. This alternative could potentially affect 15.57% of the catch of king mackerel, 17.58% of the lobster catch, 29.57% of the reef fish catch, and 10.26% of the shrimp catch in the TERSA. This would lead to a reduction in about $1.224 million in harvest revenue or 17.89% of the TERSA harvest revenue. This reduction in revenue would result in a reduction of 17.5% of total output, income and employment generated by the TERSA fishery. About 56.68% of the harvest revenue and 55.26% of the output, income and employment impacts would come from catch displaced from within the FKNMS boundary. Although the costs might seem significant to those firms that might potentially be affected, the overall impact on the local economies would be so small they would not be noticed. Harvest revenue potentially affected was only 1.98% of all harvest revenue of catch landed in Monroe County. In addition, this lost revenue would translate (accounting for the multiplier effects) into only fractions of a percent of the total Monroe County economy; 0.106% of total output, 0.138% of total income and 0.1399% of total employment.

Non-market Economic Values. For all species/species groups, this alternative could result in a potential loss of about $1.24 million in consumer's surplus. This was 16.4% of the consumer's surplus generated by the entire TERSA. 56.2% of the consumer's surplus potentially affected is from catch from inside the FKNMS boundary. This is due to the distributions of lobster and reef fish catch where a higher proportion of the potentially affected catch come from inside the FKNMS boundary, whereas the distributions of shrimp and king mackerel come largely from outside the FKNMS boundary. Although producer's surplus or economic rents are estimated to be zero, about 16.97% of the return to labor and capital of the TERSA fishery is potentially affected by this alternative. The distribution inside versus outside the FKNMS boundary follows that of the market economic values with 56.7% from catch inside the FKNMS boundary.

Profiles of Fishermen Potentially Affected

In the overview section, a profile of the approximately 110 TERSA fishermen based on a sample of 90 was given with a comparison with other commercial fishermen in Monroe County. The profiles of those potentially affected by each alternative are compared. Statistical tests were performed comparing the sample distributions for the groups that fished within each boundary alternative as compared with TERSA fishermen as a whole. Except for the number of fishing operations potentially affected, the only significant differences for all alternatives were in membership in organizations and in fish house usage.

In terms of memberships in organizations, the fishermen potentially affected by all alternatives had significantly lower participation rates in the Conch Coalition, the Organized Fishermen of Florida (OFF) and in the Monroe County Commercial Fishermen, Inc. (MCCF), but had a significantly higher participation rates in environmental organizations and the Chambers of Commerce. Fish house usage was significantly lower for those fishermen potentially affected by all alternatives.

Fishermen potentially affected by Boundary Alternative II were the only group that was significantly different. These fishermen had less experience

fishing in Monroe County than the general TERSA fishermen, however they were not significantly different with respect to years fishing in the TERSA. Fishermen potentially affected by Boundary Alternative II also earned a significantly lower proportion of their income from fishing than the general TERSA fishermen; however, they earned a significantly higher proportion of their income from fishing within the TERSA than the general TERSA fishermen.

Fishermen potentially affected by Boundary Alternative II were also significantly different from the general TERSA fishermen in the distribution of their primary hauling port. A significantly higher proportion of those potentially affected by this alternative used Key West/Stock Island and Tavenier than the general TERSA fishermen, and they used Big Pine Key, Marathon and Naples/Ft. Myers significantly less than the general TERSA fishermen.

Fifty-one (51) or 57% of the sampled fishing operations could be potentially affected by Boundary Alternative II followed by 64 operations or 71% for Alternative III, and 65 operations or 72% for both Boundary Alternatives IV and V. Twenty-four (24) of the 28 or 86% of all the lobster operations could be potentially affected by Boundary Alternative II, while 27 of the 28 lobster operations or 96% are potentially affected by Boundary Alternatives III, IV, and V. Six (6) of the 18 or 33.3% of the shrimp operations are potentially affected by Boundary Alternative II, while Boundary Alternative III could potentially affect 15 of 18 or 83% of the shrimp operations. Boundary Alternatives IV and V could potentially affect 14 of the 18 or 78% of the shrimp operations. Fifteen (15) of the 16 king mackerel operations could be potentially affected by Boundary Alternative II, while Boundary Alternatives III, IV and V could potentially affect all 16 of the king mackerel operations. Thirty-seven (37) of the 42 or 88% of the reef fish operations could be potentially affected by Boundary Alternative II, while 40 or 95% of the reef fish fishing operations could be potentially affected by Boundary Alternative III. Boundary Alternatives IV and V could potentially affect all 42 reef fish operations.

Other Potential Costs and Mitigating Factors—Are the Potential Losses Likely?

In the above GIS-based analysis, the effects are referred to as ''potential losses'' or ''maximum potential losses.'' There is the possibility that there could be an additional cost not discussed but which cannot be quantified, that is, crowding and the resulting conflicts among users forced to compete in a smaller area. There are also several factors that could mitigate all the potential losses and further there is a possibility that there might not be any losses at all. It is quite possible that there might be actual net benefits to even the current displaced users. Below the issue of crowding costs and the mitigating factors and potential for beneficial outcomes are discussed in qualitative terms because of the difficulty in quantifying them. Two mitigating factors, how likely they might mitigate the potential losses from displacement, and how this might differ for each of the alternatives, are discussed.

Crowding. As shown above, each of the alternatives would result in a certain amount of displacement. Displacement of commercial fishing activity is a certainty under all boundary alternatives, except Boundary Alternative I, the No-action Alternative. If this displacement results in the activity being transferred to other sites, there is a potential for crowding effects. Crowding effects could raise the costs of fishing, both private costs to each fishing operation and social costs in resolving conflicts.

Crowding conflicts were one of the issues mentioned when the State of Florida created the lobster trap certificate program which was designed to reduce the number of lobster traps. If fishing stocks outside the protected area are already fished to their limits (*i.e.,* limits of sustainable harvests), then displacement could also lead to adverse stock effects and a lower level of catch from all commercial fisheries. Crowding effects would represent a potential cost not accounted for in our above GIS-based analysis and the potential for the existence of crowding effects would vary by alternative. Whether crowding effects are experienced would depend on the status of the fisheries outside the proposed protected area, the extent of displacement, the current knowledge and fishing patterns of the displaced fishermen, and other potential regulations. The trap reduction program is an example where crowding effects could be mitigated by making room for the displaced traps.

Relocation. If displaced commercial fishermen are simply able to relocate their fishing effort and they are able to partially or completely replace their lost catch by fishing elsewhere, then there might be less or no affect. However, the possibility exists that displacement, even if it does not result in lower overall catch, may result in higher costs. This would result in lower profits to fishing operations. Whether fishermen are able to relocate to other fishing sites and replace lost catch or avoid cost increases would depend, like with the issue of crowding, on the status of the fisheries outside the proposed protected area, the extent of the displacement, the current knowledge and fishing patterns of the displaced fishermen, and other potential regulations.

Long-term benefits from Replenishment Effects. Ecological reserves or marine reserves may have beneficial effects beyond the direct ecological protection from the sites themselves. That is, both the size and number of fish, lobster, and other invertebrates both inside and outside the reserves may increase *i.e.,* the replenishment effect. It is clear that fishers all over the world believe no-take zones increase yields because they fish as close to the boundary as possible. The long-term benefits from the reserve could offset any losses from displacement and may also result in long-term benefits and no costs (net benefits) to commercial fishermen that would be displaced by a proposed reserve. Again, this conclusion may vary by alternative.

Boundary Alternative II

Crowding and Relocation. For the commercial lobster fishery, it appears that the lobster trap reduction program could fully mitigate the potential for crowding costs. This boundary alternative would displace 2,228 traps. A ten percent reduction in traps in the TERSA would provide space for 3,690 traps. Further, lobster fishermen in the TERSA only catch 68% of their lobsters from the TERSA. Thus, lobster fishermen are knowledgeable about fishing in other areas of the Keys where they might move their displaced traps. Thus, under this boundary alternative there would be no crowding costs for the commercial lobster fishery and the fishermen would be able to replace catch from other areas. Thus, for the commercial lobster fishery, the potential economic losses identified in Table 1 are not likely to occur under Boundary Alternative II.

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Table 1. Maximum Potential Losses to the Commercial Fisheries from Displacement

Area/Measure	Total TERSA	Alternatives: Alternative II	Preferred Alternative	Alternative IV	Alternative V
Total TERSA					
Market[1]					
Harvest Revenue	$ 6,884,992	$ 411,632	$ 843,583	$ 1,126,237	$ 1,224,849
Total Output	$ 14,957,717	$ 865,819	$ 1,817,843	$ 2,400,730	$ 2,621,627
Total Income	$ 9,273,785	$ 536,808	$ 1,127,063	$ 1,488,453	$ 1,625,409
Total Employment	404	23	49	65	71
Non-market					
Consumer's Surplus[2]	$ 7,537,781	$ 473,097	$ 879,973	$ 1,103,808	$ 1,239,587
Producer's Surplus[3]	$ -	$ -	$ -	$ -	$ -
Return to Labor & Capital[4]	$ 1,926,162	$ 106,789	$ 221,968	$ 300,599	$ 326,880
Inside FKNMS					
Market					
Harvest Revenue	$ 3,476,456	$ 411,632	$ 411,632	$ 694,284	$ 694,284
Total Output	$ 7,292,387	$ 865,819	$ 865,819	$ 1,448,700	$ 1,448,700
Total Income	$ 4,521,280	$ 536,808	$ 536,808	$ 898,194	$ 898,194
Total Employment	197	23	23	39	39
Non-market					
Consumer's Surplus	$ 3,890,933	$ 473,097	$ 473,097	$ 696,932	$ 696,932
Producer's Surplus	$ -	$ -	$ -	$ -	$ -
Return to Labor & Capital	$ 1,029,118	$ 106,789	$ 106,789	$ 185,420	$ 185,420
Outside FKNMS					
Market					
Harvest Revenue	$ 3,408,536	$ -	$ 431,951	$ 431,953	$ 530,565
Total Output	$ 7,665,330	$ -	$ 952,024	$ 952,030	$ 1,172,927
Total Income	$ 4,752,505	$ -	$ 590,255	$ 590,259	$ 727,215
Total Employment	207	-	26	26	32
Non-market					
Consumer's Surplus	$ 3,646,848	$ -	$ 406,876	$ 406,876	$ 542,655
Producer's Surplus	$ -	$ -	$ -	$ -	$ -
Return to Labor & Capital	$ 897,044	$ -	$ 115,179	$ 115,179	$ 141,460

1. Market economic measures include impacts on Monroe County and Collier/Lee counties. See Appendix A, Tables A.6 - A.11 in Leeworthy and Wiley (1999) for details by species and counties.
2. Maximum values from each species were used when range of estimates was generated from multiple demand equations. See Appendix B in Leeworthy and Wiley (1999) for detailed calculations by species and alternatives.
3. Producer's surplus or economic rents were assumed to be zero for two reasons. First, all fisheries, except spiny lobsters, are open access fisheries and therefore economic rents would be zero i.e., firms are earning only normal rates of return on investment. Second, even using total return to labor & capital, which overstates return on investment, does not yield rates of return on investment above normal rates of return.
4. Return to Labor & Capital is not a non-market value but would include rent if it existed.

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Crowding is not an issue for the king mackerel commercial fishery because king mackerel is a pelagic species and thus moves around and catching them elsewhere is highly likely without interfering with other fishermen. Shrimp fishermen currently only catch ten percent of their total shrimp catch from the TERSA. Displacement of shrimp catch under Boundary Alternative II would only be about one percent of their TERSA catch and less than one percent of their total shrimp catch. It would seem highly likely that there would be no crowding costs from displacement and given the small amounts of catch affected, it is highly likely that shrimp fishermen would be able to replace lost catch from other sites. Thus, for the king mackerel and shrimp commercial fisheries, the potential economic losses identified in Table 1 are not likely to occur under Boundary Alternative II.

Reef fish fishermen comprise the largest group of TERSA fishermen. Under Boundary Alternative II, 37 of the sampled 42 fishermen would be affected. Reef fish fishermen are knowledgeable of other fishing locations outside the TERSA. In 1997, they caught 52% of their reef fish from areas in the Keys outside the TERSA. However, stocks of reef fish in the TERSA and throughout the Keys appear to be overfished. Alternative II displaces about 13% of the reef fish catch in the TERSA. Given the status of reef fish stocks, the losses identified in Table 1 are likely to occur in the short-term until the benefits of replenishment could offset these losses in the longer-term.

Replenishment. No replenishment benefits to the king mackerel or shrimp commercial fisheries are expected. For the lobster and reef fish fisheries, replenishment benefits are expected. Invertebrates and reef fish at other marine reserves had shown estimated increases in yields of 46–50% within three kilometers of the protected areas. Also, five spawning areas were identified in the western portion of the TERSA. Only one of the five spawning areas is located within the Boundary Alternative II boundary. The reserve would protect this area, and this area would support the replenishment effect. For the commercial lobster fishery, we expect long-term net benefits under Boundary Alternative II. For the commercial reef fish fishery, it is not clear whether the full 13% lost catch from displacement would be replaced from replenishment, but the costs of displacement would be mitigated and the losses expected to be less than the 13% reductions that are the basis for the losses calculated and presented in Table 1.

Boundary Alternative III (Preferred Boundary Alternative)

Crowding and Relocation. For the lobster fishery, there is some potential for crowding costs. This boundary alternative would displace 4,346 traps. A ten percent reduction in traps in the TERSA would provide space for 3,690 traps. However, if the remaining 656 traps are relocated to zones 1–3 in the Keys, there would be more than adequate space given the 10% reduction in traps that took place in Monroe County between 1997–98 and 1998–99 (475,094 to 428,411). Lobster fishermen in the TERSA only catch 68% of their lobsters from the TERSA. Thus, lobster fishermen are knowledgeable about fishing in other areas of the Keys where they might move their displaced traps. Thus, under this alternative there would be no crowding costs for lobsters and we expect that the lobster fishermen would be able to replace catch from other areas. Thus, for the lobster fishery, the potential economic losses identified in Table 1 are not likely to occur under this alternative.

Crowding is not an issue for king mackerel commercial fishery because king mackerel is a pelagic species and thus moves around and catching them elsewhere is highly likely without interfering with other fishermen. Shrimp fishermen currently only catch ten percent of their total shrimp catch from the TERSA. Displacement of shrimp catch under Boundary Alternative III would only be about eight percent of their TERSA catch and less than one percent of their total shrimp catch. It would seem highly likely that there would be no crowding costs from displacement and given the small amounts of catch affected, it is highly likely that shrimp fishermen would be able to replace lost catch from other sites. Thus for the commercial king mackerel and shrimp fisheries, the potential economic losses identified in Table 1 are not likely to occur under this alternative.

Reef fish fishermen comprise the largest group of TERSA fishermen. Under Boundary Alternative III, 40 of the sampled 42 fishermen would be affected. Reef fish fishermen are knowledgeable of other fishing locations outside the TERSA. In 1997, they caught 52% of their reef fish from areas in the Keys outside the TERSA. However, stocks of reef fish in the TERSA and throughout the Keys appear to be overfished. Boundary Alternative III displaces 20% of the reef fish catch in the TERSA. Given the status of reef fish stocks, the losses identified in Table 1 are likely to occur in the short-term until the benefits of replenishment could offset these losses in the longer-term.

Replenishment. No replenishment benefits to the commercial king mackerel or shrimp fisheries are expected. For the commercial lobsters and reef fish fisheries, replenishment benefits are expected. Yields of invertebrates and reef fish of 46–50% have been reported within three kilometers of the protected areas at other marine reserves. Five spawning areas have been reported in the western portion of the TERSA. Three of the five spawning areas are located within the alternative III boundary and would be protected, thus bolstering the replenishment effect. For the commercial lobster fishery, long-term net benefits would be expected under Boundary Alternative III. For the commercial reef fish fishery, it is not clear whether the full 20% lost catch from displacement would be replaced from replenishment, but the costs of displacement would be mitigated and the losses expected to be less than the 20% reductions that are the basis for the losses calculated and presented in Table 1.

Boundary Alternative IV

Crowding and Relocation. For the commercial lobster fishery, there is some potential for crowding costs. This boundary alternative would displace an estimated 6,050 traps. A ten percent reduction in traps in the TERSA would provide space for 3,690 traps. However, if the remaining 2,360 traps are relocated to zones 1–3 in the Keys, there would be more than adequate space given the 10% reduction in traps that took place in Monroe County between 1997–98 and 1998–99 (475,094 to 428,411).

Lobster fishermen in the TERSA only catch 68% of their lobsters from the TERSA. Thus, lobster fishermen are knowledgeable about fishing in other areas of the Keys where they might move their displaced traps. Thus, under this alternative there would be no crowding costs for the commercial lobster fishery and fishermen would be able to replace catch from other areas. Thus, for the commercial lobster fishery, the potential economic losses identified in Table 1 are not likely to occur under Boundary Alternative IV.

Crowding is not an issue for the king mackerel fishery because king mackerel is a pelagic species and thus moves around and catching them elsewhere is highly likely without interfering with other fishermen. Shrimp fishermen

currently only catch ten percent of their total shrimp catch from the TERSA. Displacement of shrimp catch under Boundary Alternative IV would only be about eight percent of their TERSA catch and less than one percent of their total shrimp catch. It would seem highly likely that there would be no crowding costs from displacement and given the small amounts of catch affected, it is highly likely that shrimp fishermen would be able to replace lost catch from other sites. Thus, for the commercial king mackerel and shrimp fisheries, the potential economic losses identified in Table 1 are not likely to occur under Boundary Alternative IV.

Reef fish fishermen comprise the largest group of TERSA fishermen. Under Boundary Alternative IV, all 42 of the sampled fishermen would be affected. Reef fish fishermen are knowledgeable of other fishing locations outside the TERSA. In 1997, they caught 52% of their reef fish from areas in the Keys outside the TERSA. However, stocks of reef fish in the TERSA and throughout the Keys appear to be overfished. Boundary Alternative IV displaces 28% of the reef fish catch in the TERSA. Given the status of reef fish stocks, the losses identified in Table 1 are likely to occur in the short-term until the benefits of replenishment could offset these losses in the longer-term.

Replenishment. No replenishment benefits to the commercial king mackerel and shrimp fisheries are expected. For the commercial lobster and reef fish fisheries, replenishment benefits are expected. Increases in yields of invertebrates and reef fish of 46–50% have been reported within three kilometers of the protected areas at other marine reserves. Five spawning areas have been in the western portion of the TERSA. Four of the five spawning areas are located within the Boundary Alternative IV boundary and would be protected, thus bolstering the replenishment effect. For the commercial lobster fishery, no long-term net benefits would be expected under Boundary Alternative IV. For the commercial reef fish fishery, it is not clear whether the full 28% lost catch from displacement would be replaced from replenishment, but the costs of displacement would be mitigated and the losses expected to be less than the 28% reductions that are the basis for the losses calculated and presented in Table 1.

Boundary Alternative V

Crowding and Relocation. For the commercial lobster fishery, there is some potential for crowding costs. This boundary alternative would displace 6,487 traps. A ten percent reduction in traps in the TERSA would provide space for 3,690 traps. However, if the remaining 2,797 traps are relocated to zones 1–3 in the Keys, there would be more than adequate space given the 10% reduction in traps that took place in Monroe County between 1997–98 and 1998–99 (475,094 to 428,411). Lobster fishermen in the TERSA only catch 68% of their lobsters from the TERSA and they are knowledgeable about fishing in other areas of the Keys where they might move their displaced traps. Thus, under this boundary alternative there would be no crowding costs for the commercial lobster fishery and fishermen would be able to replace catch from other areas. Therefore, for the commercial lobster fishery, the potential economic losses identified in Table 1 are not likely to occur under Boundary Alternative V.

Crowding is not an issue for the king mackerel commercial fishery because king mackerel is a pelagic species and thus moves around and catching them elsewhere is highly likely without interfering with other fishermen. Shrimp fishermen currently only catch ten percent of their total shrimp catch from the TERSA. Displacement of shrimp catch under Boundary Alternative V would only be about ten percent of their TERSA catch and about one percent of their total shrimp catch. It would seem highly likely that there would be no crowding costs from displacement and given the small amounts of catch affected, it is highly likely that shrimp fishermen would be able to replace lost catch from other sites. Thus, for the king mackerel and shrimp commercial fisheries, the potential economic losses identified in Table 1 are not likely to occur under Boundary Alternative V.

Reef fish fishermen comprise the largest group of TERSA fishermen. Of the 90 TERSA fishermen sampled, 42 were reef fish fishermen. Under Boundary Alternative V, all 42 would be affected. Reef fish fishermen are knowledgeable of other fishing locations outside the TERSA. In 1997, they caught 52% of their reef fish from areas in the Keys outside the TERSA. However, stocks of reef fish in the TERSA and throughout the Keys appear to be overfished. Boundary Alternative V displaces 29% of the reef fish catch in the TERSA. Given the status of reef fish stocks, the losses identified in Table 1 are likely to occur in the short-term until the benefits of replenishment could offset these losses in the longer-term.

Replenishment. No replenishment benefits to the king mackerel and shrimp commercial fisheries are expected. For the lobster and reef fish commercial fisheries, replenishment benefits are expected. Increases in yields of invertebrates and reef fish of 46–50% have been reported within three kilometers of the protected areas at other marine reserves. Five spawning areas have been identified in the western portion of the TERSA. Four of the five spawning areas are located within the Boundary Alternative V boundary and would be protected, thus bolstering the replenishment effect. For the lobster commercial fishery, long-term net benefits under Boundary Alternative V are expected. For reef fish, it is not clear whether the full 29% lost catch from displacement would be replaced from replenishment, but the costs of displacement would be mitigated and the losses expected to be less than the 29% reductions that are the basis for the losses calculated and presented in Table 1.

Commercial Shipping

No effect for any of the alternatives.

Treasure Salvors

No expected effect for any of the alternatives. One permit for inventorying submerged cultural resources in Sanctuary waters was issued for the Tortugas area of the Sanctuary. There were no submerged cultural resources found on the Tortugas Bank. Currently, it is unknown whether there are any submerged cultural resources on Riley's Hump, located in Tortugas South.

Other Regulations

Boundary Alternative I

This alternative is the no-action alternative required by NEPA that assumes that no reserve would be established and that the current management regime and range of human activities would continue. Thus, no regulatory alternatives are applicable.

Boundary Alternative II

This alternative limits the reserve to the existing Sanctuary boundary for a total area of approximately 55 square nautical miles (Fig. 2). This alternative includes a portion of Sherwood Forest and the coral pinnacles north of Tortugas Bank; it does not include Riley's Hump. It includes some coral and hardbottom habitat north of the DRTO.

Regulatory Alternative A: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North

and South. The provisions of this alternative applicable to Tortugas South are not relevant under this boundary alternative. The Sanctuary-wide regulations already apply to Tortugas North and the effects of the ecological reserve regulations have been analyzed under the no-take discussion above. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR Parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Regulatory Alternative B: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); and prohibit anchoring in and control access to Tortugas South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy. The provisions of this alternative applicable to Tortugas South are not relevant under this boundary alternative. The Sanctuary-wide regulations already apply to Tortugas North and the effects of the ecological reserve regulations have been analyzed under the no-take discussion above. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Regulatory Alternative C (Preferred Regulatory Alternative): Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); and prohibit anchoring in and control access to Tortugas North and South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B). The provisions of this alternative applicable to Tortugas South are not relevant under this boundary alternative. The Sanctuary-wide regulations already apply to Tortugas North and the effects of the ecological reserve regulations have been analyzed under the no-take discussion above. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

This regulatory alternative has no incremental impact on commercial fishing or recreational consumptive users since they are displaced by the ''no-take'' regulation. The dive operator servicing nonconsumptive diving and currently operating in Tortugas North would be prohibited from anchoring. His vessel is less than 100 ft LOA and thus he would be unaffected by the prohibition on mooring. The location and availability of mooring buoys would constrain the number and choice of available dive sites. It is unknown whether this would have any impact on the future business volume of dive operators or the quality of the experience to nonconsumptive divers. The extent of impact would be dependent on the number and locations of mooring buoys (to be determined).

This regulatory alternative would have little impact on commercial shipping because continuous transit would be allowed. Vessels 50m or greater in registered length are already prohibited from anchoring in 19.3% of Tortugas North. The main effect would be to ban such vessels from anchoring on the remainder of Tortugas North. There would be no incremental impact to treasure salvors since they would be displaced by the ''no-take'' regulation. The one dive operator servicing nonconsumptive diving and currently operating in Tortugas North would be required to obtain Tortugas access permits. Any new dive operators would also be required to obtain a permit. There would be minor time costs associated with obtaining a permit and getting permission to access the reserve. It is expected that fulfilling all the permit requirements and obtaining permission to access the reserve will not exceed 10 minutes of each permittee's time for each visit to the reserve. No special professional skills would be necessary to apply for a permit.

Regulatory Alternative D: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); prohibit anchoring in and control access to Tortugas North via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B); and prohibit anchoring and restrict access to Tortugas South to research or education activities only. Because the provisions of this alternative applicable to Tortugas South are not relevant under this boundary alternative, the impacts of this alternative are the same as described for Regulatory Alternative C, above. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Boundary Alternative III (Preferred Boundary Alternative)

This alternative involves a Sanctuary boundary expansion and represents the WG's recommendation adopted by the SAC and recommended to NOAA and the State of Florida for a reserve with a total area of approximately 151 nm^2 (Fig. 3). It is NOAA's preferred boundary alternative.

Regulatory Alternative A: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South. Boundary Alternative III includes areas currently outside the Sanctuary boundary. A small portion of Tortugas North and all of Tortugas South would be outside the existing Sanctuary boundary. The Sanctuary-wide regulations would become effective in the expansion areas of Tortugas North and South. The existing Sanctuary regulations and their impacts are presented in Table 21 of the DSEIS/SMP. More detailed descriptions of the regulations are included in Appendix C to the DSEIS/SMP. The effects of the ecological reserve regulations have been analyzed under the no-take discussion above. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Regulatory Alternative B: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); and prohibit anchoring in and control access to Tortugas South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B). Boundary Alternative III includes areas currently outside the Sanctuary boundary. A small portion of Tortugas North and all of Tortugas South would be outside the existing Sanctuary boundary. The Sanctuary-wide regulations would become effective in the expansion areas of

Tortugas North and South. The existing Sanctuary regulations and their impacts are presented in Table 21 of the DSEIS/SMP. More detailed descriptions of the regulations are included in Appendix C to the DSEIS/SMP. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

The effects of the ecological reserve regulations have been analyzed under the no-take discussion above. The prohibition on anchoring would have no incremental impact on commercial fishing or recreational consumptive users since they are displaced by the ''no-take'' regulation. The one dive operator servicing nonconsumptive diving and currently operating in Tortugas North would be prohibited from anchoring. There are no known recreational dive operators servicing Tortugus South. The location and availability of mooring buoys would constrain the number and choice of available dive sites. It is unknown whether this would have any impact on the future business volume of dive operators or the quality of the experience to nonconsumptive divers. The extent of impact would be dependent on the number and locations of mooring buoys (to be determined). The prohibition on anchoring would impact commercial shipping in the boundary expansion areas, especially in Tortugas South. The prohibition on anchoring in Tortugas North is discussed under Boundary/Regulatory Alternative II.C above. Anchoring by large commercial vessels is known to occur on Riley's Hump, which would be included in the Sanctuary as part of Tortugas South under Boundary Alternative III and thus would be subject to the anchoring prohibition. The impact of this regulation on commercial vessel operators is expected to be small since other anchorages are available a short distance outside the Sanctuary boundary.

There would be no incremental impact on treasure salvors from the no-anchoring prohibition since they would be displaced by the ''no-take'' regulation. The permit requirements would have no incremental impact on fishermen or salvors because they would be displaced by the ''no-take'' regulations. There are no known nonconsumptive dive operators currently operating in Tortugas South. Any nonconsumptive dive operators operating in Tortugas South in the future would be required to obtain Tortugas access permits. It is not possible to gauge the extent of any such future activity. There would be minor time costs associated with obtaining a permit and getting permission to access the reserve.

It is expected that fulfilling all the permit requirements and obtaining permission to access the reserve would not exceed 10 minutes of each permittee's time for each visit to the reserve. No special professional skills would be necessary to apply for a permit.

Regulatory Alternative C (Preferred Regulatory Alternative): Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); and prohibit anchoring in and control access to Tortugas North and South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B). The only difference between the impacts of this regulatory alternative from those discussed under Regulatory Alternative B would be those associated with the requirement to obtain a permit for other than continuous transit access to Tortugas North. The permit requirements would have no incremental impact on fishermen or salvors because they would be displaced by the ''no-take'' regulations. There is only one known nonconsumptive dive operator currently operating in Tortugas North. He and any new nonconsumptive dive operators operating in Tortugas North would be required to obtain Tortugas access permits. There would be minor time costs associated with obtaining a permit and getting permission to access the reserve. It is expected that fulfilling all the permit requirements and obtaining permission to access the reserve would not exceed 10 minutes of each permittee's time for each visit to the reserve. No special professional skills would be necessary to apply for a permit. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Regulatory Alternative D: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); prohibit anchoring in and control access to Tortugas North via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B); and prohibit anchoring and restrict access to Tortugas South to research or education activities only. The only difference between the impacts of this regulatory alternative from those discussed under Regulatory Alternative C would be those associated with limiting noncontinuous transit access to Tortugas South to research/educational purposes. For the commercial fisheries, salvors, and recreational consumptive users, there would be no incremental impacts since the ''no-take'' regulation would displace these user groups. There are no known nonconsumptive dive operators currently operating in Tortugas South and no recreational diving is known to occur there. Under this alternative, none would be allowed in the future. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Boundary Alternative IV

This alternative involves an expansion to the south by 23 nm^2 of Tortugas North to make it conterminous with the NPS's proposed Research/Natural Area within the DRTO for a total area of approximately 175 nm^2 not including the Park area (Fig. 4). It also involves the same boundary expansion as Boundary Alternative III.

Regulatory Alternative A: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South. A small portion of Tortugas North and all of Tortugas South would be outside the existing Sanctuary boundary. The Sanctuary-wide regulations would become effective in the expansion areas of Tortugas North and South. The existing Sanctuary regulations and their impacts are presented in Table 21 of the DSEIS/SMP. More detailed descriptions of the regulations are included in Appendix C to the DSEIS/SMP. The effects of the ecological reserve regulations which, under Boundary Alternative IV would apply to a larger area because of the southern expansion of Tortugas North, have been analyzed under the no-take discussion above. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological

Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these parts).

Regulatory Alternative B: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); and prohibit anchoring in and control access to Tortugas South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy. A small portion of Tortugas North and all of Tortugas South would be outside the existing Sanctuary boundary. The Sanctuary-wide regulations would become effective in the expansion areas of Tortugas North and South. The existing Sanctuary regulations and their impacts are presented in Table 21 of the DSEIS/SMP. More detailed descriptions of the regulations are included in Appendix C to the DSEIS/SMP. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these parts).

The effects of the ecological reserve regulations which under Boundary Alternative IV would apply to a larger area because of the southern expansion of Tortugas North have been analyzed under the no-take discussion above. The prohibition on anchoring would have no incremental impact on commercial fishing or recreational consumptive users since they are displaced by the ''no-take'' regulation. There are no known recreational dive operators servicing Tortugus South. The location and availability of mooring buoys would constrain the number and choice of available dive sites. It is unknown whether this would have any impact on the future business volume of dive operators or the quality of the experience to nonconsumptive divers. The extent of impact would be dependent on the number and locations of mooring buoys (to be determined).

The prohibition on anchoring would impact commercial shipping in the boundary expansion areas, especially in Tortugas South. The prohibition on anchoring in Tortugas North is discussed under Boundary/Regulatory Alternative II.C. above. Anchoring by large commercial vessels is known to occur on Riley's Hump, which would be included in the Sanctuary as part of Tortugas South under Boundary Alternative IV and thus would be subject to the anchoring prohibition. The impact of this regulation on commercial vessel operators is expected to be small since other non-coral reef anchorages outside the Sanctuary boundary are available a short distance away.

There would be no incremental impact on treasure salvors from the no-anchoring prohibition since they would be displaced by the ''no-take'' regulation.

The permit requirements would have no incremental impact on fishermen or salvors because they would be displaced by the ''no-take'' regulations. There are no known nonconsumptive dive operators currently operating in Tortugas South. Any nonconsumptive dive operators operating in Tortugas South in the future would be required to obtain Tortugas access permits. It is not possible to gauge the extent of any such future activity. There would be minor time costs associated with obtaining a permit and getting permission to access the reserve. It is expected that fulfilling all the permit requirements and obtaining permission to access the reserve would not exceed 10 minutes of each permittee's time for each visit to the reserve. No special professional skills would be necessary to apply for a permit.

Regulatory Alternative C (Preferred Regulatory Alternative): Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); and prohibit anchoring in and control access to Tortugas North and South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B). The only difference between the impacts of this regulatory alternative from those discussed under Alternative B would be those associated with the requirement to obtain a permit for other than continuous transit access to Tortugas North. Under this boundary alternative there are 2.75 more person-days of recreational nonconsumptive use than under Boundary Alternatives II and III. While the area of Tortugas North would be increased by the expansion to the south, the permit requirements would have no incremental impact on fishermen or salvors because they would be displaced by the ''no-take'' regulations. There is only one known nonconsumptive dive operator currently operating in Tortugas North. He and any new nonconsumptive dive operators operating in Tortugas North would be required to obtain Tortugas access permits. There would be minor time costs associated with obtaining a permit and getting permission to access the reserve. It is expected that fulfilling all the permit requirements and obtaining permission to access the reserve would not exceed 10 minutes of each permittee's time for each visit to the reserve. No special professional skills would be necessary to apply for a permit. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Regulatory Alternative D: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); prohibit anchoring in and control access to Tortugas North via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B); and prohibit anchoring and restrict access to Tortugas South to research or education activities only. The only difference between the impacts of this regulatory alternative from those discussed under regulatory Alternative C would be those associated with limiting non-continuous transit access to Tortugas South to research/educational purposes. For the commercial fisheries, salvors, and recreational consumptive users, there would be no incremental impacts since the ''no-take'' regulation would displace these user groups. There are no known nonconsumptive dive operators currently operating in Tortugas South and no recreational diving is known to occur there. Under this alternative, none would be allowed in the future. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Boundary Alternative V

This alternative involves a Sanctuary boundary expansion to the west by three minutes ending at longitude 83′09″ instead of 83′06″ and would increase the reserve area to 190 nm_2 (Fig. 5). Tortugas North would be expanded to the west and Tortugas South would be shortened to the north. Sanctuary-wide

regulations would be applied to the expansion area.

Regulatory Alternative A: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South. The Sanctuary-wide regulations would become effective in the expansion area. The existing Sanctuary regulations and their impacts are presented in Table 21 of the DSEIS/SMP. More detailed descriptions of the regulations are included in Appendix C to the DSEIS/SMP. The effects of the ecological reserve regulations which, under Boundary Alternative V apply to a larger area because of the Sanctuary expansion, have been analyzed under the no-take discussion above. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these parts).

Regulatory Alternative B: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described under regulatory Alternative A); and prohibit anchoring in and control access to Tortugas South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy. A small portion of Tortugas North and all of Tortugas South would be outside the existing Sanctuary boundary. The Sanctuary-wide regulations would become effective in the expansion area. The existing Sanctuary regulations and their impacts are summarized in Table 21 of the DSEIS/SMP. More detailed descriptions of the regulations are included in Appendix C to the DSEIS/SMP. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

The effects of the ecological reserve regulations which, under Boundary Alternative V apply to a larger area because of the Sanctuary expansion, have been analyzed under the no-take discussion above. The prohibition on anchoring would have no incremental impact on commercial fishing or recreational consumptive users since they are displaced by the ''no-take'' regulation. There are no known recreational dive operators servicing Tortugus South. The location and availability of mooring buoys would constrain the number and choice of available dive sites. It is unknown whether this would have any impact on the future business volume of dive operators or the quality of the experience to nonconsumptive divers. The extent of impact would be dependent on the number and locations of mooring buoys (to be determined).

The prohibition on anchoring would impact commercial shipping in the boundary expansion area, especially in Tortugas South. Anchoring by large commercial vessels is known to occur on Riley's Hump, which would be included in the Sanctuary as part of Tortugas South under Boundary Alternative V and thus would be subject to the anchoring prohibition. While the Sanctuary area has been expanded, the impact of this regulation on commercial vessel operators is still expected to be small since other non-coral reef anchorages are available a short distance away outside the Sanctuary boundary.

There would be no incremental impact on treasure salvors from the no-anchoring prohibition since they would be displaced by the ''no-take'' regulation.

The permit requirements would have no incremental impact on fishermen or salvors because they would be displaced by the ''no-take'' regulations.

There are no known nonconsumptive dive operators currently operating in Tortugas South. Any nonconsumptive dive operators operating in Tortugas South in the future would be required to obtain Tortugas access permits. It is not possible to gauge the extent of any such future activity. There would be minor time costs associated with obtaining a permit and getting permission to access the reserve. It is expected that fulfilling all the permit requirements and obtaining permission to access the reserve would not exceed 10 minutes of each permittee's time for each visit to the reserve. No special professional skills would be necessary to apply for a permit.

Regulatory Alternative C (Preferred Regulatory Alternative): Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); and prohibit anchoring in and control access to Tortugas North and South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B). The only difference between the impacts of this regulatory alternative from those discussed under Regulatory Alternative B would be those associated with the requirement to obtain a permit for other than continuous transit access to Tortugas North. Under this boundary alternative there are 3.25 more person-days of recreational nonconsumptive use than under Boundary Alternatives IV. While the area of Tortugas North would be increased by the expansion to the west, the permit requirements would have no incremental impact on fishermen or salvors because they would be displaced by the ''no-take'' regulations. There is one known nonconsumptive dive operator currently operating in Tortugas North. He and any new nonconsumptive dive operators operating in Tortugas North would be required to obtain Tortugas access permits. There would be minor time costs associated with obtaining a permit and getting permission to access the reserve. It is expected that fulfilling all the permit requirements and obtaining permission to access the reserve would not exceed 10 minutes of each permittee's time for each visit to the reserve. No special professional skills would be necessary to apply for a permit. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Regulatory Alternative D: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Alternative A); prohibit anchoring in and control access to Tortugas North via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B); and prohibit anchoring and restrict access to Tortugas South to research or education activities only. The only difference between the impacts of this regulatory alternative from those discussed under Regulatory Alternative C would be those associated with limiting noncontinuous transit access to Tortugas South to research/educational purposes. For the commercial fisheries, salvors, and recreational consumptive users, there would be no incremental impacts since the ''no-take'' regulation would displace these user groups. There are no known nonconsumptive dive operators currently operating in Tortugas South and no recreational diving is known to occur there. Under

this alternative, none would be allowed in the future. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR Parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Selection of the Preferred Alternative

Introduction

This section sets forth the agency's preferred alternative (Fig. 3) and why it was selected.

Preferred Alternative

NOAA has selected Boundary Alternative III combined with Regulatory Alternative C as its preferred alternative.

General Rationale

NOAA has adopted Boundary Alternative III and Regulatory Alternative C because this combination achieves the objectives of all five of the criteria listed below. Based on its analysis, NOAA believes that this preferred alternative would adequately protect the nationally significant coral reef resources of the Tortugas region and fulfill the objectives of the FKNMSPA and the NMSA.

The preferred alternative is of sufficient size and imposes adequate protection measures to achieve the goals and objectives of the FKNMSPA and the NMSA while not unduly impacting user groups. Boundary Alternative III is consistent with the recommendations of the SAC to NOAA and the State of Florida. While the WG and SAC recommended Regulatory Alternative A (application of the existing Sanctuary-wide and existing ecological reserve regulations) NOAA believes that the more protective approach of Regulatory Alternative C is warranted because of the threat to coral reef resources posed by the anchoring of vessels and the difficulty of enforcing regulations in this remote area, particularly Tortugas South. Coral cover is so high and water depths so deep in the Tortugas that anchoring is virtually impossible without damaging coral. Enforcement would be greatly facilitated by the notice of user presence that would be provided to the FKNMS by the permit requirement.

Comparison of Alternatives

This section compares the four alternatives based on five criteria which are: (1) Protect ecosystem integrity, (2) increase scientific understanding, (3) facilitate non-consumptive human activities, (4) protect natural spawning, nursery, and permanent residence areas, and (5) minimize adverse socioeconomic impacts. These criteria are consistent with the goals of the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA), the National Marine Sanctuaries Act (NMSA), the Final Management Plan (MP), the public scoping comments, the Working Group's criteria, and the U.S. Coral Reef Task Force (CRTF) recommendations.

Criteria: Protect ecosystem integrity.

Objective: Choose an area and protective measures that protect the highest biological diversity and widest range of contiguous habitats.

Rationale/Source: FKNMSPA, NMSA, scoping comments, and WG/SAC.

Analysis: Boundary Alternative II does not encompass enough range of habitat to adequately protect the integrity of the ecosystem. The critical areas of Sherwood Forest and Riley's Hump are not part of this alternative. Boundary Alternative II offers no insurance against the effects of a catastrophic event (*e.g.,* cold weather, low salinity) that could potentially damage resources of the area. Boundary Alternatives III, IV and V include a sufficient range of viable habitats to protect ecosystem integrity and include two replicate components that would help to ensure against the effects of catastrophic events. The increased area of Boundary Alternatives IV and V has negligible increased benefit to protecting ecosystem integrity compared to Alternative III. Regulatory Alternative A would not adequately protect ecosystem integrity because of the threat to coral reef resources by anchoring. Regulatory Alternative B would not adequately protect ecosystem integrity in Tortugas North because of the threat to coral reef resources by anchoring and would not provide notice to FKNMS of the presence of users to facilitate enforcement. Regulatory Alternative C adequately protects ecosystem integrity and facilitates enforcement. Regulatory Alternative D would adequately protect ecosystem integrity and facilitates enforcement but would unduly restrict uses in Tortugas South.

Criteria: Increase scientific understanding of human effects on ecosystem processes

Objective: Choose an area and protective measures that will facilitate the monitoring of anthropogenic impacts and the evaluation of the efficacy of the ecological reserve for protecting coral reef health and biodiversity.

Rationale/Source: FKNMSPA, NMSA, scoping comments, and WG/SAC.

Analysis: Given the absence of unexploited areas in the Tortugas region, Boundary Alternatives II-V would serve to increase scientific understanding of marine ecosystems, their response to management and their recovery from fishing impacts. Boundary Alternatives III-V offer the added scientific benefit of protecting Riley's Hump which would add to existing knowledge of effective reserve design regarding networks and energy flow between reserves. Also, the inclusion of Tortugas South would significantly add to the understanding of the importance of the Tortugas region in sustaining the Florida Keys ecosystem. Boundary Alternatives IV and V encompass all of Tortugas Bank which would compromise the study of fishing effects because there would be no comparable habitat for use as a reference site. Regulatory Alternatives A, B, and C would provide for essentially the same level of scientific understanding. Regulatory Alternative D would facilitate the most scientific understanding of human effects on ecosystem processes because it would create a research/education-only area in the Tortugas which could serve as a reference to areas where recreational diving is allowed.

Criteria: Facilitate non-consumptive uses.

Objective: Choose an area and protective measures that will allow non-consumptive uses and provide a range of habitats to observe and study.

Rationale/Source: FKNMSPA, NMSA, MP.

Analysis: Boundary Alternatives II–V would serve well in enhancing opportunities for non-consumptive activities such as education, photography, underwater wilderness opportunities, and ecotourism. Boundary Alternatives III–V provide enhanced opportunities over Alternative II because of the addition of Tortugas South. Regulatory Alternatives A, B, and C would provide the same non-consumptive opportunities. Regulatory Alternative D would prohibit all consumptive and non-consumptive activities in Tortugas South other than research and education.

Criteria: Protect natural spawning, nursery, and permanent residence areas.

Objective: Choose an area and protective measures that will protect known or reported spawning areas and habitat that supports resident fish and other marine life.

Rationale/Source: MP, scoping comments, and WG/SAC.

Analysis: Boundary Alternative II protects only one of eight known fish

spawning aggregations and does not include Riley's Hump which is a critical source area for larvae. Sherwood Forest, an important permanent residence area for a variety of species, is not part of Boundary Alternative II. Boundary Alternative III would protect 5 of the 8 known fish spawning areas as well as approximately 87% of the known coral reef habitat and 76% of the known hardbottom habitat. Boundary Alternative IV would encompass 6 out of 8 known fish spawning sites as well as 100% of the known coral and hardbottom habitat. Boundary Alternative V would encompass 7 out of the 8 known fish spawning sites and would protect all of the known coral and hardbottom habitat. Boundary Alternative V's expansion of Tortugas North to the west would provide increased protection for deepwater habitats and associated species. The reduction in size of Tortugas South would provide less protection for deep water habitat has the least and associated species.

Criteria: Minimize adverse socioeconomic impacts.

Objective: Choose an area and protective measures that meets the objectives of the other criteria but that does not unduly impact users.

Rationale/Source: FKNMSPA, NMSA, scoping comments, and WG/SAC.

Analysis: Boundary Alternative II will have the least impact on recreational and commercial users whereas Boundary Alternatives IV and V will have the most. Boundary Alternative III has moderate impacts on users, mostly lobster fishermen and handline fishermen. Altenatives IV and V have significantly greater impacts because they include the southern half of Tortugas Bank which is heavily utilized by both recreational and commercial users. Alternative III offers a compromise because it allows for continued exploitation of the southern half of Tortugas Bank including trolling for pelagic species. Ignoring the potential of such effects as replenishment that would result in a net economic benefit, Regulatory Alternative A has significant adverse socioeconomic effects on users including small entities. There are 12 recreational charter operations that would be affected by this alternative and approximately 110 commercial fishing operations all of which are small entities. No lesser degree of protection than that provided by Regulatory Alternative A would provide an adequate degree of protection for the resources of the Tortugas and even Regulatory Alternative A by itself would not provide sufficient protection to coral reef resources from anchoring and would not provide FKNMS adequate notice to facilitate enforcement. Accordingly, other than the no-action alternative, no other regulatory alternatives that would provide a lesser degree of protection were considered. Regulatory Alternative B would provide adequate protection from anchoring damage in the Tortugas South and would provide adequate notification to FKNMS to facilitate enforcement there but would not provide adequate protection to Tortugas North. Regulatory Alternative C would provide both adequate resource protection and adequate notification to FKNMS to facilitate enforcement with insignificant incremental costs to users. NOAA's preferred alternative (Boundary Alternative III/Regulatory Alternative C) could potentially impact, if one assumes no mitigating factors, 9 recreational charter uses with total annual revenue losses of approximately $152,054 and 64 commercial fishermen with total annual revenue losses of approximately $843,583. Regulatory Alternative D would facilitate the study of fishing impacts and diver impacts but would prohibit any uses of the area.

Paperwork Reduction Act

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

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the PRA. The only record keeping or reporting requirements are the permit and call-in, call-out requirements for the reserve previously described in the Preamble under proposed regulations. There are two classes of users that would be affected by these proposed requirements: commercial dive boat operators and private boaters. The type of skills necessary to request an access permit and to provide notification when entering or leaving the proposed ecological reserve would be use of marine radio equipment. These requirements have been submitted to OMB for approval. The public reporting burden for these requirements is estimated to be 10 minutes per application for a permit and 2 minutes per call-in or call out, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether these proposed collections of information are necessary for the proper performance of the functions of NOAA, including whether the information has practical utility; the accuracy of the burden estimates; ways to minimize the burden of the collection of information, including through use of automated collection techniques or other forms of information technology.

List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: May 10, 2000.

Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, for the reasons set forth in the preamble, 15 CFR part 922 is proposed to be amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Section 922.161 is revised to read as follows:

§ 922.161 Boundary.

The Sanctuary consists of an area of approximately 2900 square nautical miles (9,800 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, surrounding the Florida Keys in Florida. Appendix I to this subpart sets forth the precise Sanctuary boundary.

3. In § 922.162, definitions for ''Length overall (LOA) or length,'' ''Stem,'' and ''Stern'' are added alphabetically as follows:

§ 922.162 Definitions.

* * * * *

Length overall (LOA) or *length* means, as used in § 922.167 with respect to a vessel, the horizontal distance, rounded to the nearest foot (with 0.5 ft and above rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments.

* * * * *

Stem means the foremost part of a vessel, consisting of a section of timber

or fiberglass, or cast, forged, or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end.

Stern means the aftermost part of the vessel.

* * * * *

4. In § 922.164, paragraphs (d)(1)(ii), (d)(1)(iii), (d)(1)(v) and (d)(1)(vi) are revised as follows:

§ 922.164 Additional activity regulations by Sanctuary area.

* * * * *

(d) * * *

(1) * * *

(ii) Possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities, except as authorized by paragraph (d)(1)(iii) of this section. However, fish, invertebrates, and marine plants may be possessed aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such resources can be shown not to have been harvested within, removed from, or taken within, the ecological reserve or Sanctuary Preservation Area as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through such reserves or Areas, provided further that in an Ecological Reserve or Sanctuary Preservation Area located in Florida State waters, such vessel is in continuous transit through the Ecological Reserve or Sanctuary Preservation Area.

(iii) Except for catch and release fishing by trolling in the Conch Reef, Alligator Reef, Sombrero Reef, and Sand Key Sanctuary Preservation Areas, and except for fishing in the Tortugas Ecological Reserve authorized by 50 CFR parts 622 and 635, fishing by any means. However, gear capable of harvesting fish may be aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such gear is not available for immediate use when entering and during transit through such Ecological Reserve or Sanctuary Preservation Area, and no presumption of fishing activity shall be drawn therefrom. * * *

(v) Anchoring in the Tortugas Ecological Reserve. In all other Ecological Reserves and Sanctuary Preservation Areas, placing any anchor in a way that allows the anchor or any portion of the anchor apparatus (including the anchor, chain or rope) to touch living or dead coral, or any attached living organism. When anchoring dive boats, the first diver down must inspect the anchor to ensure that it is not touching living or dead coral, and will not shift in such a way as to touch such coral or other attached organism. No further diving shall take place until the anchor is placed in accordance with these requirements.

(vi) Except in the Tortugas Ecological Reserve where mooring buoys must be used, anchoring instead of mooring when a mooring buoy is available or anchoring in other than a designated anchoring area when such areas have been designated and are available.

4. In § 922.164, paragraphs (d)(1)(viii) and (d)(1)(ix) are added to read as follows:

§ 922.164 Additional activity regulations by Sanctuary area.

* * * * *

(d) * * *

(1) * * *

(1) * * *

(viii) Except for passage without interruption through the area, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of this section, entering the Tortugas Ecological Reserve without a valid access permit issued pursuant to § 922.167 or entering or leaving the Tortugas Ecological Reserve with a valid access permit issued pursuant to § 922.167 without notifying FKNMS staff at the Dry Tortugas National Park office by telephone or radio no less than 30 minutes and no more than 6 hours, before entering and upon leaving the Tortugas Ecological Reserve.

(ix) Tying a vessel greater than 100 feet (30.48 meters) LOA, or tying more than one vessel (other than vessels carried on board a vessel) if the combined lengths would exceed 100 feet (30.48 meters) LOA, to a mooring buoy or to a vessel tied to a mooring buoy in the Tortugas Ecological Reserve.

5. In § 922.164, paragraph (g) is revised to read as follows:

§ 922.164 Additional activity regulations by Sanctuary area.

* * * * *

(g) *Anchoring on Tortugas Bank.* Vessels 50 meters or greater in registered length, are prohibited from anchoring on the portion of Tortugas Bank within the Florida Keys National Marine Sanctuary west of the Dry Tortugas National Park that is outside of the Tortugas Ecological Reserve. The boundary of the area closed to anchoring by vessels 50 meters or greater in registered length is formed by connecting in succession the points at the following coordinates (based on the North American Datum of 1983):

(1) 24 deg. 39.00′ N 83 deg. 06.00′ W

(2) 24 deg. 32.00′ N 83 deg. 00.05′ W

(3) 24 deg. 37.00′ N 83 deg. 06.00′ W

(4) 24 deg. 40.00′ N 83 deg. 06.00′ W

(5) 24 deg. 39.00′ N 83 deg. 06.00′ W

6. Revise the heading of § 922.166 to read as follows:

§ 922.166 Permits other than for access to the Tortugas Ecological Reserve-application procedures and issuance criteria.

7. Redesignate § 922.167 as § 922.168 and revise it to read as follows:

§ 922.168 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.

(a) A person may conduct an activity prohibited by §§ 922.163 or 922.164 if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on July 1, 1997, or by any valid right of subsistence use or access in existence on July 1, 1997, provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of July 1, 1997, of the existence of such authorization or right and requests certification of such authorization or right; for the area added to the Sanctuary by the boundary expansion for the Tortugas Ecological Reserve, the holder of such authorization or right notifies the Director, in writing, within 90 days of __, 2000, of the existence of such authorization or right and requests certification of such authorization or right.

(2) The holder complies with the other provisions of this § 922.168; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(b) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by §§ 922.163 or 922.164 may conduct the activity without being in violation of applicable provisions of §§ 922.163 or 922.164, pending final agency action on his or her certification request, provided the holder is in compliance with this § 922.168.

(c) Any holder of an authorization or right described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited

by §§ 922.163 or 922.164, thus requiring certification under this section.

(d) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(f) The Director may amend any certification made under this § 922.168 whenever additional information becomes available justifying such an amendment.

(g) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this § 922.168, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s)for the decision or action taken.

(h) Any time limit prescribed in or established under this § 922.168 may be extended by the Director for good cause.

(i) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.50.

(j) Any amendment, renewal, or extension made after July 1, 1997, to a lease, permit, license, approval, other authorization or right is subject to the provisions of Sec. 922.49.

8. Add a new § 922.167 to read as follows:

§ 922.167 Permits for access to the Tortugas Ecological Reserve.

(a) A person may enter the Tortugas Ecological Reserve other than for passage without interruption through the reserve, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of § 922.164, if authorized by a valid access permit issued pursuant to § 922.167.

(b)(1) Access permits must be requested at least 72 hours but no longer than one month before the date the permit is desired to be effective. Access permits do not require written applications or the payment of any fee. Permits may be requested via telephone or radio by contacting FKNMS at any of the following numbers:

Key West office: telephone: (305) 292–0311.

Marathon office: telephone: (305) 743–2437.

(2) The following information must be provided, as applicable:

(i) Vessel name.

(ii) Name, address, and telephone number of owner and operator.

(iii) Name, address, and telephone number of applicant.

(iv) USCG documentation, state license, or registration number.

(v) Home port.

(vi) Length of vessel and propulsion type (*i.e.,* motor or sail).

(vii) Number of divers.

(viii) Requested effective date and duration of permit (2 weeks, maximum).

(c) The Sanctuary Superintendent will issue a permit to the owner or to the owner's representative for the vessel when all applicable information has been provided. FKNMS will provide a permit number to the applicant and confirm the effective date and duration period of the permit. Written confirmation of permit issuance will be provided upon request.

9. Revise Appendices I, II, IV, V, VI, and VII to Subpart P of Part 922 to read as follows:

Appendix I to Subpart P of Part 922—Florida Keys National Marine Sanctuary Boundary Coordinates

(Appendix Based on North American Datum of 1983)

1. The boundary of the Florida Keys National Marine Sanctuary—

(a) Begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 05 minutes west longitude, then runs eastward to the point at 25 degrees 39 minutes north latitude, 80 degrees 04 minutes west longitude; and

(b) Then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 04 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 05 minutes west longitude, and

(iii) 25 degrees 21 minutes north latitude, 80 degrees 07 minutes west longitude;

(iv) 25 degrees 16 minutes north latitude, 80 degrees 08 minutes west longitude;

(c) Then runs southwesterly approximating the 300-foot isobath and connects in succession the points at the following coordinates:

(i) 25 degrees 07 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,

(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

(vii) 24 degrees 37 minutes north latitude, 83 degrees 06 minutes west longitude,

(viii) 24 degrees 46 minutes north latitude, 83 degrees 06 minutes west longitude,

(ix) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,

(x) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and

(xi) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(d) Then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(e) After Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(f) Then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and

(g) Then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).

2. The shoreward boundary of the Florida Keys National Marine Sanctuary is the mean high-water mark except around the Dry Tortugas where the boundary is coterminous with that of the Dry Tortugas National Park, formed by connecting in succession the points at the following coordinates:

(a) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;

(b) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 second west longitude;

(c) 24 degrees 39 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 seconds west longitude;

(d) 24 degrees 43 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;

(e) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 52 minutes 0 seconds west longitude;

(f) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude;

(g) 24 degrees 42 minutes 0 seconds north latitude, 82 degrees 46 minutes, 0 seconds west longitude;

(h) 24 degrees 40 minutes 0 seconds north latitude, 82 degrees 46 minutes 0 seconds west longitude;

(i) 24 degrees 37 minutes 0 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude; and

(j) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude.

3. The Florida Keys National Marine Sanctuary also includes the area located

within the boundary formed by connecting in succession the points at the following coordinates:

(a) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude,

(b) 24 degrees 33 minutes north latitude, 83 degrees 05 minutes west longitude, and

(c) 24 degrees 18 minutes north latitude, 83 degrees 05 minutes west longitude;

(d) 24 degrees 18 minutes north latitude, 83 degrees 09 minutes west longitude; and

(e) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude.

Appendix II to Subpart P of Part 922—Existing Management Areas Boundary Coordinates

1. The boundary of each of the Existing Management Areas is formed by connecting in succession the points at the following coordinates:

National Oceanic and Atmospheric Administration:

KEY LARGO-MANAGEMENT AREA

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	25 deg. 19′45″ N	80 deg. 12′00″ W.
2	25 deg. 16′02″ N	80 deg. 08′07″ W.
3	25 deg. 07′05″ N	80 deg. 12′05″ W.
4	24 deg. 58′03″ N	80 deg. 19′08″ W.
5	25 deg. 02′02″ N	80 deg. 25′25″ W.
6	25 deg. 19′45″ N	80 deg. 12′00″ W.

LOOE KEY MANAGEMENT AREA

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 31′62″ N	81 deg. 26′00″ W.
2	24 deg. 33′57″ N	81 deg. 26′00″ W.
3	24 deg. 34′15″ N	81 deg. 23′00″ W.
4	24 deg. 32′20″ N	81 deg. 23′00″ W.
5	24 deg. 31′62″ N	81 deg. 26′00″ W.

United States Fish and Wildlife Service:

GREAT WHITE HERON NATIONAL WILDLIFE REFUGE

[Based on the North American Datum of 1983]

Point	Latitude	Longitude
1	24 deg. 43.8′ N	81 deg. 48.6′ W.
2	24 deg. 43.8′ N	81 deg. 37.2′ W.
3	24 deg. 49.2′ N	81 deg. 37.2′ W.
4	24 deg. 49.2′ N	81 deg. 19.8′ W.
5	24 deg. 48.0′ N	81 deg. 19.8′ W.
6	24 deg. 48.0′ N	81 deg. 14.4′ W.
7	24 deg. 49.2′ N	81 deg. 14.4′ W.
8	24 deg. 49.2′ N	81 deg. 08.4′ W.
9	24 deg. 43.8′ N	81 deg. 08.4′ W.
10	24 deg. 43.8′ N	81 deg. 14.4′ W.
11	24 deg. 43.2′ N	81 deg. 14.4′ W.
12	24 deg. 43.2′ N	81 deg. 16.2′ W.
13	24 deg. 42.6′ N	81 deg. 16.2′ W.
14	24 deg. 42.6′ N	81 deg. 21.0′ W.
15	24 deg. 41.4′ N	81 deg. 21.0′ W.
16	24 deg. 41.4′ N	81 deg. 22.2′ W.
17	24 deg. 43.2′ N	81 deg. 22.2′ W.
18	24 deg. 43.2′ N	81 deg. 22.8′ W.
19	24 deg. 43.8′ N	81 deg. 22.8′ W.
20	24 deg. 43.8′ N	81 deg. 24.0′ W.
21	24 deg. 43.2′ N	81 deg. 24.0′ W.
22	24 deg. 43.2′ N	81 deg. 26.4′ W.
23	24 deg. 43.8′ N	81 deg. 26.4′ W.
24	24 deg. 43.8′ N	81 deg. 27.0′ W.
25	24 deg. 43.2′ N	81 deg. 27.0′ W.
26	24 deg. 43.2′ N	81 deg. 29.4′ W.
27	24 deg. 42.6′ N	81 deg. 29.4′ W.
28	24 deg. 42.6′ N	81 deg. 30.6′ W.
29	24 deg. 41.4′ N	81 deg. 30.6′ W.
30	24 deg. 41.4′ N	81 deg. 31.2′ W.
31	24 deg. 40.8′ N	81 deg. 31.2′ W.
32	24 deg. 40.8′ N	81 deg. 32.4′ W.

GREAT WHITE HERON NATIONAL WILDLIFE REFUGE—Continued

[Based on the North American Datum of 1983]

Point	Latitude	Longitude
33	24 deg. 41.4′ N	81 deg. 32.4′ W.
34	24 deg. 41.4′ N	81 deg. 34.2′ W.
35	24 deg. 40.8′ N	81 deg. 34.2′ W.
36	24 deg. 48.0′ N	81 deg. 35.4′ W.
37	24 deg. 39.6′ N	81 deg. 35.4′ W.
38	24 deg. 39.6′ N	81 deg. 36.0′ W.
39	24 deg. 39.0′ N	81 deg. 36.0′ W.
40	24 deg. 39.0′ N	81 deg. 37.2′ W.
41	24 deg. 37.8′ N	81 deg. 37.2′ W.
42	24 deg. 37.8′ N	81 deg. 37.8′ W.
43	24 deg. 37.2′ N	81 deg. 37.8′ W.
44	24 deg. 37.2′ N	81 deg. 40.2′ W.
45	24 deg. 36.0′ N	81 deg. 40.2′ W.
46	24 deg. 36.0′ N	81 deg. 40.8′ W.
47	24 deg. 35.4′ N	81 deg. 40.8′ W.
48	24 deg. 35.4′ N	81 deg. 42.0′ W.
49	24 deg. 36.0′ N	81 deg. 42.0′ W.
50	24 deg. 36.0′ N	81 deg. 48.6′ W.
51	24 deg. 43.8′ N	81 deg. 48.6′ W.

KEY WEST NATIONAL WILDLIFE REFUGE

[Based on the North American Datum of 1983]

Point	Latitude	Longitude
1	24 deg. 40.0′ N	81 deg.49.0′ W.
2	24 deg. 40.0′ N	82 deg.10.0′ W.
3	24 deg. 27.0′ N	82 deg.10.0′ W.
4	24 deg. 27.0′ N	81 deg.49.0′ W.
5	24 deg. 40.0′ N	81 deg.49.0′ W.

2. When differential Global Positioning Systems data becomes available, these coordinates may be revised by publication in the **Federal Register** Notice to reflect the increased accuracy of such data.

Appendix IV to Subpart P of Part 922—Ecological Reserves Boundary Coordinates

1. The boundary of the Western Sambo Ecological Reserve is formed by connecting in succession the points at the following coordinates:

WESTERN SAMBO

[Based on differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 33.70′ N	81 deg. 40.80′ W.
2	24 deg. 28.85′ N	81 deg. 41.90′ W.
3	24 deg. 28.50′ N	81 deg. 43.70′ W.
4	24 deg. 33.50′ N	81 deg. 43.10′ W.
5	24 deg. 33.70′ N	81 deg. 40.80′ W.

2. The Tortugas Ecological Reserve consists of two discrete areas, Tortugas North and Tortugas South.

3. The boundary of Tortugas North is formed by connecting in succession the points at the following coordinates:

TORTUGAS NORTH

Point	Latitude	Longitude
1	24 deg. 46′00″ N 83 deg.06′00″ W..	
2	24 deg. 46′00″ N	82 deg. 54′00″ W.
3	24 deg. 45′05″ N	82 deg. 48′00″ W.
4	24 deg. 43′32″ N	82 deg. 48′00″ W.
5	24 deg. 43′32″ N	82 deg. 52′00″ W.
6	24 deg. 43′00″ N	82 deg. 54′00″ W.
7	24 deg. 39′00″ N	82 deg. 58′00″ W.
8	24 deg. 39′00″ N 8183 deg. 06′00″ W..	
9	24 deg. 46′00″ N 8183 deg. 06′00″ W..	

4. The boundary of Tortugas South is formed by connecting in succession the points at the following coordinates:

TORTUGAS SOUTH

Point	Latitude	Longitude
1	24 deg. 33′00″ N	83 deg. 09′00″ W.
2	24 deg. 33′00″ N	83 deg. 05′00″ W.
3	24 deg. 18′00″ N	83 deg. 05′00″ W.
4	24 deg. 18′00″ N	83 deg. 09′00″ W.
5	24 deg. 33′00″ N	83 deg. 09′00″ W.

Appendix V to Subpart P of Part 922—Sanctuary Preservation Areas: Boundary Coordinates

The boundary of each of the Sanctuary Preservation Areas (SPAs) is formed by connecting in succession the points at the following coordinates:

ALLIGATOR REEF

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 50.98′ N	80 deg. 36.84′ W.
2	24 deg. 50.51′ N	80 deg. 37.35′ W.
3	24 deg. 50.81′ N	80 deg. 37.63′ W.
4	24 deg. 51.23′ N	80 deg. 37.17′ W.
5	24 deg. 50.98′ N	80 deg. 36.84′ W.

Catch and release fishing by trolling only is allowed in this SPA.

CARYSFORT/SOUTH CARYSFORT REEF

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	25 deg. 13.78′ N	80 deg. 12.00′ W.
2	25 deg. 12.03′ N	80 deg. 12.98′ W.
3	25 deg. 12.24′ N	80 deg. 13.77′ W.
4	25 deg. 14.13′ N	80 deg. 12.78′ W.
5	25 deg. 13.78′ N	80 deg. 12.00′ W.

CHEECA ROCKS

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 54.42′ N	80 deg. 36.91′ W.
2	24 deg. 54.25′ N	80 deg. 36.77′ W.
3	24 deg. 54.10′ N	80 deg. 37.00′ W.
4	24 deg. 54.22′ N	80 deg. 37.15′ W.
5	24 deg. 54.42′ N	80 deg. 36.91′ W.

COFFINS PATCH

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 41.47′ N	80 deg. 57.68′ W.
2	24 deg. 41.12′ N	80 deg. 57.53′ W.
3	24 deg. 40.75′ N	80 deg. 58.33′ W.
4	24 deg. 41.06′ N	80 deg. 58.48′ W.
5	24 deg. 41.47′ N	80 deg. 57.68′ W.

CONCH REEF

[Based on differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 57.48′ N	80 deg. 27.47′ W.
2	24 deg. 57.34′ N	80 deg. 27.26′ W.
3	24 deg. 56.78′ N	80 deg. 27.52′ W.
4	24 deg. 56.96′ N	80 deg. 27.73′ W.
5	24 deg. 57.48′ N	80 deg. 27.47′ W.

Catch and release fishing by trolling only is allowed in this SPA.

DAVIS REEF

[Based on differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 55.61′ N	80 deg. 30.27′ W.
2	24 deg. 55.41′ N	80 deg. 30.05′ W.
3	24 deg. 55.11′ N	80 deg. 30.35′ W.
4	24 deg. 55.34′ N	80 deg. 30.52′ W.
5	24 deg. 55.61′ N	80 deg. 30.27′ W.

DRY ROCKS

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	25 deg. 07.59′ N	80 deg. 17.91′ W.
2	25 deg. 07.41′ N	80 deg. 17.70′ W.
3	25 deg. 07.25′ N	80 deg. 17.82′ W.
4	25 deg. 07.41′ N	80 deg. 18.09′ W.
5	25 deg. 07.59′ N	80 deg. 17.91′ W.

GRECIAN ROCKS

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	25 deg. 06.91′ N	80 deg. 18.20′ W.
2	25 deg. 06.67′ N	80 deg. 18.06′ W.
3	25 deg. 06.39′ N	80 deg. 18.32′ W.
4	25 deg. 06.42′ N	80 deg. 18.48′ W.
5	25 deg. 06.81′ N	80 deg. 18.44′ W.
6	25 deg. 06.91′ N	80 deg. 18.20′ W.

EASTERN DRY ROCKS

[Based on Differential Global Positioning Systems Data]

Point	atitude	Longitude
1	24 deg. 27.92′ N	81 deg. 50.55′ W.
2	24 deg. 27.73′ N	81 deg. 50.33′ W.
3	24 deg. 27.47′ N	81 deg. 50.80′ W.
4	24 deg. 27.72′ N	81 deg. 50.86′ W.
5	24 deg. 27.92′ N	81 deg. 50.55′ W.

THE ELBOW

[Based on Differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg. 08.97′ N	80 deg. 15.63′ W.
2	25 deg. 08.95′ N	80 deg. 15.22′ W.
3	25 deg. 08.18′ N	80 deg. 15.64′ W.
4	25 deg. 08.50′ N	80 deg. 16.07′ W.
5	25 deg. 08.97′ N	80 deg. 15.63′ W.

FRENCH REEF

[Based on Differential Global Positioning Systems data]

Point	Latitude	Longitude
1	25 deg. 02.20′ N	80 deg. 20.63′ W.
2	25 deg. 01.81′ N	80 deg. 21.02′ W.
3	25 deg. 02.36′ N	80 deg. 21.27′ W.
4	25 deg. 02.20′ N	80 deg. 20.63′ W.

HEN AND CHICKENS

[Based on Differential Global Positioning Systems data]

Point	Latitude	Longitude
1	24 deg. 56.38′ N	80 deg. 32.86′ W.
2	24 deg. 56.21′ N	80 deg. 32.63′ W.
3	24 deg. 55.86′ N	80 deg. 32.95′ W.
4	24 deg. 56.04′ N	80 deg. 33.19′ W.
5	24 deg. 56.38′ N	80 deg. 32.86′ W.

LOOE KEY

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 33.24′ N	81 deg. 24.03′ W.
2	24 deg. 32.70′ N	81 deg. 23.85′ W.
3	24 deg. 32.52′ N	81 deg. 24.70′ W.
4	24 deg. 33.12′ N	81 deg. 24.81′ W.
5	24 deg. 33.24′ N	81 deg. 24.03′ W.

MOLASSES REEF

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	25 deg. 01.00′ N	80 deg. 22.53′ W.
2	25 deg. 01.06′ N	80 deg. 21.84′ W.
3	25 deg. 00.29′ N	80 deg. 22.70′ W.
4	25 deg. 00.72′ N	80 deg. 22.83′ W.
5	25 deg. 01.00′ N	80 deg. 22.53′ W.

NEWFOUND HARBOR KEY

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 37.10′ N	81 deg. 23.34′ W.
2	24 deg. 36.85′ N	81 deg. 23.28′ W.
3	24 deg. 36.74′ N	81 deg. 23.80′ W.
4	24 deg. 37.00′ N	81 deg. 23.86′ W.
5	24 deg. 37.10′ N	81 deg. 23.34′ W.

ROCK KEY

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 27.48′ N	81 deg. 51.35′ W.
2	24 deg. 27.30′ N	81 deg. 51.15′ W.
3	24 deg. 27.21′ N	81 deg. 51.60′ W.
4	24 deg. 27.45′ N	81 deg. 51.65′ W.
5	24 deg. 27.48′ N	81 deg. 51.35′ W.

SAND KEY

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 27.58′ N	81 deg. 52.29′ W.
2	24 deg. 27.01′ N	81 deg. 52.32′ W.
3	24 deg. 27.02′ N	81 deg. 52.95′ W.
4	24 deg. 27.61′ N	81 deg. 52.94′ W.
5	24 deg. 27.58′ N	81 deg. 52.29′ W.

Catch and release fishing by trolling only is allowed in this SPA.

SOMBRERO KEY

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 37.91′ N	81 deg. 06.78′ W.
2	24 deg. 37.50′ N	81 deg. 06.19′ W.
3	24 deg. 37.25′ N	81 deg. 06.89′ W.
4	24 deg. 37.91′ N	81 deg. 06.78′ W.

Catch and release fishing by trolling only is allowed in this SPA.

Appendix VI to Subpart P of Part 922—Special-Use Areas Boundary Coordinates and Use Designations

The boundary of each of the Special-Use is formed by connecting in succession the points at the following coordinates:

CONCH REEF

[Research Only]

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 56.83′ N	80 deg. 27.26′ W.
2	24 deg. 57.10′ N	80 deg. 26.93′ W.
3	24 deg. 56.99′ N	80 deg. 27.42′ W.
4	24 deg. 57.34′ N	80 deg. 27.26′ W.
5	24 deg. 56.83′ N	80 deg. 27.26′ W.

EASTERN SAMBO

[Research Only]

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 29.84′ N	81 deg. 39.59′ W.
2	24 deg. 29.55′ N	81 deg. 39.35′ W.
3	24 deg. 29.37′ N	81 deg. 39.96′ W.
4	24 deg. 29.77′ N	81 deg. 40.03′ W.
5	24 deg. 29.84′ N	81 deg. 39.59′ W.

LOOE KEY

[Research Only]

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 34.17′ N	81 deg. 23.01′ W.
2	24 deg. 33.98′ N	81 deg. 22.96′ W.
3	24 deg. 33.84′ N	81 deg. 23.60′ W.
4	24 deg. 34.23′ N	81 deg. 23.68′ W.
5	24 deg. 34.17′ N	81 deg. 23.01′ W.

TENNESSEE REEF

[Research Only]

[Based on Differential Global Positioning Systems Data]

Point	Latitude	Longitude
1	24 deg. 44.77′ N	80 deg. 47.12′ W.
2	24 deg. 44.57′ N	80 deg. 46.98′ W.
3	24 deg. 44.68′ N	80 deg. 46.59′ W.
4	24 deg. 44.95′ N	80 deg. 46.74′ W.
5	24 deg. 44.77′ N	80 deg. 47.12′ W.

Appendix VII to Subpart P of Part 922—Areas To Be Avoided Boundary Coordinates

IN THE VICINITY OF THE FLORIDA KEYS

[Reference Charts: United States 11466, 27th Edition—September 1, 1990 and United States 11450, 4th Edition—August 11,1990]

Point	Latitude	Longitude
1	25 deg. 45.00′ N	80 deg. 06.10′ W.
2	25 deg. 38.70′ N	80 deg. 02.70′ W.
3	25 deg. 22.00′ N	80 deg. 03.00′ W.
4	25 deg. 00.20′ N	80 deg. 13.40′ W.
5	24 deg. 37.90′ N	80 deg. 47.30′ W.
6	24 deg. 29.20′ N	81 deg. 17.30′ W.
7	24 deg. 22.30′ N	81 deg. 43.17′ W.
8	24 deg. 28.00′ N	81 deg. 43.17′ W.
9	24 deg. 28.70′ N	81 deg. 43.50′ W.
10	24 deg. 29.80′ N	81 deg. 43.17′ W.
11	24 deg. 33.10′ N	81 deg. 35.15′ W.
12	24 deg. 33.60′ N	81 deg. 26.00′ W.
13	24 deg. 38.20′ N	81 deg. 07.00′ W.
14	24 deg. 43.20′ N	80 deg. 53.20′ W.
15	24 deg. 46.10′ N	80 deg. 46.15′ W.
16	24 deg. 51.10′ N	80 deg. 37.10′ W.
17	24 deg. 57.50′ N	80 deg. 27.50′ W.
18	25 deg. 09.90′ N	80 deg. 16.20′ W.
19	25 deg. 24.00′ N	80 deg. 09.10′ W.
20	25 deg. 31.50′ N	80 deg. 07.00′ W.
21	25 deg. 39.70′ N	80 deg. 06.85′ W.
22	25 deg. 45.00′ N	80 deg. 06.10′ W.

IN THE VICINITY OF KEY WEST HARBOR

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
23	24 deg. 27.95′ N	81 deg. 48.65′ W.
24	24 deg. 23.00′ N	81 deg. 53.50′ W.
25	24 deg. 26.60′ N	81 deg. 58.50′ W.
26	24 deg. 27.75′ N	81 deg. 55.70′ W.
27	24 deg. 29.35′ N	81 deg. 53.40′ W.
28	24 deg. 29.35′ N	81 deg. 50.00′ W.
29	24 deg. 27.95′ N	81 deg. 48.65′ W.

AREA SURROUNDING THE MARQUESAS KEYS

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
30	24 deg. 26.60′ N	81 deg. 59.55′ W.
31	24 deg. 23.00′ N	82 deg. 03.50′ W.
32	24 deg. 23.60′ N	82 deg. 27.80′ W.
33	24 deg. 34.50′ N	82 deg. 37.50′ W.
34	24 deg. 43.00′ N	82 deg. 26.50′ W.
35	24 deg. 38.31′ N	81 deg. 54.06′ W.
36	24 deg. 37.91′ N	81 deg. 53.40′ W.
37	24 deg. 36.15′ N	81 deg. 51.78′ W.
38	24 deg. 34.40′ N	81 deg. 50.60′ W.
39	24 deg. 33.44′ N	81 deg. 49.73′ W.
40	24 deg. 31.20′ N	81 deg. 52.10′ W.
41	24 deg. 28.70′ N	81 deg. 56.80′ W.
42	24 deg. 26.60′ N	81 deg. 59.55′ W.

AREA SURROUNDING THE DRY TORTUGAS ISLANDS

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
43	24 deg. 32.00′ N	82 deg. 53.50′ W.
44	24 deg. 32.00′ N	83 deg. 00.05′ W.
45	24 deg. 39.70′ N	83 deg. 00.05′ W.
46	24 deg. 45.60′ N	82 deg. 54.40′ W.
47	24 deg. 45.60′ N	82 deg. 47.02′ W.

AREA SURROUNDING THE DRY TORTUGAS ISLANDS—Continued

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

Point	Latitude	Longitude
48	24 deg. 42.80′ N	82 deg. 43.90′ W.
49	24 deg. 39.50′ N	82 deg. 43.90′ W.
50	24 deg. 35.60′ N	82 deg. 46.40′ W.
51	24 deg. 32.00′ N	82 deg. 53.50′ W.

[FR Doc. 00–12150 Filed 5–12–00; 8:45 am]

BILLING CODE 3510–08–P

Federal Register

Thursday,
May 18, 2000

Part III

Environmental Protection Agency

40 CFR Part 131

Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[FRL–6587–9]

RIN 2040–AC44

Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This final rule promulgates: numeric aquatic life criteria for 23 priority toxic pollutants; numeric human health criteria for 57 priority toxic pollutants; and a compliance schedule provision which authorizes the State to issue schedules of compliance for new or revised National Pollutant Discharge Elimination System permit limits based on the federal criteria when certain conditions are met.

EPA is promulgating this rule based on the Administrator's determination that numeric criteria are necessary in the State of California to protect human health and the environment. The Clean Water Act requires States to adopt numeric water quality criteria for priority toxic pollutants for which EPA has issued criteria guidance, the presence or discharge of which could reasonably be expected to interfere with maintaining designated uses.

EPA is promulgating this rule to fill a gap in California water quality standards that was created in 1994 when a State court overturned the State's water quality control plans which contained water quality criteria for priority toxic pollutants. Thus, the State of California has been without numeric water quality criteria for many priority toxic pollutants as required by the Clean Water Act, necessitating this action by EPA. These Federal criteria are legally applicable in the State of California for inland surface waters, enclosed bays and estuaries for all purposes and programs under the Clean Water Act.

EFFECTIVE DATE: This rule shall be effective May 18, 2000.

ADDRESSES: The administrative record for today's final rule is available for public inspection at the U.S. Environmental Protection Agency, Region 9, Water Division, 75 Hawthorne Street, San Francisco, California 94105, between the hours of 8:00 a.m. and 4:30 p.m. For access to the administrative record, call Diane E. Fleck, P.E., Esq. at 415 744–1984 for an appointment. A reasonable fee will be charged for photocopies.

FOR FURTHER INFORMATION CONTACT: Diane E. Fleck, P.E., Esq. or Philip Woods, U.S. Environmental Protection Agency, Region 9, Water Division, 75 Hawthorne Street, San Francisco, California 94105, 415–744–1984 or 415–744–1997, respectively.

SUPPLEMENTARY INFORMATION: This preamble is organized according to the following outline:

A. Potentially Affected Entities
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1. Introduction
2. Overview
C. Statutory and Regulatory Background
D. California Water Quality Standards Actions
1. California Regional Water Quality Control Board Basin Plans, and the Inland Surface Waters Plan (ISWP) and the Enclosed Bays and Estuaries Plan (EBEP) of April 1991
2. EPA's Review of California Water Quality Standards for Priority Toxic Pollutants in the ISWP and EBEP, and the National Toxics Rule
3. Status of Implementation of CWA Section 303(c)(2)(B)
4. State-Adopted, Site-Specific Criteria for Priority Toxic Pollutants
a. State-Adopted Site-Specific Criteria Under EPA Review
b. State-Adopted Site-Specific Criteria With EPA Approval
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1. Section 304(a) Criteria Guidance Process
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P. National Technology Transfer and Advancement Act
Q. Executive Order 13132 on Federalism
R. Executive Order 13045 on Protection of Children From Environmental Health Risks and Safety Risks

A. Potentially Affected Entities

Citizens concerned with water quality in California may be interested in this rulemaking. Entities discharging pollutants to waters of the United States in California could be affected by this rulemaking since water quality criteria are used by the State in developing National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that ultimately may be affected include:

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to surface waters in California or to publicly-owned treatment works.
Municipalities	Publicly-owned treatment works discharging pollutants to surface waters in California

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility might be affected by this action, you should carefully examine the applicability criteria in § 131.38(c). If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Introduction and Overview

1. Introduction

This section introduces the topics which are addressed in the preamble and provides a brief overview of EPA's basis and rationale for promulgating Federal criteria for the State of California. Section C briefly describes the evolution of the efforts to control toxic pollutants; these efforts include the changes enacted in the 1987 CWA Amendments, which are the basis for this rule. Section D summarizes California's efforts since 1987 to implement the requirements of CWA section 303(c)(2)(B) and describes EPA's procedure and actions for determining whether California has fully implemented CWA section 303(c)(2)(B). Section E provides the rationale and approach for developing this final rule, including a discussion of EPA's legal basis for this final rule. Section F describes the development of the criteria included in this rule. Section G summarizes the provisions of the final rule and discusses implementation issues. Sections H, I, J, K , L, M, N, O, P, and Q briefly address the requirements of Executive Order 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, the Paperwork Reduction Act, the Endangered Species Act, the Congressional Review Act, Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, the National Technology Transfer and Advancement Act, and Executive Order 13132, Federalism, respectively.

The proposal for this rulemaking was published in the **Federal Register** on August 5, 1997. Changes from the proposal are generally addressed in the body of this preamble and specifically addressed in the response to comments document included in the administrative record for this rulemaking. EPA responded to all comments on the proposed rule, including comments received after the September 26, 1997, deadline. Although EPA is under no legal obligation to respond to late comments, EPA made a policy decision to respond to all comments.

Since detailed information concerning many of the topics in this preamble was published previously in the **Federal Register** in preambles for this and other rulemakings, references are frequently made to those preambles. Those rulemakings include: Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California; Proposed Rule, 62 FR 42159, August 5, 1997 (referred to as the ''proposed CTR''); Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants, 57 FR 60848, December 22, 1992 (referred to as the ''National Toxics Rule'' or ''NTR''); and the NTR as amended by Administrative Stay of Federal Water Quality Criteria for Metals and Interim Final Rule, Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance—Revision of Metals Criteria, 60 FR 22228, May 4, 1995 (referred to as the ''National Toxics Rule [NTR], as amended''). The NTR, as amended, is codified at 40 CFR 131.36. A copy of the proposed CTR and its preamble, and the NTR, as amended, and its preambles are contained in the administrative record for this rulemaking.

EPA is making this final rule effective upon publication. Under the Administrative Procedure Act, 5 U.S.C. 553(d)(3), agencies must generally publish a rule no more than 30 days prior to the effective date of the rule except as otherwise provided for by the Agency for good cause. The purpose of the 30-day waiting period is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect. See *Omnipoint Corp.* v. *F.C.C.,* 78 F.3d 620, 630–631 (D.C. Cir. 1996); *Riverbend Farms, Inc.* v. *Madigan*, 958 F.2d 1479, 1485 (9th Cir. 1992).

In this instance, EPA finds good cause to make the final rule effective upon publication. In order to find good cause, an Agency needs to find that the 30-day period would be: (1) Impracticable, (2) unnecessary, or (3) contrary to the public interest. Here EPA is relying on the second reason to support its finding of good cause. EPA also notes that the State has requested EPA to make the rule immediately effective.

EPA finds that in this instance, waiting 30 days to make the rule effective is unnecessary. As explained in further detail elsewhere in this preamble, this rule is not self implementing; rather it establishes ambient conditions that the State of California will implement in future permit proceedings. These permit proceedings will, by regulation, take longer than 30 days to complete. This means that although the rule is immediately effective, no discharger's conduct would be altered under the rule in less than 30 days, and therefore the 30-day period is unnecessary.

2. Overview

This final rule establishes ambient water quality criteria for priority toxic pollutants in the State of California. The criteria in this final rule will supplement the water quality criteria promulgated for California in the NTR, as amended. In 1991, EPA approved a number of water quality criteria (discussed in section D), for the State of California. Since EPA had approved these criteria, it was not necessary to include them in the 1992 NTR for these criteria. However, the EPA-approved criteria were subsequently invalidated in State litigation. Thus, this final rule contains criteria to fill the gap created by the State litigation.

This final rule does not change or supersede any criteria previously promulgated for the State of California in the NTR, as amended. Criteria which EPA promulgated for California in the NTR, as amended, are footnoted in the final table at 131.38(b)(1), so that readers may see the criteria promulgated in the NTR, as amended, for California and the criteria promulgated through this rulemaking for California in the same table. This final rule is not intended to apply to waters within Indian Country. EPA recognizes that there are possibly waters located wholly or partly in Indian Country that are included in the State's basin plans. EPA will work with the State and Tribes to identify any such waters and determine whether further action to protect water quality in Indian Country is necessary.

This rule is important for several environmental, programmatic and legal reasons. Control of toxic pollutants in surface waters is necessary to achieve the CWA's goals and objectives. Many of California's monitored river miles, lake acres, and estuarine waters have elevated levels of toxic pollutants. Recent studies on California water bodies indicate that elevated levels of toxic pollutants exist in fish tissue which result in fishing advisories or bans. These toxic pollutants can be attributed to, among other sources, industrial and municipal discharges.

Water quality standards for toxic pollutants are important to State and EPA efforts to address water quality problems. Clearly established water quality goals enhance the effectiveness of many of the State's and EPA's water programs including permitting, coastal water quality improvement, fish tissue quality protection, nonpoint source controls, drinking water quality protection, and ecological protection. Numeric criteria for toxic pollutants allow the State and EPA to evaluate the adequacy of existing and potential control measures to protect aquatic ecosystems and human health. Numeric criteria also provide a more precise basis for deriving water quality-based effluent limitations (WQBELs) in

National Pollutant Discharge Elimination System (NPDES) permits and wasteload allocations for total maximum daily loads (TMDLs) to control toxic pollutant discharges. Congress recognized these issues when it enacted section 303(c)(2)(B) to the CWA.

While California recognizes the need for applicable water quality standards for toxic pollutants, its adoption efforts have been stymied by a variety of factors. The Administrator has decided to exercise her CWA authorities to move forward the toxic control program, consistent with the CWA and with the State of California's water quality standards program.

Today's action will also help restore equity among the States. The CWA is designed to ensure all waters are sufficiently clean to protect public health and/or the environment. The CWA allows some flexibility and differences among States in their adopted and approved water quality standards, but it should be implemented in a manner that ensures a level playing field among States. Although California has made important progress toward satisfying CWA requirements, it has not satisfied CWA section 303(c)(2)(B) by adopting numeric water quality criteria for toxic pollutants. This section was added to the CWA by Congress in 1987. Prior to today, the State of California had been the only State in the Nation for which CWA section 303(c)(2)(B) had remained substantially unimplemented after EPA's promulgation of the NTR in December of 1992. Section 303(c)(4) of the CWA authorizes the EPA Administrator to promulgate standards where necessary to meet the requirements of the Act. The Administrator determined that this rule was a necessary and important component for the implementation of CWA section 303(c)(2)(B) in California.

EPA acknowledges that the State of California is working to satisfy CWA section 303(c)(2)(B). When the State formally adopts, and EPA approves, criteria consistent with statutory requirements, as envisioned by Congress in the CWA, EPA intends to stay this rule. If within the applicable time frame for judicial review, the States' standards are challenged, EPA will withdraw this rule after such judicial review is complete and the State standards are sustained.

C. Statutory and Regulatory Background

The preamble to the August 5, 1997, proposed rule provided a general discussion of EPA's statutory and regulatory authority to promulgate water quality criteria for the State of California. See 62 FR 42160–42163. EPA is including that discussion in the record for the final rule. Commenters questioned EPA's authority to promulgate certain aspects of the proposal. EPA is responding to those comments in the appropriate sections of this preamble, and in the response to comments document included in the administrative record for this rulemaking. Where appropriate, EPA's responses expand upon the discussion of statutory and regulatory authority found in the proposal.

D. California Water Quality Standards Actions

1. California Regional Water Quality Control Board Basin Plans, and the Inland Surface Waters Plan (ISWP) and the Enclosed Bays and Estuaries Plan (EBEP) of April 1991

The State of California regulates water quality through its State Water Resources Control Board (SWRCB) and through nine Regional Water Quality Control Boards (RWQCBs). Each of the nine RWQCBs represents a different geographic area; area boundaries are generally along watershed boundaries. Each RWQCB maintains a Basin Plan which contains the designated uses of the water bodies within its respective geographic area within California. These designated uses (or ''beneficial uses'' under State law) together with legally-adopted criteria (or ''objectives'' under State law), comprise water quality standards for the water bodies within each of the Basin areas. Each of the nine RWQCBs undergoes a triennial basin planning review process, in compliance with CWA section 303. The SWRCB provides assistance to the RWQCBs.

Most of the Basin Plans contain conventional pollutant objectives such as dissolved oxygen. None of the Basin Plans contains a comprehensive list of priority toxic pollutant criteria to satisfy CWA section 303(c)(2)(B). The nine RWQCBs and the SWRCB had intended that the priority toxic pollutant criteria contained in the three SWRCB statewide plans, the Inland Surface Waters Plan (ISWP), the Enclosed Bays and Estuaries Plan (EBEP), and the Ocean Plan, apply to all basins and satisfy CWA section 303(c)(2)(B).

On April 11, 1991, the SWRCB adopted two statewide water quality control plans, the ISWP and the EBEP. These statewide plans contained narrative and numeric water quality criteria for toxic pollutants, in part to satisfy CWA section 303(c)(2)(B). The water quality criteria contained in the SWRCB statewide plans, together with the designated uses in each of the Basin Plans, created a set of water quality standards for waters within the State of California.

Specifically, the two plans established water quality criteria or objectives for all fresh waters, bays and estuaries in the State. The plans contained water quality criteria for some priority toxic pollutants, provisions relating to whole effluent toxicity, implementation procedures for point and nonpoint sources, and authorizing compliance schedule provisions. The plans also included special provisions affecting waters dominated by reclaimed water (labeled as Category (a) waters), and waters dominated by agricultural drainage and constructed agricultural drains (labeled as Category (b) and (c) waters, respectively).

2. EPA's Review of California Water Quality Standards for Priority Toxic Pollutants in the ISWP and EBEP, and the National Toxics Rule

The EPA Administrator has delegated the responsibility and authority for review and approval or disapproval of all new or revised State water quality standards to the EPA Regional Administrators (see 40 CFR 131.21). Thus, State actions under CWA section 303(c)(2)(B) are submitted to the appropriate EPA Regional Administrator for review and approval.

In mid-April 1991, the SWRCB submitted to EPA for review and approval the two statewide water quality control plans, the ISWP and the EBEP. On November 6, 1991, EPA Region 9 formally concluded its review of the SWRCB's plans. EPA approved the narrative water quality criterion and the toxicity criterion in each of the plans. EPA also approved the numeric water quality criteria contained in both plans, finding them to be consistent with the requirements of section 303(c)(2)(B) of the CWA and with EPA's national criteria guidance published pursuant to section 304(a) of the CWA.

EPA noted the lack of criteria for some pollutants, and found that, because of the omissions, the plans did not fully satisfy CWA section 303(c)(2)(B). The plans did not contain criteria for all listed pollutants for which EPA had published national criteria guidance. The ISWP contained human health criteria for only 65 pollutants, and the EBEP contained human health criteria for only 61 pollutants for which EPA had issued section 304(a) guidance criteria. Both the ISWP and EBEP contained aquatic life criteria for all pollutants except cyanide and chromium III (freshwater only) for which EPA has CWA section

304(a) criteria guidance. The SWRCB's administrative record stated that all priority pollutants with EPA criteria guidance were likely to be present in California waters. However, the SWRCB's record contained insufficient information to support a finding that the excluded pollutants were not reasonably expected to interfere with designated uses of the waters of the State.

Although EPA approved the statewide selenium objective in the ISWP and EBEP, EPA disapproved the objective for the San Francisco Bay and Delta, because there was clear evidence that the objective would not protect the designated fish and wildlife uses (the California Department of Health Services had issued waterfowl consumption advisories due to selenium concentrations, and scientific studies had documented selenium toxicity to fish and wildlife). EPA restated its commitment to object to National Pollutant Discharge Elimination System (NPDES) permits issued for San Francisco Bay that contained effluent limits based on an objective greater than 5 parts per billion (ppb) (four day average) and 20 ppb (1 hour average), the freshwater criteria. EPA reaffirmed its disapproval of Californias' site-specific selenium objective for portions of the San Joaquin River, Salt Slough, and Mud Slough. EPA also disapproved of the categorical deferrals and exemptions. These disapprovals included the disapproval of the State's deferral of water quality objectives to effluent dominated streams (Category a) and to streams dominated by agricultural drainage (Category b), and the disapproval of the exemption of water quality objectives to constructed agricultural drains (Category c). EPA found the definitions of the categories imprecise and overly broad which could have led to an incorrect interpretation.

Since EPA had disapproved portions of each of the California statewide plans which were necessary to satisfy CWA section 303(c)(2)(B), certain disapproved aspects of California's water quality standards were included in EPA's promulgation of the National Toxics Rule (NTR) (40 CFR 131.36, 57 FR 60848). EPA promulgated specific criteria for certain water bodies in California.

The NTR was amended, effective April 14, 1995, to stay certain metals criteria which had been promulgated as total recoverable. Effective April 15, 1995, EPA promulgated interim final metals criteria as dissolved concentrations for those metals which had been stayed (Administrative Stay of Federal Water Quality Criteria for Metals and Interim Final Rule, Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance—Revision of Metals Criteria; 60 FR 22228, 22229, May 4, 1995 [the NTR, as amended]). The stay was in response to a lawsuit against EPA challenging, among other issues, metals criteria expressed as total recoverable concentrations. A partial Settlement Agreement required EPA to stay specific metals criteria in the NTR. EPA then promulgated certain metals criteria in the dissolved form through the use of conversion factors. These factors are listed in the NTR, as amended. A scientific discussion of these criteria is found in a subsequent section of this preamble.

Since certain criteria have already been promulgated for specific water bodies in the State of California in the NTR, as amended, they are not within the scope of today's final rule. However, for clarity in reading a comprehensive rule for the State of California, these criteria are incorporated into 40 CFR 131.38(d)(2). Footnotes to the Table in 40 CFR 131.38(b)(1) and 40 CFR 131.38(d)(3) clarify which criteria (and for which specific water bodies) were promulgated by the NTR, as amended, and are therefore excluded from this final rule. The appropriate (freshwater or saltwater) aquatic life criteria which were promulgated in the NTR, as amended, for all inland surface waters and enclosed bays and estuaries include: chromium III and cyanide. The appropriate (water and organism or organism only) human health criteria which were promulgated in the NTR, as amended, for all inland surface waters and enclosed bays and estuaries include:

antimony
thallium
asbestos
acrolein
acrylonitrile
carbon tetrachloride
chlorobenzene
1,2-dichloroethane
1,1-dichloroethylene
1,3-dichloropropylene
ethylbenzene
1,1,2,2-tetrachloroethane
tetrachloroethylene
1,1,2-trichloroethane
trichloroethylene
vinyl chloride
2,4-dichlorophenol
2-methyl-4,6-dinitrophenol
2,4-dinitrophenol
benzidine
bis(2-chloroethyl)ether
bis(2-ethylhexyl)phthalate
3,3-dichlorobenzidine
diethyl phthalate
dimethyl phthalate
di-n-butyl phthalate
2,4-dinitrotoluene
1,2-diphenylhydrazine
hexachlorobutadiene
hexachlorocyclopentadiene
hexachloroethane
isophorone
nitrobenzene
n-nitrosodimethylamine
n-nitrosodiphenylamine

Other pollutant criteria were promulgated in the NTR, as amended, for specific water bodies, but not all inland surface waters and enclosed bays and estuaries.

3. Status of Implementation of CWA Section 303(c)(2)(B)

Shortly after the SWRCB adopted the ISWP and EBEP, several dischargers filed suit against the State alleging that it had not adopted the two plans in compliance with State law. The plaintiffs in a consolidated case included: the County of Sacramento, Sacramento County Water Agency; Sacramento Regional County Sanitation District; the City of Sacramento; the City of Sunnyvale; the City of San Jose; the City of Stockton; and Simpson Paper Company.

The dischargers alleged that the State had not adopted the ISWP and EBEP in compliance with the California Administrative Procedures Act (Gov Code. Section 11340, *et seq.*), the California Environmental Quality Act (Pub. Re Code, Section 21000, *et seq.*), and the Porter-Cologne Act (Wat. Code, Section 13200, *et seq.*). The allegation that the State did not sufficiently consider economics when adopting water quality objectives, as allegedly required by Section 13241 of the Porter Cologne Act, was an important issue in the litigation.

In October of 1993, the Superior Court of California, County of Sacramento, issued a tentative decision in favor of the dischargers. In March of 1994, the Court issued a substantively similar final decision in favor of the dischargers. Final judgments from the Court in July of 1994 ordered the SWRCB to rescind the ISWP and EBEP. On September 22, 1994, the SWRCB formally rescinded the two statewide water quality control plans. The State is currently in the process of readopting water quality control plans for inland surface waters, enclosed bays and estuaries.

CWA section 303(c)(2)(B) was fully implemented in the State of California from December of 1992, when the NTR was promulgated, until September of 1994, when the SWRCB was required to rescind the ISWP and EBEP. The provisions for California in EPA's NTR together with the approved portions of

California's ISWP and EBEP implemented the requirements of CWA section 303(c)(2)(B). However, since September of 1994, when the SWRCB rescinded the ISWP and EBEP, the requirements of section 303(c)(2)(B) have not been fully implemented in California.

The scope of today's rule is to re-establish criteria for the remaining priority toxic pollutants to meet the requirements of section 303(c)(2)(B) of the CWA. Pursuant to section 303(c)(4), the Administrator has determined that it is necessary to include in today's action criteria for priority toxic pollutants, which are not covered by the NTR, as amended, or by the State through EPA-approved site-specific criteria, for waters of the United States in the State of California.

4. State-Adopted, Site-Specific Criteria for Priority Toxic Pollutants

The State has the discretion to develop site-specific criteria when appropriate e.g., when statewide criteria appear over-or under-protective of designated uses. Periodically, the State through its RWQCBs will adopt site-specific criteria for priority toxic pollutants within respective Basin Plans. These criteria are intended to be effective throughout the Basin or throughout a designated water body. Under California law, these criteria must be publicly reviewed and approved by the RWQCB, the SWRCB, and the State's Office of Administrative Law (OAL). Once this adoption process is complete, the criteria become State law.

These criteria must be submitted to the EPA Regional Administrator for review and approval under CWA section 303. These criteria are usually submitted to EPA as part of a RWQCB Basin Plan Amendment, after the Amendment has been adopted under the State's process and has become State law.

a. State-Adopted Site-Specific Criteria Under EPA Review

The State of California has recently reviewed and updated all of its RWQCB Basin Plans. All of the Basin Plans have completed the State review and adoption process and have been submitted to EPA for review and approval. Some of the Basin Plans contain site-specific criteria. In these cases, the State-adopted site-specific criteria are used for water quality programs.

EPA has not yet concluded consultation under the Endangered Species Act with the U.S. Department of Interior, Fish and Wildlife Service, and the U.S. Department of Commerce, National Marine Fisheries Service, on EPA's tentative approval/disapproval actions on the RWQCB Basin Plans. In this situation, the more stringent of the two criteria (the State-adopted site-specific criteria in the RWQCB Basin Plans, or the Federal criteria in this final rule), would be used for water quality programs including the calculation of water quality-based effluent criteria in National Pollutant Discharge Elimination System (NPDES) permits.

b. State-Adopted Site-Specific Criteria With EPA Approval

In several cases, the EPA Regional Administrator has already reviewed and approved State-adopted site-specific criteria within the State of California. Several of these cases are discussed in this section. All of the EPA approval letters referenced in today's preamble are contained in the administrative record for today's rule.

Sacramento River: EPA has approved site-specific acute criteria for copper, cadmium and zinc in the Sacramento River, upstream of Hamilton City, in the Central Valley Region (RWQCB for the Central Valley Region) of the State of California. EPA approved these site-specific criteria by letter dated August 7, 1985. Specifically, EPA approved for the Sacramento River (and tributaries) above Hamilton City, a copper criterion of 5.6 μg/l (maximum), a zinc criterion of 16 μg/l (maximum) and a cadmium criterion of 0.22 μg/l (maximum), all in the dissolved form using a hardness of 40 mg/l as CaCO3. (These criteria were actually adopted by the State and approved by EPA as equations which vary with hardness.) These ''maximum'' criteria correspond to acute criteria in today's final rule. Therefore, Federal acute criteria for copper, cadmium, and zinc for the Sacramento River (and tributaries) above Hamilton City are not necessary to protect the designated uses and are not included in the final rule. However, the EPA Administrator is making a finding that it is necessary to include chronic criteria for copper, cadmium and zinc for the Sacramento River (and tributaries) above Hamilton City, as part of the statewide criteria promulgated in today's final rule.

San Joaquin River: The selenium criteria in this rule are not applicable to portions of the San Joaquin River, in the Central Valley Region, because selenium criteria have been either previously approved by EPA or previously promulgated by EPA as part of the NTR. EPA approved and disapproved State-adopted site-specific selenium criteria in portions of the San Joaquin River, in the Central Valley Region of the State of California (RWQCB for the Central Valley Region). EPA's determination on these site-specific criteria is contained in a letter dated April 13, 1990.

Specifically, EPA approved for the San Joaquin River, mouth of Merced River to Vernalis, an aquatic life selenium criterion of 12 μg/l (maximum with the understanding that the instantaneous maximum concentration may not exceed the objective more than once every three years). Today's final rule does not affect this Federally-approved, State-adopted site-specific acute criterion, and it remains in effect for the San Joaquin River, mouth of Merced River to Vernalis. Therefore, an acute criterion for selenium in the San Joaquin River, mouth of Merced River to Vernalis is not necessary to protect the designated use and thus is not included in this final rule.

By letter dated April 13, 1990, EPA also approved for the San Joaquin River, mouth of Merced River to Vernalis, a State-adopted site-specific aquatic life selenium criterion of 5 μg/l (monthly mean); however, EPA disapproved a State-adopted site-specific selenium criterion of 8 μg/l (monthly mean—critical year only) for these waters. Subsequently, EPA promulgated a chronic selenium criterion of 5 μg/l (4 day average) for waters of the San Joaquin River from the mouth of the Merced River to Vernalis in the NTR. This chronic criterion applies to all water quality programs concerning the San Joaquin River, mouth of Merced River to Vernalis. Today's final rule does not affect the Federally-promulgated chronic selenium criterion of 5 μg/l (4 day average) set forth in the NTR. This previously Federally-promulgated criterion remains in effect for the San Joaquin River, mouth of Merced River to Vernalis.

Grassland Water District, San Luis National Wildlife Refuge, and Los Banos State Wildlife Refuge: EPA approved for the Grassland Water District, San Luis National Wildlife Refuge, and Los Banos State Wildlife Refuge, a State-adopted site-specific aquatic life selenium criterion of 2 μg/l (monthly mean) by letter dated April 13, 1990. This Federally-approved, State-adopted site-specific chronic criterion remains in effect for the Grassland Water District, San Luis National Wildlife Refuge and Los Banos State Wildlife Refuge. Therefore it is not necessary to include in today's final rule, a chronic criterion for selenium for the Grassland Water District, San Luis National Wildlife Refuge and Los Banos State Wildlife Refuge, and thus, it is not included in this final rule.

San Francisco Regional Board Basin Plan of 1986: EPA approved several priority toxic pollutant objectives (CWA criteria) that were contained in the1986 San Francisco Regional Board Basin Plan, as amended by SWRCB Resolution Numbers 87–49, 87–82 and 87–92, by letters dated September 2, 1987 and December 24, 1987. This Basin Plan, the SWRCB Resolutions, and the EPA approval letters are contained in the administrative record for this rulemaking. It is not necessary to include these criteria for priority toxic pollutants that are contained in the San Francisco Regional Board's 1986 Basin Plan as amended, and approved by EPA. Priority pollutants in this situation are footnoted in the matrix at 131.38(b)(1) with footnote ''b.'' Where gaps exist in the State adoption and EPA approval of priority toxic pollutant objectives, the criteria in today's rule apply.

EPA is assigning ''human health, water and organism consumption'' criteria to waters with the States' municipal or ''MUN'' beneficial use designation in the Basin Plan. Also, some pollutants regulated through the Basin Plan have different averaging periods, *e.g.,* one hour as compared with the rule's ''short-term.'' However, where classes of chemicals, such as polynuclear aromatic hydrocarbons, or PAHs, and phenols, are regulated through the Basin Plan, but not specific chemicals within the category, specific chemicals within the category are regulated by today's rule.

E. Rationale and Approach for Developing the Final Rule

This section explains EPA's legal basis for today's final rule, and discusses EPA's general approach for developing the specific requirements for the State of California.

1. Legal Basis

CWA section 303(c) specifies that adoption of water quality standards is primarily the responsibility of the States. However, CWA section 303(c) also describes a role for the Federal government to oversee State actions to ensure compliance with CWA requirements. If EPA's review of the States' standards finds flaws or omissions, then the CWA authorizes EPA to correct the deficiencies (see CWA section 303(c)(4)). This water quality standards promulgation authority has been used by EPA to issue final rules on several separate occasions, including the NTR, as amended, which promulgated criteria similar to those included here for a number of States. These actions have addressed both insufficiently protective State criteria and/or designated uses and failure to adopt needed criteria. Thus, today's action is not unique.

The CWA in section 303(c)(4) provides two bases for promulgation of Federal water quality standards. The first basis, in paragraph (A), applies when a State submits new or revised standards that EPA determines are not consistent with the applicable requirements of the CWA. If, after EPA's disapproval, the State does not amend its rules so as to be consistent with the CWA, EPA is to promptly propose appropriate Federal water quality standards for that State. The second basis for an EPA action is in paragraph (B), which provides that EPA shall promptly initiate promulgation ''* * * in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this Act.'' EPA is using section 303(c)(4)(B) as the legal basis for today's final rule.

As discussed in the preamble to the NTR, the Administrator's determination under CWA section 303(c)(4) that criteria are necessary to meet the requirements of the Act could be supported in several ways. Consistent with EPA's approach in the NTR, EPA interprets section 303(c)(2)(B) of the CWA to allow EPA to act where the State has not succeeded in establishing numeric water quality standards for toxic pollutants. This inaction can be the basis for the Administrator's determination under section 303(c)(4) that new or revised criteria are necessary to ensure designated uses are protected.

EPA does not believe that it is necessary to support the criteria in today's rule on a pollutant-specific, water body-by-water-body basis. For EPA to undertake an effort to conduct research and studies of each stream segment or water body across the State of California to demonstrate that for each toxic pollutant for which EPA has issued CWA section 304(a) criteria guidance there is a ''discharge or presence'' of that pollutant which could reasonably ''be expected to interfere with'' the designated use would impose an enormous administrative burden and would be contrary to the statutory directive for swift action manifested by the 1987 addition of section 303(c)(2)(B) to the CWA. Moreover, because these criteria are ambient criteria that define attainment of the designated uses, their application to all water bodies will result in additional controls on dischargers only where necessary to protect the designated uses.

EPA's interpretation of section 303(c)(2)(B) is supported by the language of the provision, the statutory framework and purpose of section 303, and the legislative history. In adding section 303(c)(2)(B) to the CWA, Congress understood the existing requirements in section 303(c)(1) for States to conduct triennial reviews of their water quality standards and submit the results of those reviews to EPA and in section 303(c)(4)(B) for promulgation. CWA section 303(c) includes numerous deadlines and section 303(c)(4) directs the Administrator to act ''promptly'' where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Act. Congress, by linking section 303(c)(2)(B) to the section 303(c)(1) three-year review period, gave States a last chance to correct this deficiency on their own. The legislative history of the provision demonstrates that chief Senate sponsors, including Senators Stafford, Chaffee and others wanted the provision to eliminate State and EPA delays and force quick action. Thus, to interpret CWA section 303(c)(2)(B) and (c)(4) to require such a cumbersome pollutant specific effort on each stream segment would essentially render section 303(c)(2)(B) meaningless. The provision and its legislative background indicate that the Administrator's determination to invoke section 303(c)(4)(B) authority can be met by the Administrator making a generic finding of inaction by the State without the need to develop pollutant specific data for individual stream segments. Finally, the reference in section 303(c)(2)(B) to section 304(a) criteria suggests that section 304(a) criteria serve as default criteria; that once EPA has issued them, States were to adopt numeric criteria for those pollutants based on the 304(a) criteria, unless they had other scientifically defensible criteria. EPA also notes that this rule follows the approach EPA took nationally in promulgating the NTR for States that failed to comply with CWA section 303(c)(2)(B). 57 FR 60848, December 22, 1992. EPA incorporates the discussion in the NTR preamble as part of this rulemaking record.

This determination is supported by information in the rulemaking record showing the discharge or presence of priority toxic pollutants throughout the State. While this data is not necessarily complete, it constitutes a strong record supporting the need for numeric criteria for priority toxic pollutants with section 304(a) criteria guidance where the State does not have numeric criteria.

Today's final rule would not impose any undue or inappropriate burden on the State of California or its dischargers. It merely puts in place numeric criteria

for toxic pollutants that are already used in other States in implementing CWA programs. Under this rulemaking, the State of California retains the ability to adopt alternative water quality criteria simply by completing its criteria adoption process. Upon EPA approval of those criteria, EPA will initiate action to stay the Federally-promulgated criteria and subsequently withdraw them.

2. Approach for Developing This Rule

In summary, EPA developed the criteria promulgated in today's final rule as follows. Where EPA promulgated criteria for California in the NTR, EPA has not acted to amend the criteria in the NTR. Where criteria for California were not included in the NTR, EPA used section 304(a) National criteria guidance documents as a starting point for the criteria promulgated in this rule. EPA then determined whether new information since the development of the national criteria guidance documents warranted any changes. New information came primarily from two sources. For human health criteria, new or revised risk reference doses and cancer potency factors on EPA's Integrated Risk Information System (IRIS) as of October 1996 form the basis for criteria values (see also 63 FR 68354). For aquatic life criteria, updated data sets resulting in revised criteria maximum concentrations (CMCs) and criteria continuous concentrations (CCCs) formed the basis for differences from the national criteria guidance documents. Both of these types of changes are discussed in more detail in the following sections. This revised information was used to develop the water quality criteria promulgated here for the State of California.

F. Derivation of Criteria

1. Section 304(a) Criteria Guidance Process

Under CWA section 304(a), EPA has developed methodologies and specific criteria guidance to protect aquatic life and human health. These methodologies are intended to provide protection for all surface waters on a national basis. The methodologies have been subject to public review, as have the individual criteria guidance documents. Additionally, the methodologies have been reviewed by EPA's Science Advisory Board (SAB) of external experts.

EPA has included in the record of this rule the aquatic life methodology as described in ''Appendix B—Guidelines for Deriving Water Quality Criteria for the Protection of Aquatic Life and Its Uses'' to the ''Water Quality Criteria Documents; Availability'' (45 FR 79341, November 28, 1980) as amended by the ''Summary of Revisions to Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses'' (50 FR 30792, July 29, 1985). (**Note:** Throughout the remainder of this preamble, this reference is described as the 1985 Guidelines. Any page number references are to the actual guidance document, not the notice of availability in the **Federal Register**. A copy of the 1985 Guidelines is available through the National Technical Information Service (PB85–227049), is in the administrative record for this rule, and is abstracted in Appendix A of *Quality Criteria for Water,* 1986.) EPA has also included in the administrative record of this rule the human health methodology as described in ''Appendix C—Guidelines and Methodology Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents'' (45 FR 79347, November 28, 1980). (Note: Throughout the remainder of this preamble, this reference is described as the Human Health Guidelines or the 1980 Guidelines.) EPA also recommends that the following be reviewed: ''Appendix D—Response to Comments on Guidelines for Deriving Water Quality Criteria for the Protection of Aquatic Life and Its Uses,'' (45 FR 79357, November 28, 1980); ''Appendix E—Responses to Public Comments on the Human Health Effects Methodology for Deriving Ambient Water Quality Criteria'' (45 FR 79368, November 28, 1980); and ''Appendix B—Response to Comments on Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses'' (50 FR 30793, July 29, 1985). EPA placed into the administrative record for this rulemaking the most current individual criteria guidance for the priority toxic pollutants included in today's rule. (**Note:** All references to appendices are to the associated **Federal Register** publication.)

EPA received many comments related to the issue of what criteria should apply in the CTR if the CWA section 304(a) criteria guidance is undergoing re-evaluation, or if new data are developed that may affect a recommended criterion. As science is always evolving, EPA is faced with the challenge of promulgating criteria that reflect the best science and sound science. EPA addressed this challenge in some detail in its **Federal Register** notice that contained the Agency's current section 304(a) criteria guidance (63 FR 68335, December 10, 1998). There, EPA articulated its policy, reiterated here, that the existing criteria guidance represent the Agency's best assessment until such time as EPA's re-evaluation of a criteria guidance value for a particular chemical is complete. The reason for this is that both EPA's human health criteria guidance and aquatic life criteria guidance are developed taking into account numerous variables. For example, for human health criteria guidance, EPA evaluates many diverse toxicity studies, whose results feed into a reference dose or cancer potency estimate that, along with a number of exposure factors and determination of risk level, results in a guidance criterion. For aquatic life, EPA evaluates many diverse aquatic toxicity studies to determine chronic and acute toxicity taking into account how other factors (such as pH, temperature or hardness) affect toxicity. EPA also, to the extent possible, addresses bioaccumulation or bioconcentration. EPA then uses this toxicity information along with exposure information to determine the guidance criterion. Importantly, EPA subjects such evaluation to peer review and/or public comment.

For these reasons, EPA generally does not make a change to the 304(a) criteria guidance based on a partial picture of the evolving science. This makes sense, because to address one piece of new data without looking at all relevant data is less efficient and results in regulatory impacts that may go back and forth, when in the end, the criteria guidance value does not change that much. Certain new changes, however, do warrant change in criteria guidance, such as a change in a value in EPA's Integrated Risk Information System (IRIS) because it represents the Agency consensus about human health impacts. These changes are sufficiently examined across the Agency such that EPA believes they can be incorporated into EPA's water quality criteria guidance. EPA has followed this approach in the CTR. Included in the administrative record for today's rule is a document entitled ''Status of Clean Water Act Section 304(a) Criteria'' which further explains EPA's policy on managing change to criteria guidance.

2. Aquatic Life Criteria

Aquatic life criteria may be expressed in numeric or narrative form. EPA's 1985 Guidelines describe an objective, internally consistent and appropriate way of deriving chemical-specific, numeric water quality criteria for the protection of the presence of, as well as

the uses of, both fresh and salt water aquatic organisms.

An aquatic life criterion derived using EPA's CWA section 304(a) method ''might be thought of as an estimate of the highest concentration of a substance in water which does not present a significant risk to the aquatic organisms in the water and their uses.'' (45 FR 79341.) EPA's guidelines are designed to derive criteria that protect aquatic communities. EPA's 1985 Guidelines attempt to provide a reasonable and adequate amount of protection with only a small possibility of substantial overprotection or underprotection. As discussed in detail below, there are several individual factors which may make the criteria somewhat overprotective or underprotective. The approach EPA is using is believed to be as well balanced as possible, given the state of the science.

Numerical aquatic life criteria derived using EPA's 1985 Guidelines are expressed as short-term and long-term averages, rather than one number, in order that the criterion more accurately reflect toxicological and practical realities. The combination of a criterion maximum concentration (CMC), a short-term concentration limit, and a criterion continuous concentration (CCC), a four-day average concentration limit, are designed to provide protection of aquatic life and its uses from acute and chronic toxicity to animals and plants, without being as restrictive as a one-number criterion would have to be (1985 Guidelines, pages 4 & 5). The terms CMC and CCC are the formal names for the two (acute and chronic) values of a criterion for a pollutant; however, this document will also use the informal synonyms acute criterion and chronic criterion.

The two-number criteria are intended to identify average pollutant concentrations which will produce water quality generally suited to maintenance of aquatic life and designated uses while restricting the duration of excursions over the average so that total exposures will not cause unacceptable adverse effects. Merely specifying an average value over a time period may be insufficient unless the time period is short, because excursions higher than the average may kill or cause substantial damage in short periods.

A minimum data set of eight specified families is recommended for criteria development (details are given in the 1985 Guidelines, page 22). The eight specific families are intended to be representative of a wide spectrum of aquatic life. For this reason it is not necessary that the specific organisms tested be actually present in the water body. EPA's application of its guidelines to develop the criteria matrix in this rule is judged by the Agency to be appropriate for all waters of the United States (U.S.), and to all ecosystems (1985 Guidelines, page 4) including those waters of the U.S. and ecosystems in the State of California.

Fresh water and salt water (including both estuarine and marine waters) have different chemical compositions, and freshwater and saltwater species often do not inhabit the same water. To provide additional accuracy, criteria are developed for fresh water and for salt water.

For this rule, EPA updated freshwater aquatic life criteria contained in CWA section 304(a) criteria guidance first published in the early 1980's and later modified in the NTR, as amended, for the following ten pollutants: arsenic, cadmium, chromium (VI), copper, dieldrin, endrin, lindane (gamma BHC), nickel, pentachlorophenol, and zinc. The updates used as the basis for this rule are explained in a technical support document entitled, *1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water* (U.S. EPA–820–B–96–001, September 1996), available in the administrative record to this rulemaking; this document presents the derivation of each of the final CMCs and CCCs and the toxicity studies from which the updated freshwater criteria for the ten pollutants were derived.

The polychlorinated biphenyls (PCB) criteria in the criteria matrix for this rule differs from that in the NTR, as amended; for this rule, the criteria are expressed as the sum of seven aroclors, while for the NTR, as amended, the criteria are expressed for each of seven aroclors. The aquatic life criteria for PCBs in the CTR are based on the criteria contained in the 1980 criteria guidance document for PCBs which is included in the administrative record for this rule. This criteria document explains the derivation of aquatic life criteria based on total PCBs. For more information see the Response to Comments document for this rule. Today's chronic aquatic life criteria for PCBs are based on a final residue value (FRV). In EPA's guidelines for deriving aquatic life criteria, an FRV-based criterion is intended to prevent concentrations of pollutants in commercially or recreationally important aquatic species from affecting the marketability of those species or affecting the wildlife that consume aquatic life.

The proposed CTR included an updated freshwater and saltwater aquatic life criteria for mercury. In today's final rule, EPA has reserved the mercury criteria for freshwater and saltwater aquatic life, but is promulgating human health criteria for mercury for all surface waters in California. In some instances, the human health mercury criteria included in today's final rule may not protect some aquatic species or threatened or endangered species. In such instances, more stringent mercury limits may be determined and implemented through use of the State's narrative criterion. The reasons for reserving the mercury aquatic life numbers are explained in further detail in Section L, Endangered Species Act.

a. Freshwater Acute Selenium Criterion

EPA proposed a different freshwater acute aquatic life criterion for selenium for this rule than was promulgated in the NTR, as amended. EPA's proposed action was consistent with EPA's proposed selenium criterion maximum concentration for the Water Quality Guidance for the Great Lakes System (61 FR 58444, November 14, 1996). This proposal took into account data showing that selenium's two most prevalent oxidation states, selenite and selenate, present differing potentials for aquatic toxicity, as well as new data which indicated that various forms of selenium are additive. Additivity increases the toxicity of mixtures of different forms of the pollutant. The proposed approach produces a different selenium acute criterion concentration, or CMC, depending upon the relative proportions of selenite, selenate, and other forms of selenium that are present.

The preamble to the August 5, 1997, proposed rule provided a lengthy discussion of this proposed criterion for the State of California. See 62 FR 42160–42208. EPA incorporates that discussion here as part of this rulemaking record. In 1996, a similar discussion was included in the proposed rule for the Great Lakes System. Commenters questioned several aspects of the Great Lakes proposal. EPA is continuing to respond to those comments, and to follow up with additional literature review and toxicity testing. In addition, the U.S. FWS and U.S. NMFS (collectively, the Services) are concerned that EPA's proposed criterion may not be sufficiently protective of certain threatened and endangered species in California. Because the Services believe there is a lack of data to show for certain that the proposed criterion would not affect threatened and endangered species, the Services prefer that EPA further investigate the protectiveness of the

criterion before finalizing the proposed criterion. Therefore, EPA is not promulgating a final acute freshwater selenium criterion at this time.

b. Dissolved Metals Criteria

In December of 1992, in the NTR, EPA promulgated water quality criteria for several States that had failed to meet the requirements of CWA section 303(c)(2)(B). Included among the water quality criteria promulgated were numeric criteria for the protection of aquatic life for 11 metals: arsenic, cadmium, chromium (III), chromium (VI), copper, lead, mercury, nickel, selenium, silver and zinc. Criteria for two metals applied to the State of California: chromium III and selenium.

The Agency received extensive public comment during the development of the NTR regarding the most appropriate approach for expressing the aquatic life metals criteria. The principal issue was the correlation between metals that are measured and metals that are bioavailable and toxic to aquatic life. It is now the Agency's policy that the use of dissolved metal to set and measure compliance with aquatic life water quality standards is the recommended approach, because dissolved metal more closely approximates the bioavailable fraction of the metal in the water column than does total recoverable metal.

Since EPA's previous aquatic life criteria guidance had been expressed as total recoverable metal, to express the criteria as dissolved, conversion factors were developed to account for the possible presence of particulate metal in the laboratory toxicity tests used to develop the total recoverable criteria. EPA included a set of recommended freshwater conversion factors with its Metals Policy (see Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria, Martha G. Prothro, Acting Assistant Administrator for Water, October 1, 1993). Based on additional laboratory evaluations that simulated the original toxicity tests, EPA refined the procedures used to develop freshwater conversion factors for aquatic life criteria. These new conversion factors were made available for public review and comment in the amendments to the NTR on May 4, 1995, at 60 FR 22229. They are also contained in today's rule at 40 CFR 131.38(b)(2).

The preamble to the August 5, 1997, proposed rule provided a more detailed discussion of EPA's metals policy concerning the aquatic life water quality criteria for the State of California. See 62 FR 42160–42208. EPA incorporates that discussion here as part of this rulemaking record. Many commenters strongly supported the Agency's policy on dissolved metals aquatic life criteria. A few commenters expressed an opinion that the metals policy may not provide criteria that are adequately protective of aquatic or other species. Responses to those comments are contained in a memo to the CTR record entitled ''Discussion of the Use of Dissolved Metals in the CTR'' (February 1, 2000, Jeanette Wiltse) and EPA's response to comments document which are both contained in the administrative record for the final rule.

Calculation of Aquatic Life Dissolved Metals Criteria: Metals criteria values for aquatic life in today's rule in the matrix at 131.38(b)(1) are shown as dissolved metal. These criteria have been calculated in one of two ways. For freshwater metals criteria that are hardness-dependent, the metals criteria value is calculated separately for each hardness using the table at 40 CFR 131.38(b)(2). (The hardness-dependent freshwater values presented in the matrix at 40 CFR 131.38(b)(1) have been calculated using a hardness of 100 mg/l as CaCO3 for illustrative purposes only.) The hardness-dependent criteria are then multiplied by the appropriate conversion factors in the table at 40 CFR 131.38(b)(2). Saltwater and freshwater metals criteria that are not hardness-dependent are calculated by taking the total recoverable criteria values (from EPA's national section 304(a) criteria guidance, as updated and described in section F.2.a.) before rounding, and multiplying them by the appropriate conversion factors. The final dissolved metals criteria values, as they appear in the matrix at 40 CFR 131.38(b)(1), are rounded to two significant figures.

Translators for Dissolved to Total Recoverable Metals Limits: EPA's National Pollutant Discharge Elimination System (NPDES) regulations require that limits for metals in permits be stated as total recoverable in most cases (see 40 CFR 122.45(c)) except when an effluent guideline specifies the limitation in another form of the metal, the approved analytical methods measure only dissolved metal, or the permit writer expresses a metal's limit in another form (*e.g.,* dissolved, specific valence, or total) when required to carry out provisions of the CWA. This is because the chemical conditions in ambient waters frequently differ substantially from those in the effluent and these differences result in changes in the partitioning between dissolved and absorbed forms of the metal. This means that if effluent limits were expressed in the dissolved form, additional particulate metal could dissolve in the receiving water causing the criteria to be exceeded. Expressing criteria as dissolved metal requires translation between different metal forms in the calculation of the permit limit so that a total recoverable permit limit can be established that will achieve water quality standards. Thus, it is important that permitting authorities and other authorities have the ability to translate between dissolved metal in ambient waters and total recoverable metal in effluent.

EPA has completed guidance on the use of translators to convert from dissolved metals criteria to total recoverable permit limits. The document, *The Metals Translator: Guidance for Calculating a Total Recoverable Permit Limit From a Dissolved Criterion* (EPA 823–B–96–007, June 1996), is included in the administrative record for today's rule. This technical guidance examines how to develop a metals translator which is defined as the fraction of total recoverable metal in the downstream water that is dissolved, *i.e.,* the dissolved metal concentration divided by the total recoverable metal concentration. A translator may take one of three forms: (1) It may be assumed to be equivalent to the criteria guidance conversion factors; (2) it may be developed directly as the ratio of dissolved to total recoverable metal; and (3) it may be developed through the use of a partition coefficient that is functionally related to the number of metal binding sites on the adsorbent in the water column (*e.g.,* concentrations of total suspended solids or TSS). This guidance document discusses these three forms of translators, as well as field study designs, data generation and analysis, and site-specific study plans to generate site-specific translators.

California Regional Water Quality Control Boards may use any of these methods in developing water quality-based permit limits to meet water quality standards based on dissolved metals criteria. EPA encourages the State to adopt a statewide policy on the use of translators so that the most appropriate method or methods are used consistently within California.

c. Application of Metals Criteria

In selecting an approach for implementing the metals criteria, the principal issue is the correlation between metals that are measured and metals that are biologically available and toxic. In order to assure that the metals criteria are appropriate for the chemical conditions under which they are applied, EPA is providing for the

adjustment of the criteria through application of the ''water-effect ratio'' procedure. EPA notes that performing the testing to use a site-specific water-effect ratio is optional on the part of the State.

In the NTR, as amended, EPA identified the water-effect ratio (WER) procedure as a method for optional site-specific criteria development for certain metals. The WER approach compares bioavailability and toxicity of a specific pollutant in receiving waters and in laboratory waters. A WER is an appropriate measure of the toxicity of a material obtained in a site water divided by the same measure of the toxicity of the same material obtained simultaneously in a laboratory dilution water.

On February 22, 1994, EPA issued *Interim Guidance on the Determination and Use of the Water-Effect Ratios for Metals* (EPA 823-B–94–001) now incorporated into the updated Second Edition of the Water Quality Standards Handbook, Appendix L. A copy of the Handbook is contained in the administrative record for today's rule. In accordance with the WER guidance and where application of the WER is deemed appropriate, EPA strongly encourages the application of the WER on a watershed or water body basis as part of a water quality criteria in California as opposed to the application on a discharger-by-discharger basis through individual NPDES permits. This approach is technically sound and an efficient use of resources. However, discharger specific WERs for individual NPDES permit limits are possible and potentially efficient where the NPDES discharger is the only point source discharger to a specific water body.

The rule requires a default WER value of 1.0 which will be assumed, if no site-specific WER is determined. To use a WER other than the default of 1.0, the rule requires that the WER must be determined as set forth in EPA's WER guidance or by another scientifically defensible method that has been adopted by the State as part of its water quality standards program and approved by EPA.

The WER is a more comprehensive mechanism for addressing bioavailability issues than simply expressing the criteria in terms of dissolved metal. Consequently, expressing the criteria in terms of dissolved metal, as done in today's rule for California, does not completely eliminate the utility of the WER. This is particularly true for copper, a metal that forms reduced-toxicity complexes with dissolved organic matter.

The *Interim Guidance on Determination and Use of Water-Effect Ratios for Metals* explains the relationship between WERs for dissolved criteria and WERs for total recoverable criteria. Dissolved measurements are to be used in the site-specific toxicity testing underlying the WERs for dissolved criteria. Because WERs for dissolved criteria generally are little affected by elevated particulate concentrations, EPA expects those WERs to be somewhat less than WERs for total recoverable criteria in such situations. Nevertheless, after the site-specific ratio of dissolved to total metal has been taken into account, EPA expects a permit limit derived using a WER for a dissolved criterion to be similar to the permit limit that would be derived from the WER for the corresponding total recoverable criterion.

d. Saltwater Copper Criteria

The saltwater copper criteria for aquatic life in today's rule are 4.8 μg/l (CMC) and 3.1 μg/l (CCC) in the dissolved form. These criteria reflect new data including data collected from studies for the New York/New Jersey Harbor and the San Francisco Bay indicating a need to revise the former copper 304(a) criteria guidance document to reflect a change in the saltwater CMC and CCC aquatic life values. These data also reflect a comprehensive literature search resulting in added toxicity test data for seven new species to the database for the saltwater copper criteria. EPA believes these new data have national implications and the national criteria guidance now contains a CMC of 4.8 μg/l dissolved and a CCC of 3.1 μg/l dissolved. In the amendments to the NTR, EPA noticed the availability of data to support these changes to the NTR, and solicited comments. The data can be found in the draft document entitled, *Ambient Water Quality Criteria—Copper, Addendum 1995.* This document is available from the Office of Water Resource Center and is available for review in the administrative record for today's rule.

e. Chronic Averaging Period

In establishing water quality criteria, EPA generally recommends an ''averaging period'' which reflects the duration of exposure required to elicit effects in individual organisms (TSD, Appendix D–2). The criteria continuous concentration, or CCC, is intended to be the highest concentration that could be maintained indefinitely in a water body without causing an unacceptable effect on the aquatic community or its uses (TSD, Appendix D–1). As aquatic organisms do not generally experience steady exposure, but rather fluctuating exposures to pollutants, and because aquatic organisms can generally tolerate higher concentrations of pollutants over a shorter periods of time, EPA expects that the concentration of a pollutant can exceed the CCC without causing an unacceptable effect if (a) the magnitude and duration of exceedences are appropriately limited and (b) there are compensating periods of time during which the concentration is below the CCC. This is done by specifying a duration of an ''averaging period'' over which the average concentration should not exceed the CCC more often than specified by the frequency (TSD, Appendix D–1).

EPA is promulgating a 4-day averaging period for chronic criteria, which means that measured or predicted ambient pollutant concentrations should be averaged over a 4-day period to determine attainment of chronic criteria. The State may apply to EPA for approval of an alternative averaging period. To do so, the State must submit to EPA the basis for such alternative averaging period.

The most important consideration for setting an appropriate averaging period is the length of time that sensitive organisms can tolerate exposure to a pollutant at levels exceeding a criterion without showing adverse effects on survival, growth, or reproduction. EPA believes that the chronic averaging period must be shorter than the duration of the chronic tests on which the CCC is based, since, in some cases, effects are elicited before exposure of the entire duration. Most of the toxicity tests used to establish the chronic criteria are conducted using steady exposure to toxicants for a least 28 days (TSD, page 35). Some chronic tests, however, are much shorter than this (TSD, Appendix D–2). EPA selected the 4-day averaging period based on the shortest duration in which chronic test effects are sometimes observed for certain species and toxicants. In addition, EPA believes that the results of some chronic tests are due to an acute effect on a sensitive life stage that occurs some time during the test, rather than being caused by long-term stress or long-term accumulation of the test material in the organisms.

Additional discussion of the rationale for the 4-day averaging period is contained in Appendix D of the TSD. Balancing all of the above factors and data, EPA believes that the 4-day averaging period falls within the scientifically reasonable range of values for choice of the averaging period, and is an appropriate length of time of

pollutant exposure to ensure protection of sensitive organisms.

EPA established a 4-day averaging period in the NTR. In settlement of litigation on the NTR, EPA stated that it was ''in the midst of conducting, sponsoring, or planning research related to the basis for and application of'' water quality criteria and mentioned the issue of averaging period. See Partial Settlement Agreement in *American Forest and Paper Ass'n, Inc. et al.* v. *U.S. EPA* (Consolidated Case No. 93–0694 (RMU), D.D.C.). EPA is re-evaluating issues raised about averaging periods and will, if appropriate, revise the 1985 Guidelines.

EPA received public comment relevant to the averaging period during the comment period for the 1995 Amendments to the NTR (60 FR 22228, May 4, 1995), although these public comments did not address the chronic averaging period separately from the allowable excursion frequency and the design flow. Comments recommended that EPA use the 30Q5 design flow for chronic criteria.

While EPA is undertaking analysis of the chronic design conditions as part of the revisions to the 1985 Guidelines, EPA has not yet completed this work. Until this work is complete, for the reasons set forth in the TSD, EPA continues to believe that the 4-day chronic averaging period represents a reasonable, defensible value for this parameter.

EPA added language to the final rule which will enable the State to adopt alternative averaging periods and frequencies and associated design flows where appropriate. The State may apply to EPA for approval of alternative averaging periods and frequencies and related design flows; the State must submit the bases for any changes. Before approving any change, EPA will publish for public comment, a notice proposing the changes.

f. Hardness

Freshwater aquatic life criteria for certain metals are expressed as a function of hardness because hardness and/or water quality characteristics that are usually correlated with hardness can reduce or increase the toxicities of some metals. Hardness is used as a surrogate for a number of water quality characteristics which affect the toxicity of metals in a variety of ways. Increasing hardness has the effect of decreasing the toxicity of metals. Water quality criteria to protect aquatic life may be calculated at different concentrations of hardnesses measured in milligrams per liter (mg/l) as calcium carbonate ($CaCO_3$).

Section 131.38(b)(2) of the final rule presents the hardness-dependent equations for freshwater metals criteria. For example, using the equation for zinc, the total recoverable CMCs at a hardness of 10, 50, 100 or 200 mg/l as $CaCO_3$ are 17, 67, 120 and 220 micrograms per liter (µg/l), respectively. Thus, the specific value in the table in the regulatory text is for illustrative purposes only. Most of the data used to develop these hardness equations for deriving aquatic life criteria for metals were in the range of 25 mg/l to 400 mg/l as $CaCO_3$, and the formulas are therefore most accurate in this range. The majority of surface waters nationwide and in California have a hardness of less than 400 mg/l as $CaCO_3$.

In the past, EPA generally recommended that 25 mg/l as $CaCO_3$ be used as a default hardness value in deriving freshwater aquatic life criteria for metals when the ambient (or actual) hardness value is below 25 mg/l as $CaCO_3$. However, use of the approach results in criteria that may not be fully protective. Therefore, for waters with a hardness of less than 25 mg/l as $CaCO_3$, criteria should be calculated using the actual ambient hardness of the surface water.

In the past, EPA generally recommended that if the hardness was over 400 mg/l, two options were available: (1) Calculate the criterion using a default WER of 1.0 and using a hardness of 400 mg/l in the hardness equation; or (2) calculate the criterion using a WER and the actual ambient hardness of the surface water in the equation. Use of the second option is expected to result in the level of protection intended in the 1985 Guidelines whereas use of the first option is thought to result in an even more protective aquatic life criterion. At high hardness there is an indication that hardness and related inorganic water quality characteristics do not have as much of an effect on toxicity of metals as they do at lower hardnesses. Related water quality characteristics do not correlate as well at higher hardnesses as they do at lower hardnesses. Therefore, if hardness is over 400 mg/l as $CaCO_3$, a hardness of 400 mg/l as $CaCO_3$ should be used with a default WER of 1.0; alternatively, the WER and actual hardness of the surface water may be used.

EPA requested comments in the NTR amendments on the use of actual ambient hardness for calculating criteria when the hardness is below 25 mg/l as $CaCO_3$, and when hardness is greater than 400 mg/l as $CaCO_3$. Most of the comments received were in favor of using the actual hardness with the use of the water-effect ratio (1.0 unless otherwise specified by the permitting authority) when the hardness is greater than 400 mg/l as $CaCO_3$. A few commenters did not want the water-effect ratio to be mandatory in calculating hardness, and other commenters had concerns about being responsible for deriving an appropriate water-effect ratio. Overall, the commenters were in favor of using the actual hardness when calculating hardness-dependent freshwater metals criteria for hardness between 0–400 mg/l as $CaCO_3$. EPA took those comments into account in promulgating today's rule.

A hardness equation is most accurate when the relationships between hardness and the other important inorganic constituents, notably alkalinity and pH, are nearly identical in all of the dilution waters used in the toxicity tests and in the surface waters to which the equation is to be applied. If an effluent raises hardness but not alkalinity and/or pH, using the hardness of the downstream water might provide a lower level of protection than intended by the 1985 guidelines. If it appears that an effluent causes hardness to be inconsistent with alkalinity and/or pH, the intended level of protection will usually be maintained or exceeded if either (1) data are available to demonstrate that alkalinity and/or pH do not affect the toxicity of the metal, or (2) the hardness used in the hardness equation is the hardness of upstream water that does not contain the effluent. The level of protection intended by the 1985 guidelines can also be provided by using the WER procedure.

In some cases, capping hardness at 400 mg/l might result in a level of protection that is higher than that intended by the 1985 guidelines, but any such increase in the level of protection can be overcome by use of the WER procedure. For metals whose criteria are expressed as hardness equations, use of the WER procedure will generally be intended to account for effects of such water quality characteristics as total organic carbon on the toxicities of metals. The WER procedure is equally useful for accounting for any deviation from a hardness equation in a site water.

3. Human Health Criteria

EPA's CWA section 304(a) human health criteria guidance provides criteria recommendations to minimize adverse human effects due to substances in ambient water. EPA's CWA section 304(a) criteria guidance for human health are based on two types of

toxicological endpoints: (1) carcinogenicity and (2) systemic toxicity (i.e., all other adverse effects other than cancer). Thus, there are two procedures for assessing these health effects: one for carcinogens and one for non-carcinogens.

If there are no data on how a chemical agent causes cancer, EPA's existing human health guidelines assume that carcinogenicity is a ''non-threshold phenomenon,'' that is, there are no ''safe'' or ''no-effect levels'' because even extremely small doses are assumed to cause a finite increase in the incidence of the effect (i.e., cancer). Therefore, EPA's water quality criteria guidance for carcinogens are presented as pollutant concentrations corresponding to increases in the risk of developing cancer. See Human Health Guidelines at 45 FR 79347.

With existing criteria, pollutants that do not manifest any apparent carcinogenic effect in animal studies (i.e., systemic toxicants), EPA assumes that the pollutant has a threshold below which no effect will be observed. This assumption is based on the premise that a physiological mechanism exists within living organisms to avoid or overcome the adverse effect of the pollutant below the threshold concentration.

Note: Recent changes in the Agency's cancer guidelines addressing these assumptions are described in the Draft Water Quality Criteria Methodology: Human Health, 63 FR 43756, August 14, 1998.

The human health risks of a substance cannot be determined with any degree of confidence unless dose-response relationships are quantified. Therefore, a dose-response assessment is required before a criterion can be calculated. The dose-response assessment determines the quantitative relationships between the amount of exposure to a substance and the onset of toxic injury or disease. Data for determining dose-response relationships are typically derived from animal studies, or less frequently, from epidemiological studies in exposed populations.

The dose-response information needed for carcinogens is an estimate of the carcinogenic potency of the compound. Carcinogenic potency is defined here as a general term for a chemical's human cancer-causing potential. This term is often used loosely to refer to the more specific carcinogenic or cancer slope factor which is defined as an estimate of carcinogenic potency derived from animal studies or epidemiological data of human exposure. It is based on extrapolation from test exposures of high doses over relatively short periods of time to more realistic low doses over a lifetime exposure period by use of linear extrapolation models. The cancer slope factor, q1*, is EPA's estimate of carcinogenic potency and is intended to be a conservative upper bound estimate (e.g. 95% upper bound confidence limit).

For non-carcinogens, EPA uses the reference dose (RfD) as the dose-response parameter in calculating the criteria. For non-carcinogens, oral RfD assessments (hereinafter simply ''RfDs'') are developed based on pollutant concentrations that cause threshold effects. The RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a lifetime. See Human Health Guidelines. The RfD was formerly referred to as an ''Acceptable Daily Intake'' or ADI. The RfD is useful as a reference point for gauging the potential effect of other doses. Doses that are less than the RfD are not likely to be associated with any health risks, and are therefore less likely to be of regulatory concern. As the frequency of exposures exceeding the RfD increases and as the size of the excess increases, the probability increases that adverse effect may be observed in a human population. Nonetheless, a clear conclusion cannot be categorically drawn that all doses below the RfD are ''acceptable'' and that all doses in excess of the RfD are ''unacceptable.'' In extrapolating non-carcinogen animal test data to humans to derive an RfD, EPA divides either a No Observed-Adverse Effect Level (NOAEL), Lowest Observed Adverse Effect Level (LOAEL), or other benchmark dose observed in animal studies by an ''uncertainty factor'' which is based on professional judgment of toxicologists and typically ranges from 10 to 10,000.

For CWA section 304(a) human health criteria development, EPA typically considers only exposures to a pollutant that occur through the ingestion of water and contaminated fish and shellfish. Thus, the criteria are based on an assessment of risks related to the surface water exposure route only where designated uses are drinking water and fish and shellfish consumption.

The assumed exposure pathways in calculating the criteria are the consumption of 2 liters per day of water at the criteria concentration and the consumption of 6.5 grams per day of fish and shellfish contaminated at a level equal to the criteria concentration but multiplied by a ''bioconcentration factor.'' The use of fish and shellfish consumption as an exposure factor requires the quantification of pollutant residues in the edible portions of the ingested species.

Bioconcentration factors (BCFs) are used to relate pollutant residues in aquatic organisms to the pollutant concentration in ambient waters. BCFs are quantified by various procedures depending on the lipid solubility of the pollutant. For lipid soluble pollutants, the average BCF is calculated from the weighted average percent lipids in the edible portions of fish and shellfish, which is about 3%; or it is calculated from theoretical considerations using the octanol/water partition coefficient. For non-lipid soluble compounds, the BCF is determined empirically. The assumed water consumption is taken from the National Academy of Sciences publication *Drinking Water and Health* (1977). (Referenced in the Human Health Guidelines.) This value is appropriate as it includes a margin of safety so that the general population is protected. See also EPA's discussion of the 2.0 liters/day assumption at 61 FR 65183 (Dec. 11, 1996). The 6.5 grams per day contaminated fish and shellfish consumption value was equivalent to the average per-capita consumption rate of all (contaminated and non-contaminated) freshwater and estuarine fish and shellfish for the U.S. population. See Human Health Guidelines.

EPA assumes in calculating water quality criteria that the exposed individual is an average adult with body weight of 70 kilograms. EPA assumes 6.5 grams per day of contaminated fish and shellfish consumption and 2.0 liters per day of contaminated drinking water consumption for a 70 kilogram person in calculating the criteria. Regarding issues concerning criteria development and differences in dose per kilogram of body weight, RfDs are always derived based on the most sensitive health effect endpoint. Therefore, when that basis is due to a chronic or lifetime health effect, the exposure parameters assume the exposed individual to be the average adult, as indicated above.

In the absence of this final rule, there may be particular risks to children. EPA believes that children are protected by the human health criteria contained in this final rule. Children are protected against other less sensitive adverse health endpoints due to the conservative way that the RfDs are derived. An RfD is a public health protective endpoint. It is an amount of a chemical that can be consumed on a daily basis for a lifetime without expecting an adverse effect. RfDs are based on sensitive health endpoints and

are calculated to be protective for sensitive human sub-populations including children. If the basis of the RfD was due to an acute or shorter-term developmental effect, EPA uses exposure parameters other than those indicated above. Specifically, EPA uses parameters most representative of the population of concern (*e.g.,* the health criteria for nitrates based on infant exposure parameters). For carcinogens, the risk assessments are upper bound one in a million (10^{-6}) lifetime risk numbers. The risk to children is not likely to exceed these upper bounds estimates and may be zero at low doses. The exposure assumptions for drinking water and fish protect children because they are conservative for infants and children. EPA assumes 2 liters of untreated surface water and 6.5 grams of freshwater and estuarine fish are consumed each day. EPA believes the adult fish consumption assumption is conservative for children because children generally consume marine fish not freshwater and estuarine.

EPA has a process to develop a scientific consensus on oral reference dose assessments and carcinogenicity assessments (hereinafter simply cancer slope factors or slope factors or q1*s). Through this process, EPA develops a consensus of Agency opinion which is then used throughout EPA in risk management decision-making. EPA maintains an electronic data base which contains the official Agency consensus for oral RfD assessments and carcinogenicity assessments which is known as the Integrated Risk Information System (IRIS). It is available for use by the public on the National Institutes of Health's National Library of Medicine's TOXNET system, and through diskettes from the National Technical Information Service (NTIS). (NTIS access number is PB 90–591330.)

Section 304(a)(1) of the CWA requires EPA to periodically revise its criteria guidance to reflect the latest scientific knowledge: ''(A) On the kind and extent of all identifiable effects on health and welfare * * *; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on the biological community diversity, productivity, and stability, including information on the factors affecting eutrophication rates of organic and inorganic sedimentation for varying types of receiving waters.'' In developing up-to-date water quality criteria for the protection of human health, EPA uses the most recent IRIS values (RfDs and q1*s) as the toxicological basis in the criterion calculation. IRIS reflects EPA's most current consensus on the toxicological assessment for a chemical. In developing the criteria in today's rule, the IRIS values as of October 1996 were used together with currently accepted exposure parameters for bioconcentration, fish and shellfish and water consumption, and body weight. The IRIS cover sheet for each pollutant criteria included in today's rule is contained in the administrative record.

For the human health criteria included in today's rule, EPA used the Human Health Guidelines on which criteria recommendations from the appropriate CWA section 304(a) criteria guidance document were based. (These documents are also placed in the administrative record for today's rule.) Where EPA has changed any parameters in IRIS used in criteria derivation since issuance of the criteria guidance document, EPA recalculated the criteria recommendation with the latest IRIS information. Thus, there are differences between the original 1980 criteria guidance document recommendations, and those in this rule, but this rule presents EPA's most current CWA section 304(a) criteria recommendation. The basis (q1* or RfD) and BCF for each pollutant criterion in today's rule is contained in the rule's Administrative Record Matrix which is included in the administrative record for the rule. In addition, all recalculated human health numbers are denoted by an ''a'' in the criteria matrix in 40 CFR 131.38(b)(1) of the rule. The pollutants for which a revised human health criterion has been calculated since the December 1992 NTR include:

mercury
dichlorobromomethane
1,2-dichloropropane
1,2-trans-dichloroethylene
2,4-dimethylphenol
acenaphthene
benzo(a)anthracene
benzo(a)pyrene
benzo(b)flouranthene
benzo(k)flouranthene
2-chloronaphthalene
chrysene
dibenzo(a,h)anthracene
indeno(1,2,3-cd)pyrene
N-nitrosodi-n-propylamine
alpha-endosulfan
beta-endosulfan
endosulfan sulfate
2-chlorophenol
butylbenzyl phthalate
polychlorinated biphenyls.

In November of 1991, the proposed NTR presented criteria for several pollutants in parentheses. These were pollutants for which, in 1980, insufficient information existed to develop human health water quality criteria, but for which, in 1991, sufficient information existed. Since these criteria did not undergo the public review and comment in a manner similar to the other water quality criteria presented in the NTR (for which sufficient information was available in 1980 to develop a criterion, as presented in the 1980 criteria guidance documents), they were not proposed for adoption into the water quality criteria, but were presented to serve as notice for inclusion in future State triennial reviews. Today's rule promulgates criteria for these nine pollutants:

copper
1, 2-dichloropropane
1,2-trans-dichloroethylene
2,4-dimethylphenol
acenaphthene
2-chloronaphthalene
N-nitrosodi-n-propylamine
2-chlorophenol
butylbenzene phthalate

All the criteria are based on IRIS values—either an RfD or q1*—which were listed on IRIS as of November 1991, the date of the proposed NTR. These values have not changed since the final NTR was published in December of 1992. The rule's Administrative Record Matrix in the administrative record of today's rule contains the specific RfDs, q1*s, and BCFs used in calculating these criteria.

Proposed Changes to the Human Health Criteria Methodology: EPA recently proposed revisions to the 1980 ambient water quality criteria derivation guidelines (the Human Health Guidelines). See *Draft Water Quality Criteria Methodology: Human Health,* 63 FR 43756, August 14, 1998; see also *Draft Water Quality Criteria Methodology: Human Health,* U.S. EPA Office of Water, EPA 822–Z–98–001. The EPA revisions consist of five documents: *Draft Water Quality Criteria Methodology: Human Health,* EPA 822–Z–98–001; *Ambient Water Quality Criteria Derivation Methodology Human Health, Technical Support Document, Final Draft,* EPA–822–B–98–005; and three Ambient Water Quality Criteria for the Protection of Human Health, Drafts—one each for Acrylonitrile, 1,3-Dichloropropene (1,3-DCP), and Hexachlorobutadiene (HCBD), respectively, EPA–822–R–98–006, –005, and –004. All five documents are contained in the administrative record for today's rule.

The proposed methodology revisions reflect significant scientific advances that have occurred during the past nineteen years in such key areas as cancer and noncancer risk assessments, exposure assessments and bioaccumulation. For specific details on

these proposed changes and others, please refer to the **Federal Register** notice or the EPA document.

It should be noted that some of the proposed changes may result in significant numeric changes in the ambient water quality criteria. However, EPA will continue to rely on existing criteria as the basis for regulatory and non-regulatory decisions, until EPA revises and reissues a 304(a) criteria guidance using the revised final human health criteria methodology. The existing criteria are still viewed as scientifically acceptable by EPA. The intention of the proposed methodology revisions is to present the latest scientific advancements in the areas of risk and exposure assessment in order to incrementally improve the already sound toxicological and exposure bases for these criteria. As EPA's current human health criteria are the product of many years worth of development and peer review, it is reasonable to assume that revisiting all existing criteria, and incorporating peer review into such review, could require comparable amounts of time and resources. Given these circumstances, EPA proposed a process for revisiting these criteria as part of the overall revisions to the methodology for deriving human health criteria. This process is discussed in the Implementation Section of the Notice of *Draft Revisions to the Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (see 63 FR 43771–43776, August 14, 1998).

The State of California in its Ocean Plan, adopted in 1990 and approved by EPA in 1991, established numeric water quality criteria using an average fish and shellfish consumption rate of 23 grams per day. This value is based on an earlier California Department of Health Services estimate. The State is currently in the process of readopting its water quality control plans for inland surface waters, enclosed bays, and estuaries. The State intends to consider information on fish and shellfish consumption rates evaluated and summarized in a report prepared by the State's Pesticide and Environmental Toxicology Section of the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency. The report, entitled, *Chemicals in Fish Report No. 1: Consumption of Fish and Shellfish in California and the United States,* was published in final draft form in July of 1997, and released to the public on September 16, 1997. The report is currently undergoing final evaluation, and is expected to published in final form in the near future. This final draft report is contained in the administrative record for today's rule. Although EPA has not used this fish consumption value here because this information has not yet been finalized, the State may use any appropriate higher state-specific fish and shellfish consumption rates in its readoption of criteria in its statewide plans.

a. 2,3,7,8-TCDD (Dioxin) Criteria

In today's action, EPA is promulgating human health water quality criteria for 2,3,7,8-tetrachlorodibenzo-p-dioxin (''dioxin'') at the same levels as promulgated in the NTR, as amended. These criteria are derived from EPA's 1984 CWA section 304(a) criteria guidance document for dioxin.

For National Pollutant Discharge Elimination System (NPDES) purposes, EPA supports the regulation of other dioxin and dioxin-like compounds through the use of toxicity equivalencies or TEQs in NPDES permits (see discussion below). For California waters, if the discharge of dioxin or dioxin-like compounds has reasonable potential to cause or contribute to a violation of a narrative criterion, numeric water quality-based effluent limits for dioxin or dioxin-like compounds should be included in NPDES permits and should be expressed using a TEQ scheme.

EPA has been evaluating the health threat posed by dioxin nearly continuously for over two decades. Following issuance of the 1984 criteria guidance document, evaluating the health effects of dioxin and recommending human health criteria for dioxin, EPA prepared draft reassessments reviewing new scientific information relating to dioxin in 1985 and 1988. EPA's Science Advisory Board (SAB), reviewing the 1988 draft reassessment, concluded that while the risk assessment approach used in 1984 criteria guidance document had inadequacies, a better alternative was unavailable (see SAB's *Dioxin Panel Review of Documents from the Office or Research and Development relating to the Risk and Exposure Assessment of 2,3,7,8-TCDD* (EPA–SAB–EC–90–003, November 28, 1989) included in the administrative record for today's rule). Between 1988 and 1990, EPA issued numerous reports and guidances relating to the control of dioxin discharges from pulp and paper mills. See e.g., EPA Memorandum, ''Strategy for the Regulation of Discharges of PHDDs & PHDFs from Pulp and Paper Mills to the Waters of the United States,'' from Assistant Administrator for Water to Regional Water Management Division Directors and NPDES State Directors, dated May 21, 1990 (AR NL–16); EPA Memorandum, ''State Policies, Water Quality Standards, and Permit Limitations Related to 2,3,7,8-TCDD in Surface Water,'' from the Assistant Administrator for Water to Regional Water Management Division Directors, dated January 5, 1990 (AR VA–66). These documents are available in the administrative record for today's rule.

In 1991, EPA's Administrator announced another scientific reassessment of the risks of exposure to dioxin (see Memorandum from Administrator William K. Reilly to Erich W. Bretthauer, Assistant Administrator for Research and Development and E. Donald Elliott, General Counsel, entitled *Dioxin: Follow-Up to Briefing on Scientific Developments,* April 8, 1991, included in the administrative record for today's rule). At that time, the Administrator made clear that while the reassessment was underway, EPA would continue to regulate dioxin in accordance with existing Agency policy. Thereafter, the Agency proceeded to regulate dioxin in a number of environmental programs, including standards under the Safe Drinking Water Act and the CWA.

The Administrator's promulgation of the dioxin human health criteria in the 1992 NTR affirmed the Agency's decision that the ongoing reassessment should not defer or delay regulating this potent contaminant, and further, that the risk assessment in the 1984 criteria guidance document for dioxin continued to be scientifically defensible. Until the reassessment process was completed, the Agency could not ''say with any certainty what the degree or directions of any changes in the risk estimates might be'' (57 FR 60863–64).

The basis for the dioxin criteria as well as the decision to include the dioxin criteria in the 1992 NTR pending the results of the reassessment were challenged. See *American Forest and Paper Ass'n, Inc. et al.* v. *U.S. EPA* (Consolidated Case No. 93–0694 (RMU) D.D.C.). By order dated September 4, 1996, the Court upheld EPA's decision. EPA's brief and the Court's decision are included in the administrative record for today's rule.

EPA has undertaken significant effort toward completion of the dioxin reassessment. On September 13, 1994, EPA released for public review and comment a draft reassessment of toxicity and exposure to dioxin. See *Health Assessment Document for 2,3,7,8-Tetrachlorobenzo-p-Dioxin (TCDD) and Related Compounds,* U.S. EPA, 1994. EPA is currently addressing comments made by the public and the SAB and anticipates that the final

revised reassessment will go to the SAB in the near future. With today's rule, the Agency reaffirms that, notwithstanding the on-going risk reassessment, EPA intends to continue to regulate dioxin to avoid further harm to public health, and the basis for the dioxin criteria, both in terms of the cancer potency and the exposure estimates, remains scientifically defensible. The fact that EPA is reassessing the risk of dioxin, virtually a continuous process to evaluate new scientific information, does not mean that the current risk assessment is ''wrong''. It continues to be EPA's position that until the risk assessment for dioxin is revised, EPA supports and will continue to use the existing risk assessment for the regulation of dioxin in the environment. Accordingly, EPA today promulgates dioxin criteria based on the 1984 criteria guidance document for dioxin and promulgated in the NTR in 1992.

Toxicity Equivalency: The State of California, in its 1991 water quality control plans, adopted human health criteria for dioxin and dioxin-like compounds based on the concept of toxicity equivalency (TEQ) using toxicity equivalency factors (TEFs). EPA Region 9 reviewed and approved the State's use of the TEQ concept and TEFs in setting the State's human health water quality criteria for dioxin and dioxin-like compounds.

In 1987, EPA formally embraced the TEQ concept as an interim procedure to estimate the risks associated with exposures to 210 chlorinated dibenzo-p-dioxin and chlorinated dibenzofuran (CDD/CDF) congeners, including 2,3,7,8-TCDD. This procedure uses a set of derived TEFs to convert the concentration of any CDD/CDF congener into an equivalent concentration of 2,3,7,8-TCDD. In 1989, EPA updated its TEFs based on an examination of relevant scientific evidence and a recognition of the value of international consistency. This updated information can be found in EPA's 1989 *Update to the Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-dioxins and -dibenzofurans (CDDs and CDFs)* (EPA/625/3–89/016, March 1989). EPA had been active in an international effort aimed at adopting a common set of TEFs (International TEFs/89 or I–TEFs/89), to facilitate information exchange on environmental contamination of CDD/CDF. This document reflects EPA's support of an internationally consistent set of TEFs, the I–TEFs/89. EPA uses I–TEFs/89 in many of its regulatory programs.

In 1994, the World Health Organization (WHO) revised the TEF scheme for dioxins and furans to include toxicity from dioxin-like compounds (Ahlborg et al., 1994). However, no changes were made to the TEFs for dioxins and furans. In 1998, the WHO re-evaluated and revised the previously established TEFs for dioxins (Ds), furans (Fs) and dioxin-like compounds (Vanden Bers, 1998). The nomenclature for this TEF scheme is TEQDFP–WHO98, where TEQ represents the 2,3,7,8-TCDD Toxic Equivalence of the mixture, and the subscript DFP indicates that dioxins (Ds) furans (Fs) and dioxin-like compounds (P) are included in the TEF scheme. The subscript 98 following WHO displays the year changes were made to the TEF scheme.

EPA intends to use the 1998 WHO TEF scheme in the near future. At this point however, EPA will support the use of either the 1989 interim procedures or the 1998 WHO TEF scheme but encourages the use of the 1998 WHO TEF scheme in State programs. EPA expects California to use a TEF scheme in implementing the 2,3,7,8-TCDD water quality criteria contained in today's rule. The TEQ and TEF approach provide a methodology for setting NPDES water quality-based permit limits that are protective of human health for dioxin and dioxin-like compounds.

Several commenters requested EPA to promulgate criteria for other forms of dioxin, in addition to 2,3,7,8-TCDD. EPA's draft reassessment for dioxin examines toxicity based on the TEQ concept and I–TEFs/89. When EPA completes the dioxin reassessment, the Agency intends to adopt revised 304(a) water quality criteria guidance based on the reassessment for dioxin. If necessary, EPA will then act to amend the NTR and CTR to reflect the revised 304(a) water quality criteria guidance.

b. Arsenic Criteria

EPA is not promulgating human health criteria for arsenic in today's rule. EPA recognizes that it promulgated human health water quality criteria for arsenic for a number of States in 1992, in the NTR, based on EPA's 1980 section 304(a) criteria guidance for arsenic established, in part, from IRIS values current at that time. However, a number of issues and uncertainties existed at the time of the CTR proposal concerning the health effects of arsenic. These issues and uncertainties were summarized in ''Issues Related to Health Risk of Arsenic'' which is contained in the administrative record for today's rule. During the period of this rulemaking action, EPA commissioned a study of arsenic health effects by the National Research Council (NRC) arm of the National Academy of Sciences. EPA received the NRC report in March of 1999. EPA scientists reviewed the report, which recommended that EPA lower the Safe Drinking Water Act arsenic maximum contaminant level (MCL) as soon as possible (The arsenic MCL is currently 50 μg/l.) The bladder cancer analysis in the NRC report will provide part of the basis for the risk assessment of a proposed revised arsenic MCL in the near future. After promulgating a revised MCL for drinking water, the Agency plans to revise the CWA 304(a) human health criteria for arsenic in order to harmonize the two standards. Today's rule defers promulgating arsenic criteria based on the Agency's previous risk assessment of skin cancer. In the meantime, permitting authorities in California should rely on existing narrative water quality criteria to establish effluent limitations as necessary for arsenic. California has previously expressed its science and policy position by establishing a criterion level of 5 μg/l for arsenic. Permitting authorities may, among other considerations, consider that value when evaluating and interpreting narrative water quality criteria.

c. Mercury Criteria

The human health criteria promulgated here use the latest RfD in EPA's Integrated Risk Information System (IRIS) and the weighted average practical bioconcentration factor (PBCF) from the 1980 section 304(a) criteria guidance document for mercury. EPA considered the approach used in the Great Lakes Water Quality Guidance (''Guidance'') incorporating Bioaccumulation Factors (BAFs), but rejected this approach for reasons outlined below. The equation used here to derive an ambient water quality criterion for mercury from exposure to organisms and water is:

$$HHC = \frac{RfD \times BW}{WC + (FC \times PBCF)}$$

Where:

RfD = Reference Dose
BW = Body Weight
WC = Water Consumption
FC = Total Fish and Shellfish Consumption per Day
PBCF = Practical Bioconcentration Factor (weighted average)

For mercury, the most current RfD from IRIS is 1×10^{-4} mg/kg/day. The RfD used a benchmark dose as an estimate of a No Observed Adverse Effect Level (NOAEL). The benchmark dose was calculated by applying a Weibel model

for extra risk to all neurological effects observed in 81 Iraqi children exposed in utero as reported in Marsh, et. al. (1987). Maternal hair mercury was the measure of exposure. Extra risk refers to an adjustment for background incidence of a given health effect. Specifically, the extra risk is the added incidence of observing an effect above the background rate relative to the proportion of the population of interest that is not expected to exhibit such as effect. The resulting estimate was the lower 95% statistical bound on the 10% extra risk; this was 11 ppm mercury in maternal hair. This dose in hair was converted to an equivalent ingested amount by applying a model based on data from human studies; the resulting benchmark dose was 1×10^{-3} mg/kg body weight /day. The RfD was calculated by dividing the benchmark dose by a composite uncertainty factor of 10. The uncertainty factor was used to account for variability in the human population, in particular the wide variation in biological half-life of methylmercury and the variation that is observed in the ration of hair mercury to mercury in the blood. In addition the uncertainty factor accounts for lack of a two-generation reproductive study and the lack of data on long term effects of childhood mercury exposures. The RfD thus calculated is 1×10^{-4} mg/kg body weight/day or 0.1 μg/kg/day. The body weight used in the equation for the mercury criteria, as discussed in the Human Health Guidelines, is a mean adult human body weight of 70 kg. The drinking water consumption rate, as discussed in the Human Health Guidelines, is 2.0 liters per day.

The bioconcentration factor or BCF is defined as the ratio of chemical concentration in the organism to that in surrounding water. Bioconcentration occurs through uptake and retention of a substance from water only, through gill membranes or other external body surfaces. In the context of setting exposure criteria it is generally understood that the terms ''BCF'' and ''steady-state BCF'' are synonymous. A steady-state condition occurs when the organism is exposed for a sufficient length of time that the ratio does not change substantially.

The BCFs that were used herein are the ''Practical Bioconcentration Factors (PBCFs)'' that were derived in 1980: 5500 for fresh water, 3765 for estuarine coastal waters, and 9000 for open oceans. See pages C–100–1 of Ambient Water Quality Criteria for Mercury (EPA 440/5–80–058) for a complete discussion on the PBCF. Because of the way they were derived, these PBCFs take into account uptake from food as well as uptake from water. A weighted average PBCF was calculated to take into account the average consumption from the three waters using the following equation:

$$\text{Weighted Average Practical BCF} = \frac{\sum(\text{FC} \times \text{PBCF})}{\sum(\text{FC})} = \frac{(0.00172)(5500) + (0.00478)(3765) + (0.0122)(9000)}{0.00172 + 0.00478 + 0.0122} = \frac{137.3}{0.0187} = 7342.6$$

Given the large value for the weighted average PBCF, the contribution of drinking water to total daily intake is negligible so that assumptions concerning the chemical form of mercury in drinking water become less important. The human health mercury criteria promulgated for this rule are based on the latest RfD as listed in IRIS and a weighted PBCF from the 1980 § 304(a) criteria guidance document for mercury.

On March 23, 1995 (60 FR 15366), EPA promulgated the Great Lakes Water Quality Guidance (''Guidance''). The Guidance incorporated bioaccumulation factors (BAFs) in the derivation of criteria to protect human health because it is believed that BAFs are a better predictor than BCFs of the concentration of a chemical within fish tissue since BAFs include consideration of the uptake of contaminants from all routes of exposure. A bioaccumulation factor is defined as the ratio (in L/kg) of a substance's concentration in tissue to the concentration in the ambient water, in situations where both the organism and its food are exposed and the ratio does not change substantially over time. The final Great Lakes Guidance establishes a hierarchy of four methods for deriving BAFs for non-polar organic chemicals: (1) Field-measured BAFs; (2) predicted BAFs derived using a field-measured biota-sediment accumulation factor; (3) predicted BAFs derived by multiplying a laboratory-measured BCF by a food chain multiplier; and (4) predicted BAFs derived by multiplying a BCF calculated from the log Kow by a food-chain multiplier. The final Great Lakes Guidance developed BAFs for trophic levels three and four fish of the Great Lakes Basin. Respectively, the BAFs for mercury for trophic level 3 and 4 fish were: 27,900 and 140,000.

The BAF promulgated in the GLI was developed specifically for the Great Lakes System. It is uncertain whether the BAFs of 27,900 and 140,000 are appropriate for use in California at this time; therefore, today's final rule does not use the GLI BAF in establishing human health criteria for mercury in California. The magnitude of the BAF for mercury in a given system depends on how much of the total mercury is present in the methylated form. Methylation rates vary widely from one water body to another for reasons that are not fully understood. Lacking the data, it is difficult to determine if the BAF used in the GLI represents the true potential for mercury to bioaccumulate in California surface waters. The true, average BAF for California could be higher or lower. For more information see EPA's Response to Comments document in the administrative record for this rule (specifically comments CTR–002–007(b) and CTR–016–007).

EPA is developing a national BAF for mercury as part of revisions to its 304(a) criteria for human health; however, the BAF methodology that will be used is currently under evaluation as part of EPA's revisions to its National Human Health Methodology (see section F.3 above). EPA applied a similar methodology in its Mercury Study Report to Congress (MSRC) to derive a BAF for methylmercury. The MSRC is available through NTIS (EPA–452/R–97–003). Although a BAF was derived in the MSRC, EPA does not intend to use this BAF for National application. EPA is engaged in a separate effort to incorporate additional mercury bioaccumulation data that was not considered in the MSRC, and to assess uncertainties with using a National BAF approach for mercury. Once the proposed revised human health methodology, including the BAF component, is finalized, EPA will revise its 304(a) criteria for mercury to reflect changes in the underlying methodology, recommendations contained in the MSRC, and recommendations in a National Academy of Science report on human health assessment of methylmercury. When EPA changes its 304(a) criteria recommendation for mercury, States and Tribes will be expected to review their water quality standards for mercury and make any revisions necessary to ensure their standards are scientifically defensible.

New information may become available regarding the bioaccumulation

of mercury in certain water bodies in California. EPA supports the use of this information to develop site-specific criteria for mercury. Further, if a California water body is impaired due to mercury fish tissue or sediment contamination, loadings of mercury could contribute to or exacerbate the impairment. Therefore, one option regulatory authorities should consider is to include water quality-based effluent limits (WQBELs) in permits based on mass for discharges to the impaired water body. Such WQBELs must be derived from and comply with applicable State water quality standards (including both numeric and narrative criteria) and assure that the discharge does not cause or contribute to a violation of water quality standards.

d. Polychlorinated Biphenyls (PCBs) Criteria

The NTR, as amended, calculated human health criteria for PCBs using a cancer potency factor of 7.7 per mg/kg-day from the Agency's IRIS. This cancer potency factor was derived from the Norback and Weltman (1985) study which looked at rats that were fed Aroclor 1260. The study used the linearized multistage model with a default cross-species scaling factor (body weight ratio to the ⅔ power). Although it is known that PCB mixtures vary greatly as to their potency in producing biological effects, for purposes of its carcinogenicity assessment, EPA considered Aroclor 1260 to be representative of all PCB mixtures. The Agency did not pool data from all available congener studies or generate a geometric mean from these studies, since the Norback and Weltman study was judged by EPA as acceptable, and not of marginal quality, in design or conduct as compared with other studies. Thereafter, the Institute for Evaluating Health Risks (IEHR, 1991) reviewed the pathological slides from the Norback and Weltman study, and concluded that some of the malignant liver tumors should have been interpreted as nonmalignant lesions, and that the cancer potency factor should be 5.1 per mg/kg-day as compared with EPA's 7.7 per mg/kg-day.

The Agency's peer-reviewed reassessment of the cancer potency of PCBs published in a final report, *PCBs: Cancer Dose-Response Assessment and Applications to Environmental Mixtures* (EPA/600/P–96/001F), adopts a different approach that distinguishes among PCB mixtures by using information on environmental processes. (The report is included in the administrative record of today's rule.) The report considers all cancer studies (which used commercial mixtures only) to develop a range of cancer potency factors, then uses information on environmental processes to provide guidance on choosing an appropriate potency factor for representative classes of environmental mixtures and different pathways. The reassessment provides that, depending on the specific application, either central estimates or upper bounds can be appropriate. Central estimates describe a typical individual's risk, while upper bounds provide assurance (*i.e.,* 95% confidence) that this risk is not likely to be underestimated if the underlying model is correct. Central estimates are used for comparing or ranking environmental hazards, while upper bounds provide information about the precision of the comparison or ranking. In the reassessment, the use of the upper bound values were found to increase cancer potency estimates by two or three-fold over those using central tendency. Upper bounds are useful for estimating risks or setting exposure-related standards to protect public health, and are used by EPA in quantitative cancer risk assessment. Thus, the cancer potency of PCB mixtures is determined using a tiered approach based on environmental exposure routes with upper-bound potency factors (using a body weight ratio to the ¾ power) ranging from 0.07 (lowest risk and persistence) to 2 (high risk and persistence) per mg/kg-day for average lifetime exposures to PCBs. It is noteworthy that bioaccumulated PCBs appear to be more toxic than commercial PCBs and appear to be more persistent in the body. For exposure through the food chain, risks can be higher than other exposures.

EPA issued the final reassessment report on September 27, 1996, and updated IRIS to include the reassessment on October 1, 1996. EPA updated the human health criteria for PCBs in the National Toxics Rule on September 27, 1999. For today's rule, EPA derived the human health criteria for PCBs using a cancer potency factor of 2 per mg/kg-day, an upper bound potency factor reflecting high risk and persistence. This decision is based on recent multimedia studies indicating that the major pathway of exposure to persistent toxic substances such as PCBs is via dietary exposure (*i.e.,* contaminated fish and shellfish consumption).

Following is the calculation of the human health criterion (HHC) for organism and water consumption:

$$HHC = \frac{RF \times BW \times (1{,}000\ \mu g/mg)}{q1^* \times [WC + (FC \times BCF)]}$$

Where:

RF = Risk Factor = 1 x 10^{-6}
BW = Body Weight = 70 kg
q1* = Cancer slope factor = 2 per mg/kg-day
WC = Water Consumption = 2 l/day
FC = Fish and Shellfish Consumption = 0.0065 kg/day
BCF = Bioconcentration Factor = 31,200

the HHC (μg/l) = 0.00017 μg/l (rounded to two significant digits).

Following is the calculation of the human health criterion for organism only consumption:

$$HHC = \frac{RF \times BW \times (1{,}000\ \mu g/mg)}{q1^* \times FC \times BCF}$$

Where:

RF = Risk Factor = 1 x 10^{-6}
BW = Body Weight = 70 kg
q1* = Cancer slope factor = 2 per mg/kg-day
FC = Total Fish and Shellfish Consumption per Day = 0.0065 kg/day
BCF = Bioconcentration Factor = 31,200

the HHC (μg/l) = 0.00017 μg/l (rounded to two significant digits).

The criteria are both equal to 0.00017 μg/l and apply to total PCBs. *See PCBs: Cancer Dose Response Assessment and Application to Environmental Mixtures* (EPA/600/9–96–001F). For a discussion of the body weight, water consumption, and fish and shellfish consumption factors, see the Human Health Guidelines. For a discussion of the BCF, see the 304(a) criteria guidance document for PCBs (included in the administrative record for today's rule).

e. Excluded Section 304(a) Human Health Criteria

As is the case in the NTR, as amended, today's rule does not promulgate criteria for certain priority pollutants for which CWA section 304(a) criteria guidance exists because those criteria were not based on toxicity to humans or aquatic organisms. The basis for those particular criteria is organoleptic effects (*e.g.,* taste and odor) which would make water and edible aquatic life unpalatable but not toxic. Because the basis for this rule is to protect the public health and aquatic life from toxicity consistent with the language and intent in CWA section 303(c)(2)(B), EPA is promulgating criteria only for those priority toxic pollutants whose criteria recommendations are based on toxicity. The CWA section 304(a) human health criteria based on organoleptic effects for zinc and 3-methyl-4-chlorophenol are excluded for this reason. See the 1992 NTR discussion at 57 FR 60864.

f. Cancer Risk Level

EPA's CWA section 304(a) criteria guidance documents for priority toxic pollutants that are based on carcinogenicity present concentrations for upper bound risk levels of 1 excess cancer case per 100,000 people (10^{-5}), per 1,000,000 people (10^{-6}), and per 10,000,000 people (10^{-7}). However, the criteria documents do not recommend a particular risk level as EPA policy.

As part of the proposed rule, EPA requested and received comment on the adoption of a 10^{-5} risk level for carcinogenic pollutants. The effect of a 10^{-5} risk level would have been to increase (*i.e.,* make less stringent) carcinogenic pollutant criteria values (noted in the matrix by footnote c) that are not already promulgated in the NTR, by one order of magnitude. For example, the organism-only criterion for gamma BHC (pollutant number 105 in the matrix) is 0.013 µg/l; the criterion based on a 10^{-5} risk level would have been 0.13 µg/l. EPA received several comments that indicated a preference for a higher (10^{-4} and 10^{-5}) risk level for effluent dependent waters or other types of special circumstances.

In today's rule, EPA is promulgating criteria that protect the general population at an incremental cancer risk level of one in a million (10^{-6}) for all priority toxic pollutants regulated as carcinogens, consistent with the criteria promulgated in the NTR for the State of California. Standards adopted by the State contained in the Enclosed Bays and Estuaries Plan (EBEP), and the Inland Surface Waters Plan (ISWP), partially approved by EPA on November 6, 1991, and the Ocean Plan approved by EPA on June 28, 1990, contained a risk level of 10^{-6} for most carcinogens. The State has historically protected at a 10^{-6} risk level for carcinogenic pollutants.

EPA, in its recent human health methodology revisions, proposed acceptable lifetime cancer risk for the general population in the range of 10^{-5} to 10^{-6}. EPA also proposed that States and Tribes ensure the most highly exposed populations do not exceed a 10^{-4} risk level. However, EPA's draft methodology revisions also stated that it will derive 304(a) criteria at a 10^{-6} risk level, which the Agency believes reflects the appropriate risk for the general population and which applies a risk management policy which ensures protection for all exposed population groups. (Draft Water Quality Criteria Methodology: Human Health, EPA 822–Z–98–001, August 1998, Appendix II, page 72).

Subpopulations within a State may exist, such as recreational and subsistence anglers, who as a result of greater exposure to a contaminant are at greater risk than the standard 70 kilogram person eating 6.5 grams per day of fish and shellfish and drinking 2.0 liters per day of drinking water with pollutant levels meeting the water quality criteria. EPA acknowledges that at any given risk level for the general population, those segments of the population that are more highly exposed face a higher relative risk. For example, if fish are contaminated at a level permitted by criteria derived on the basis of a risk level of 10^{-6}, individuals consuming up to 10 times the assumed fish consumption rate would still be protected at a 10^{-5} risk level. Similarly, individuals consuming 100 times the general population rate would be protected at a 10^{-4} risk level. EPA, therefore, believes that derivation of criteria at the 10^{-6} risk level is a reasonable risk management decision protective of designated uses under the CWA. While outside the scope of this rule, EPA notes that States and Tribes, however, have the discretion to adopt water quality criteria that result in a higher risk level (*e.g.,* 10^{-5}). EPA expects to approve such criteria if the State or Tribe has identified the most highly exposed subpopulation within the State or Tribe, demonstrates the chosen risk level is adequately protective of the most highly exposed subpopulation, and has completed all necessary public participation.

This demonstration has not happened in California. Further, the information that is available on highly exposed subpopulations in California supports the need to protect the general population at the 10^{-6} level. California has cited the Santa Monica Bay Seafood Consumption Study as providing the best available data set for estimating consumption of sport fish and shellfish in California for both marine or freshwater sources (Chemicals in Fish Report No. 1: Consumption of Fish and Shellfish in California and the United States, Final Draft Report, July 1997). Consumption rates of sport fish and shellfish of 21g/day, 50 g/day, 107 g/day, and 161 g/day for the median, mean, 90th, and 95th percentile rates, respectively, were determined from this study. Additional consumption of commercial species in the range of approximately 8 to 42 g/day would further increase these values. Clearly the consumption rates for the most highly exposed subpopulation within the State exceeds 10 times the 6.5 g/day rates used in the CTR. Therefore, use of a risk level of 10^{-5} for the general population would not be sufficient to protect the most highly exposed population in California at a 10^{-4} risk level. On the other hand, even the most highly exposed subpopulations cited in the California study do not have consumption rates approaching 100 times the 6.5 g/day rates used in the CTR. The use of the 10^{-6} risk level to protect average level consumers does not subject these subpopulations to risk levels as high as 10^{-4}.

EPA believes its decision to establish a 10^{-6} risk level for the CTR is also consistent with EPA's policy in the NTR to select the risk level that reflect the policies or preferences of CWA programs in the affected States. California adopted standards for priority toxic pollutants for its ocean waters in 1990 using a 10^{-6} risk level to protect human health (California Ocean Plan, 1990). In April 1991, and again in November 1992, California adopted standards for its inland surface waters and enclosed bays and estuaries in its Inland Surface Waters Plan (ISWP) and its Enclosed Bays and Estuaries Plan (EBEP) using a 10^{-6} risk level. To be consistent with the State's water quality standards, EPA used a 10^{-6} risk level for California in the NTR at 57 FR 60867. The State has continued using a 10^{-6} risk level to protect human health for its standards that were not withdrawn with the ISWP and EBEP. The most recent expression of risk level preference is contained in the Draft Functional Equivalent Document, Amendment of the Water Quality Control Plan for Ocean Waters of California, October 1998, where the State recommended maintaining a consistent risk level of 10^{-6} for the human health standards that it was proposing to revise.

EPA received several comments requesting a 10^{-5} risk level based on the risk level chosen for the Great Lakes Water Quality Guidance (the Guidance). There are several differences between the guidelines for the derivation of human health criteria contained in the Guidance and the California Toxics Rule (CTR) that make a 10^{-5} risk factor appropriate for the Guidance, but not for the CTR. These differences result in criteria developed using the 10^{-5} risk factor in the Guidance being at least as stringent as criteria derived under the CTR using a 10^{-6} risk factor. The relevant aspects of the Guidance include:

- Use of fish consumption rates that are considerably higher than fish consumption rates for the CTR.
- Use of bioaccumulation factors rather than bioconcentration factors in

estimating exposure, considerably increasing the dose of carcinogens to sensitive subgroups.

• Consideration of additivity of effects of mixtures for both carcinogenic and noncarcinogenic pollutants.

This combination of factors increase the calculated carcinogenic risk substantially under the Guidance (the combination would generally be more than one order of magnitude), making a lower overall risk factor acceptable. The Guidance risk factor provides, in fact, criteria with at least the same level of protection against carcinogens as criteria derived with a higher risk factor using the CTR. A lower risk factor for the CTR would not be appropriate absent concomitant changes in the derivation procedures that provide equivalent risk protection.

G. Description of Final Rule

1. Scope

Paragraph (a) in 40 CFR 131.38, entitled ''Scope,'' states that this rule is a promulgation of criteria for priority toxic pollutants in the State of California for inland surface waters, enclosed bays, and estuaries. Paragraph (a) in 40 CFR 131.38 also states that this rule contains an authorizing compliance schedule provision.

2. EPA Criteria for Priority Toxic Pollutants

EPA's criteria for California are presented in tabular form at 40 CFR 131.38. For ease of presentation, the table that appears combines water quality criteria promulgated in the NTR, as amended, that are outside the scope of this rulemaking, with the criteria that are within the scope of today's rule. This is intended to help readers determine applicable water quality criteria for the State of California. The table contains footnotes for clarification.

Paragraph (b) in 40 CFR 131.38 presents a matrix of the applicable EPA aquatic life and/or human health criteria for priority toxic pollutants in California. Section 303(c)(2)(B) of the CWA addresses only pollutants listed as ''toxic'' pursuant to section 307(a) of the CWA for which EPA has developed section 304(a) criteria guidance. As discussed earlier in this preamble, the section 307(a) list of toxics contains 65 compounds and families of compounds, which potentially include thousands of specific compounds. Of these, the Agency identified a list of 126 ''priority toxic pollutants'' to implement the CWA (see 40 CFR 131.36(b)). Reference in this rule to priority toxic pollutants, toxic pollutants, or toxics refers to the 126 priority toxic pollutants.

EPA has not developed both aquatic life and human health CWA section 304(a) criterion guidance for all of the priority toxic pollutants. The matrix in 40 CFR 131.38(b) contains human health criteria in Column D for 92 priority toxic pollutants which are divided into Column 1: criteria for water consumption (i.e., 2.0 liters per day) and aquatic organism consumption (i.e., 6.5 grams per day of aquatic organisms); and Column 2: criteria for aquatic organism consumption only. The term aquatic organism includes fish and shellfish such as shrimp, clams, oysters and mussels. One reason the total number of priority toxic pollutants with criteria today differs from the total number of priority toxic pollutants contained in earlier published CWA section 304(a) criteria guidance is because EPA has developed and is promulgating chromium criteria for two valence states with respect to aquatic life criteria. Thus, although chromium is a single priority toxic pollutant, there are two criteria for chromium for aquatic life protection. See pollutant 5 in today's rule at 40 CFR 131.38(b). Another reason is that EPA is promulgating human health criteria for nine priority pollutants for which health-based national criteria have been calculated based on information obtained from EPA's IRIS database (EPA provided notice of these nine criteria in the NTR for inclusion in future State triennial reviews. See 57 FR 60848, 60890).

The matrix contains aquatic life criteria for 23 priority pollutants. These are divided into freshwater criteria (Column B) and saltwater criteria (Column C). These columns are further divided into acute and chronic criteria. The aquatic life criteria are considered by EPA to be protective when applied under the conditions described in the section 304(a) criteria documents and in the TSD. For example, water body uses should be protected if the criteria are not exceeded, on average, once every three year period. It should be noted that the criteria maximum concentrations (the acute criteria) are short-term concentrations and that the criteria continuous concentrations (the chronic criteria) are four-day averages. It should also be noted that for certain metals, the actual criteria are equations which are included as footnotes to the matrix. The toxicity of these metals is water hardness dependent and may be adjusted. The values shown in the table are illustrative only, based on a hardness expressed as calcium carbonate of 100 mg/l. Finally, the criterion for pentachlorophenol is pH dependent. The equation is the actual criterion and is included as a footnote. The value shown in the matrix is for a pH of 7.8. Several of the freshwater aquatic life criteria are incorporated into the matrix in the format used in the 1980 criteria methodology which uses a final acute value instead of a continuous maximum concentration. This distinction is noted in footnote g of the table.

The final rule at 40 CFR 131.38(c) establishes the applicability of the criteria to the State of California. 40 CFR 131.38(d) is described later in Section F, of this preamble. EPA has included in this rule provisions necessary to implement numeric criteria in a way that maintains the level of protection intended. These provisions are included in 40 CFR 131.38(c) of today's rule. For example, in order to do steady state waste load allocation analyses, most States have low flow values for streams and rivers which establish flow rates for various purposes. These low flow values become design flows for sizing treatment plants and developing water quality-based effluent limits and/or TMDLs. Historically, these design flows were selected for the purposes of waste load allocation analyses which focused on instream dissolved oxygen concentrations and protection of aquatic life. With the publication of the 1985 TSD, EPA introduced hydrologically and biologically based analyses for the protection of aquatic life and human health. (These concepts have been expanded subsequently in EPA's *Technical Guidance Manual for Performing Wasteload Allocations, Book 6, Design Conditions,* U.S. EPA, 1986. These analyses are included in Appendix D of the revised TSD. The discussion here is greatly simplified and is provided to support EPA's decision to promulgate design flows for instream flows and thereby maintain the adequacy of the criteria for priority toxic pollutants.) EPA recommended either of two methods for calculating acceptable low flows, the traditional hydrologic method developed by the U.S. Geological Survey or a biological based method developed by EPA. Other methods for evaluating the instream flow record may be available; use of these methods may result in TMDLs and/or water quality-based effluent limitations which adequately protect human health and/or aquatic life. The results of either of these two methods, or an equally protective alternative method, may be used.

The State of California may adopt specific design flows for streams and rivers to protect designated uses against the effects of toxics. EPA believes it is

important to specify design flows in today's rule so that, in the absence of state design flows, the criteria promulgated today would be implemented appropriately. The TSD also recommends the use of three dynamic models to perform wasteload allocations. Dynamic wasteload models do not generally use specific steady state design flows but accomplish the same effect by factoring in the probability of occurrence of stream flows based on the historical flow record.

The low flows specified in the rule explicitly contain duration and frequency of occurrence which represent certain probabilities of occurrence. Likewise, the criteria for priority toxic pollutants are defined with duration and frequency components. Dynamic modeling techniques explicitly predict the effects of variability in receiving water, effluent flow, and pollution variation. Dynamic modeling techniques, as described in the TSD, allow for calculating wasteload allocations that meet the criteria for priority toxic pollutants without using a single, worst-case concentration based on a critical condition. Either dynamic modeling or steady state modeling can be used to implement the criteria promulgated today. For simplicity, only steady state conditions are discussed here. Clearly, if the criteria were implemented using design flows that are too high, the resulting toxic controls would not be adequate, because the resulting ambient concentrations would exceed EPA's criteria.

In the case of aquatic life, assuming exceedences occur more frequently than once in three years on the average, exceedences would result in diminished vitality of stream ecosystems characterized by the loss of desired species. Numeric water quality criteria should apply at all flows that are equal to or greater than flows specified below. The low flow values are:

Type of criteria	Design flow
Acute Aquatic Life (CMC).	1 Q 10 or 1 B 3
Chronic Aquatic Life (CCC).	7 Q 10 or 4 B 3
Human Health	harmonic mean flow

Where:

1 Q 10 is the lowest one day flow with an average recurrence frequency of once in 10 years determined hydrologically;

1 B 3 is biologically based and indicates an allowable exceedence of once every 3 years. It is determined by EPA's computerized method (DFLOW model);

7 Q 10 is the lowest average 7 consecutive day low flow with an average recurrence frequency of once in 10 years determined hydrologically;

4 B 3 is biologically based and indicates an allowable exceedences for 4 consecutive days once every 3 years. It is determined by EPA's computerized method (DFLOW model);

EPA is requiring that the harmonic mean flow be applied with human health criteria. The harmonic mean is a standard calculated statistical value. EPA's model for human health effects assumes that such effects occur because of a long-term exposure to low concentration of a toxic pollutant, for example, two liters of water per day for seventy years. To estimate the concentrations of the toxic pollutant in those two liters per day by withdrawal from streams with a high daily variation in flow, EPA believes the harmonic mean flow is the correct statistic to use in computing such design flows rather than other averaging techniques. (For a description of harmonic means see ''Design Stream Flows Based on Harmonic Means,'' Lewis A. Rossman, Jr. of Hydraulics Engineering, Vol. 116, No. 7, July, 1990.)

All waters (including lakes, estuaries, and marine waters), whether or not suitable for such hydrologic calculations, are subject to the criteria promulgated today. Such criteria will need to be attained at the end of the discharge pipe, unless the State authorizes a mixing zone. Where the State plans to authorize a mixing zone, the criteria would apply at the locations allowed by the mixing zone. For example, the chronic criteria (CCC) would apply at the defined boundary of the chronic mixing zone. Discussion of and guidance on these factors are included in the revised TSD in Chapter 4.

EPA is aware that the criteria promulgated today for some of the priority toxic pollutants are at concentrations less than EPA's current analytical detection limits. Analytical detection limits have never been an acceptable basis for setting water quality criteria since they are not related to actual environmental impacts. The environmental impact of a pollutant is based on a scientific determination, not a measuring technique which is subject to change. Setting the criteria at levels that reflect adequate protection tends to be a forcing mechanism to improve analytical detection methods. See 1985 Guidelines, page 21. As the methods improve, limits based on the actual criteria necessary to protect aquatic life and human health become measurable. The Agency does not believe it is appropriate to promulgate criteria that are not sufficiently protective. EPA discusses this issue further in its Response to Comment Document for today's final rule.

EPA does believe, however, that the use of analytical detection limits are appropriate for assessing *compliance* with National Pollutant Discharge Elimination System (NPDES) permit limits. This view of the role of detection limits was first articulated in guidance for translating dioxin criteria into NPDES permit limits. See ''Strategy for the Regulation of Discharges of PHDDs and PHDFs from Pulp and Paper Mills to Waters of the U.S.'' Memorandum from the Assistant Administrator for Water to the Regional Water Management Division Directors, May 21, 1990. This guidance presented a model for addressing toxic pollutants which have criteria less than current detection limits. EPA, in more recent guidance, recommends the use of the ''minimum level'' or ML for reporting sample results to assess compliance with WQBELs (TSD page 111). The ML, also called the ''quantification level,'' is the level at which the entire analytical system gives recognizable mass spectra and acceptable calibration points, i.e., the point at which the method can reliably quantify the amount of pollutant in the sample. States can use their own procedures to average and otherwise account for monitoring data, *e.g.,* quantifying results below the ML. These results can then be used to assess compliance with WQBELs. (See 40 CFR part 132, Appendix F, Procedure 8.B.) This approach is applicable to priority toxic pollutants with criteria less than current detection limits. EPA's guidance explains that standard analytical methods may be used for purposes of assessing compliance with permit limits, but not for purposes of establishing water quality criteria or permit limits. Under the CWA, analytical methods are appropriately used in connection with NPDES permit limit compliance assessments. Because of the function of water quality criteria, EPA has not considered the sensitivity of analytical methods in deriving the criteria promulgated today.

EPA has promulgated 40 CFR 131.38(c)(3) to determine when freshwater or saltwater aquatic life criteria apply. This provision incorporates a time parameter to better define the critical condition. The structure of the paragraph is to establish

applicable rules and to allow for site-specific exceptions where the rules are not consistent with actual field conditions. Because a distinct separation generally does not exist between freshwater and saltwater aquatic communities, EPA is establishing the following: (1) The freshwater criteria apply at salinities of 1 part per thousand and below at locations where this occurs 95% or more of the time; (2) saltwater criteria apply at salinities of 10 parts per thousand and above at locations where this occurs 95% more of the time; and (3) at salinities between 1 and 10 parts per thousand the more stringent of the two apply unless EPA approves the application of the freshwater or saltwater criteria based on an appropriate biological assessment. The percentiles included here were selected to minimize the chance of overlap, that is, one site meeting both criteria. Determination of these percentiles can be done by any reasonable means such as interpolation between points with measured data or by the application of calibrated and verified mathematical models (or hydraulic models). It is not EPA's intent to require actual data collection at particular locations.

In the brackish water transition zones of estuaries with varying salinities, there generally will be a mix of freshwater and saltwater species. Generally, therefore, it is reasonable for the more stringent of the freshwater or saltwater criteria to apply. In evaluating appropriate data supporting the alternative set of criteria, EPA will focus on the species composition as its preferred method. This assignment of criteria for fresh, brackish and salt waters was developed in consultation with EPA's research laboratories at Duluth, Minnesota and Narragansett, Rhode Island. The Agency believes such an approach is consistent with field experience.

Paragraph (d) in 40 CFR 131.38 lists the designated water and use classifications for which the criteria apply. The criteria are applied to the beneficial use designations adopted by the State of California; EPA has not promulgated any new use classifications in this rule.

Exceedences Frequency: In a water quality criterion for aquatic life, EPA recommends an allowable frequency for excursions of the criteria. See 1985 Guidelines, pages 11–13. This allowable frequency provides an appropriate period of time during which the aquatic community can recover from the effect of an excursion and then function normally for a period of time before the next excursion. An excursion is defined as an occurrence of when the average concentration over the duration of the averaging period is above the CCC or the CMC. As ecological communities are naturally subjected to a series of stresses, the allowable frequency of pollutant stress may be set at a value that does not significantly increase the frequency or severity of all stresses combined. See also TSD, Appendix D. In addition, providing an allowable frequency for exceeding the criterion recognizes that it is not generally possible to assure that criteria are never exceeded. (TSD, page 36.)

Based on the available data, today's rule requires that the acute criterion for a pollutant be exceeded no more than once in three years on the average. EPA is also requiring that the chronic criterion for a pollutant be exceeded no more than once in three years on the average. EPA acknowledges that States may develop allowable frequencies that differ from these allowable frequencies, so long as they are scientifically supportable, but believes that these allowable frequencies are protective of the designated uses where EPA is promulgating criteria.

The use of aquatic life criteria for developing water quality-based effluent limits in permits requires the permitting official to use an appropriate wasteload allocation model. (TSD, Appendix D–6.) As discussed above, there are generally two methods for determining design flows, the hydrologically-based method and the biologically-based method.

The biologically-based method directly uses the averaging periods and frequencies specified in the aquatic life criteria for determining design flows. (TSD, Appendix. D–8.) Because the biologically-based method calculates the design flow directly from the duration and allowable frequency, it most accurately provides the allowed number of excursions. The hydrologically based method applies the CMC at a design flow equal to or equivalent to the 1Q10 design flow (i.e., the lowest one-day flow with an average recurrence frequency of once in ten years), and applies the CCC at the 7Q10 design flow (i.e., the lowest average seven consecutive day flow with a recurrence frequency of once in ten years).

EPA established a three year allowable frequency in the NTR. In settlement of the litigation on the NTR, EPA stated that it was in the midst of conducting, sponsoring, or planning research aimed at addressing scientific issues related to the basis for and application of water quality criteria and mentioned the issue of allowable frequency. See Partial Settlement Agreement in *American Forest and Paper Ass'n, Inc. et al.* v. *U.S. EPA* (Consolidated Case No. 93–0694 (RMU) D.D.C. To that end, EPA is reevaluating issues raised about allowable frequency as part of its work in revising the 1985 Guidelines.

EPA recognizes that additional data concerning (a) the probable frequency of lethal events for an assemblage of taxa covering a range of sensitivities to pollutants, (b) the probable frequency of sublethal effects for such taxa, (c) the differing effects of lethal and sublethal events in reducing populations of such taxa, and (d) the time needed to replace organisms lost as a result of toxicity, may lead to further refinement of the allowable frequency value. EPA has not yet completed this work. Until this work is complete, EPA believes that where EPA promulgates criteria, the three year allowable frequency represents a value in the reasonable range for this parameter.

3. Implementation

Once the applicable designated uses and water quality criteria for a water body are determined, under the National Pollutant Discharge Elimination System (NPDES) program discharges to the water body must be characterized and the permitting authority must determine the need for permit limits. If a discharge causes, has the reasonable potential to cause, or contributes to an excursion of a numeric or narrative water quality criteria, the permitting authority must develop permit limits as necessary to meet water quality standards. These permit limits are water quality-based effluent limitations or WQBELs. The terms ''cause,'' ''reasonable potential to cause,'' and ''contribute to'' are the terms in the NPDES regulations for conditions under which water quality-based permit limits are required. See 40 CFR 122.44(d)(1).

Since the publication of the proposed CTR, the State of California adopted procedures which detail how water quality criteria will be implemented through NPDES permits, waste discharge requirements, and other regulatory approaches. These procedures entitled, *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* were adopted on March 2, 2000. Once these procedures are submitted for review under CWA section 303(c), EPA will review them as they relate to water quality standards, and approve or disapprove them.

Several commenters understood the language in the preamble to the proposed rule regarding implementation

to mean that site-specific criteria, variances, and other actions would be prohibited or severely limited by the CTR. Site-specific criteria, variances and other actions modifying criteria are neither prohibited nor limited by the CTR. The State, if it so chooses, still can make these changes to its water quality standards, subject to EPA approval. However, with this Federal rule in effect, the State cannot implement any modifications that are less stringent than the CTR without an amendment to the CTR to reflect these modifications. EPA will make every effort to expeditiously accommodate Federal rulemaking of appropriate modifications to California's water quality standards. In the preamble to the proposed CTR, and here today, EPA is emphasizing that these efforts to amend the CTR on a case-by-case basis will generally increase the time before a modification can be implemented.

4. Wet Weather Flows

EPA has for a longtime maintained that CWA section 301(b)(1)(C) applies to NPDES permits for discharges from municipal separate storm sewer systems. Recently, the U.S. Court of Appeals for the Ninth Circuit upheld NPDES permits issued by EPA for five Arizona municipal separate storm sewer systems and addressed this issue specifically. *Defenders of Wildlife, et al.* v. *Browner,* No. 98–71080 (9th Cir., October 1999). The Court held that the CWA does not require ''strict compliance'' with State water quality standards for municipal storm sewer permits under section 301(b)(1)(C), but that at the same time, the CWA does give EPA discretion to incorporate appropriate water quality-based effluent limitations under another provision, CWA section 402(p)(3)(B)(iii).

The Court based its decision on the structure of section 402(p)(3), which contains distinct language for discharges of industrial storm water and municipal storm water. In section 402(p)(3)(A), Congress requires that ''dischargers associated with industrial activity shall meet all applicable provisions of [section 402] and section [301].'' 33 U.S.C. section 1342(p)(3)(A). The Court noted, therefore, that by incorporation, industrial storm water discharges need to achieve ''any more stringent limitation, including those necessary to meet water quality standards * * *'' The Court explained that industrial storm water discharges ''must comply strictly with State water quality standards'' but that Congress chose not to include a similar provision for municipal storm sewer discharges, including instead a requirement for controls to reduce pollutants to the maximum extent practicable or MEP standard in section 402(p)(3)(B). Reading the two related sections together, the Court concluded that section 402(p)(3)(B)(iii) does not require ''strict compliance'' by municipal storm sewer discharges according to section 301(b)(1)(C). At the same time, however, the Court found that the language in CWA section 402(p)(3)(B)(iii) which states that permits for discharges from municipal storm sewers shall require ''such other provisions as the Administrator of the state determines appropriate for the control of such pollutants'' provides EPA with discretion to incorporate provisions lending to ultimate compliance with water quality standards.

EPA believes that compliance with water quality standards through the use of Best Management Practices (BMPs) is appropriate. EPA articulated its position on the use of BMPs in storm water permits in the policy memorandum entitled, ''Interim Permitting Approach for Water Quality-Based Effluent Limitations In Storm Water Permits'' which was signed by the Assistant Administrator for Water, Robert Perciasepe on August 1, 1996 (61 FR 43761, August 9, 1996). A copy of this memorandum is contained in the administrative record for today's rule. The policy affirms the use of BMPs as a means to attain water quality standards in municipal storm water permits, and embraces BMPs as an interim permitting approach.

The interim permitting approach uses BMPs in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards. In cases where adequate information exists to develop more specific conditions or limitations to meet water quality standards, these conditions or limitations are to be incorporated into storm water permits, as necessary and appropriate.

This interim permitting approach, however, only applies to EPA. EPA encourages the State to adopt a similar policy for municipal storm water permits. This interim permitting approach provides time, where necessary, to more fully assess the range of issues and possible options for the control of storm water discharges for the protection of water quality. More information on this issue is included in the response to comment document in response to specific storm water issues raised by commenters.

5. Schedules of Compliance

A compliance schedule refers to an enforceable sequence of interim requirements in a permit leading to ultimate compliance with water quality-based effluent limitations or WQBELs in accordance with the CWA. The authorizing compliance schedule provision authorizes, but does not require, the permit issuing authority in the State of California to include such compliance schedules in permits under appropriate circumstances. The State of California is authorized to administer the National Pollutant Discharge Elimination System (NPDES) program and may exercise its discretion when deciding if a compliance schedule is justified because of the technical or financial (or other) infeasibility of immediate compliance. An authorizing compliance schedule provision is included in today's rule because of the potential for existing dischargers to have new or more stringent effluent limitations for which immediate compliance would not be possible or practicable.

New and Existing Dischargers: The provision allows compliance schedules only for an ''existing discharger'' which is defined as any discharger which is not a ''new California discharger.'' A ''new California discharger'' includes ''any building, structure, facility, or installation from which there is, or may be, a 'discharge of pollutants', the construction of which commences after the effective date of this regulation.'' These definitions are modeled after the existing 40 CFR 122.2 definitions for parallel terms, but with a cut-off date modified to reflect this rule. Only ''new California dischargers'' are required to comply immediately upon commencement of discharge with effluent limitations derived from the criteria in this rule. For ''existing dischargers'' whose permits are reissued or modified to contain new or more stringent limitations based upon certain water quality requirements, the permit could allow up to five years, or up to the length of a permit, to comply with such limitations. The provision applies to new or more stringent effluent limitations based on the criteria in this EPA rule.

EPA has included ''increasing dischargers'' within the category of ''existing dischargers'' since ''increasing dischargers'' are existing facilities with a change—an increase—in their discharge. Such facilities may include those with seasonal variations. ''Increasing dischargers'' will already have treatment systems in place for their current discharge, thus, they have less

opportunity than a new discharger does to design and build a new treatment system which will meet new water quality-based requirements for their changed discharge. Allowing existing facilities with an increasing discharge a compliance schedule will avoid placing the discharger at a competitive disadvantage vis-a-vis other existing dischargers who are eligible for compliance schedules.

Today's rule does not prohibit the use of a short-term ''shake down period'' for new California dischargers as is provided for new sources or new dischargers in 40 CFR 122.29(d)(4). These regulations require that the owner or operator of (1) a new source; (2) a new discharger (as defined in 40 CFR 122.2) which commenced discharge after August 13, 1979; or (3) a recommencing discharger shall install and implement all pollution control equipment to meet the conditions of the permit before discharging. The facility must also meet all permit conditions in the shortest feasible time (not to exceed 90 days). This shake-down period is not a compliance schedule. This approach may be used to address violations which may occur during a new facility's start-up, especially where permit limits are water quality-based and biological treatment is involved.

The burden of proof to show the necessity of a compliance schedule is on the discharger, and the discharger must request approval from the permit issuing authority for a schedule of compliance. The discharger should submit a description of the minimum required actions or evaluations that must be undertaken in order to comply with the new or more restrictive discharge limits. Dates of completion for the required actions or evaluations should be included, and the proposed schedule should reflect the shortest practicable time to complete all minimum required actions.

Duration of Compliance Schedules: Today's rule provides that compliance schedules may provide for up to five years to meet new or more stringent effluent limitations in those limited circumstances where the permittee can demonstrate to the permit authority that an extended schedule is warranted. EPA's regulations at 122.47 require compliance with standards as soon as possible. This means that permit authorities should not allow compliance schedules where the permittee fails to demonstrate their necessity. This provision should not be considered a default compliance schedule duration for existing facilities.

In instances where dischargers wish to conduct toxicological studies, analyze results, and adopt and implement new or revised water quality-based effluent limitations, EPA believes that five years is sufficient time within which to complete this process. See the preamble to the proposed rule.

Under this rule, where a schedule of compliance exceeds one year, interim requirements are to be specified and interim progress reports are to be submitted at least annually to the permit issuing authority, in at least one-year time intervals.

The rule allows all compliance schedules to extend up to a maximum duration of five years, which is the maximum term of any NPDES permit. See 40 CFR 122.46. The discharger's opportunity to obtain a compliance schedule occurs when the existing permit for that discharge is issued, reissued or modified to contain more stringent limits based on the water quality criteria in today's rule. Such compliance schedules, however, cannot be extended to any indefinite point of time in the future because the compliance schedule provision in this rule will sunset on May 18, 2005. The sunset applies to the authorizing provision in today's rule (40 CFR 131.38(e)), not to individual schedules of compliance included in specific NPDES permits. Delays in reissuing expired permits (including those which continue in effect under applicable NPDES regulations) cannot indefinitely extend the period of time during which a compliance schedule is in effect. This would occur where the permit authority includes the single maximum five-year compliance schedule in a permit that is reissued just before the compliance schedule provision sunsets (having been previously issued without WQBELS using the rule's criteria on the eve of the effective date of this rule). Instead, the effect of the sunset provision is to limit the longest time period for compliance to ten years after the effective date of this rule.

EPA recognizes that where a permit is modified during the permit term, and the permittee needs the full five years to comply, the five-year schedule may extend beyond the term of the modified permit. In such cases, the rule allows for the modified permit to contain a compliance schedule with an interim limit by the end of the permit term. When the permit is reissued, the permit authority may extend the compliance schedule in the next permit, provided that, taking into account the amount of time allowed under the previous permit, the entire compliance schedule contained in the permit shall not exceed five years. Final permit limits and compliance dates will be included in the record for the permit. Final compliance dates must occur within five years from the date of permit issuance, reissuance, or modification, unless additional or less time is provided for by law.

EPA would prefer that the State adopt an authorizing compliance schedule provision but recognizes that the State may not be able to complete this action for some time after promulgation of the CTR. Thus, EPA has chosen to promulgate the rule with a sunset provision which states that the authorizing compliance schedule provision will cease or sunset on May 18, 2005. However, if the State Board adopts, and EPA approves, a statewide authorizing compliance schedule provision significantly prior to May 18, 2005, EPA will act to stay the authorizing compliance schedule provision in today's rule. Additionally, if a Regional Board adopts, and the State Board adopts and EPA approves, a Regional Board authorizing compliance schedule provision, EPA will act to stay today's provision for the appropriate or corresponding geographic region in California. At that time, the State Board's or Regional Board's authorizing compliance schedule provision will govern the ability of the State regulatory entity to allow a discharger to include a compliance schedule in a discharger's NPDES permit.

Antibacksliding: EPA wishes to address the potential concern over antibacksliding where revised permit limits based on new information are the result of the completion of additional studies. The Agency's interpretation of the CWA is that the antibacksliding requirements of section 402(o) of the CWA do not apply to revisions to effluent limitations made before the scheduled date of compliance for those limitations.

State Compliance Schedule Provisions: EPA supports the State in adopting a statewide provision independent of or as part of the effort to readopt statewide water quality control plans, or in adopting individual basin-wide compliance schedule provisions through its nine Regional Water Quality Control Boards (RWQCBs). The State and RWQCBs have broad discretion to adopt a provision, including discretion on reasonable lengths of time for final compliance with WQBELs. EPA recognizes that practical time frames within which to set interim goals may be necessary to achieve meaningful, long-term improvements in water quality in California.

At this time, two RWQCBs have adopted an authorizing compliance schedule provision as an amendment to

their respective Basin Plans during the Boards' last triennial review process. The Basin Plans have been adopted by the State and have come to EPA for approval. Thus, the Basin Plans' provisions are effective for the respective Basins. If and when EPA approves of either Regional Basin Plan, EPA will expeditiously act to amend the CTR, staying its compliance schedule provision, for the appropriate geographic region.

6. Changes From Proposed Rule

A few changes were made in the final rule from the proposal both as a result of the Agency's consideration of issues raised in public comments and Endangered Species Act consultation with the U.S. Fish and Wildlife Service (FWS) and U.S. National Marine Fisheries Service (NMFS). The important changes include: reserving the mercury aquatic life criteria; reserving the selenium freshwater acute aquatic life criterion; reserving the chloroform human health criteria; and adding a sunset provision to the authorizing compliance schedule provision. EPA also clarified that the CTR will not replace priority toxic pollutant criteria which were adopted by the San Francisco Regional Water Quality Control Board in its 1986 Basin Plan, adopted by the State Board, and approved by EPA; specifying the harmonic mean for human health criteria for non-carcinogens and adding a provision which explicitly allows the State to adopt and implement an alternative averaging period, frequency, and design flow for a criterion after opportunity for public comment.

The first two changes, the reservation of mercury criteria and selenium criterion, are discussed in more detail below in Section L., The Endangered Species Act (ESA). The selenium criterion is also discussed in more detail above in Section E., Derivation of Criteria, in subsection 2.b., Freshwater Acute Selenium Criterion. EPA has also decided to reserve a decision on numeric criteria for chloroform and therefore not promulgate chloroform criteria in the final rule. As part of a large-scale regulation promulgated in December l998 under the Safe Drinking Water Act, EPA published a health-based goal for chloroform (the maximum contaminant level goal or MCLG) of zero, see 63 FR 69390, Dec. 16, 1998. EPA provided new data and analyses concerning chloroform for public review and comment, including a different, mode of action approach for estimating the cancer risk, 63 FR 15674, March 31, 1998, but did not reach a conclusion on how to use that new information in establishing the final MCLG, pending further review by the Science Advisory Board. EPA has now concluded that any further actions on water quality criteria should take into account the new data and analysis as reviewed by the SAB. This decision is consistent with a recent federal court decision vacating the MCLG for chloroform (*Chlorine Chemistry Council* v. *EPA,* No. 98–1627 (DC Cir., Mar. 31,2000)). EPA intends to reassess the human health 304(a) criteria recommendation for chloroform. For these reasons, EPA has decided to reserve a decision on numeric criteria for chloroform in the CTR and not promulgate water quality criteria as proposed. Permitting authorities in California should continue to rely on existing narrative criteria to establish effluent limitations as necessary for chloroform.

The sunset provision for the authorizing compliance schedule provision has been added to ease the transition from a Federal provision to the State's provision that was adopted in March 2000 as part of its' new statewide implementation plan. The sunset provision is discussed in more detail in Section G.5 of today's preamble. The CTR matrix at 40 CFR 131.38(b)(1) makes it explicit that the rule does not supplant priority toxic pollutant criteria which were adopted by the San Francisco Regional Water Quality Control Board in its 1986 Basin Plan, adopted by the State Board, and approved by EPA. This change is discussed more fully in Section D.4. of today's preamble. EPA modified the design flow for implementing human health criteria for non-carcinogens from a 30Q5 to a harmonic mean. Human health criteria for non-carcinogens are based on an RfD, which is an acceptable daily exposure over a lifetime. EPA matched the criteria for protection over a human lifetime with the longest stream flow averaging period, i.e., the harmonic mean. Lastly, the CTR now contains language which is intended to make it easier for the State to adopt and implement an alternative averaging period, frequency and related design flow, for situations where the default parameters are inappropriate. This language is found at 40 CFR 131.38(c)(2)(iv).

H. Economic Analysis

This final rule establishes ambient water quality criteria which, by themselves, do not directly impose economic impacts (see section K). These criteria combined with the State-adopted designated uses for inland surface waters, enclosed bays and estuaries, and implementation policies, will establish water quality standards. Until the State implements these water quality standards, there will be no effect of this rule on any entity. The State will implement these criteria by ensuring that NPDES permits result in discharges that will meet these criteria. In so doing, the State will have considerable discretion.

EPA has analyzed the indirect potential costs and benefits of this rule. In order to estimate the indirect costs and benefits of the rule, an appropriate baseline must be established. The baseline is the starting point for measuring incremental costs and benefits of a regulation. The baseline is established by assessing what would occur in the absence of the regulation. At present, State Basin Plans contain a narrative water quality criterion stating that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. EPA's regulation at 40 CFR 122.44(d)(1)(vi) requires that where a discharge causes or has the reasonable potential to cause an excursion above a narrative criterion within a State water quality standard, the permitting authority must establish effluent limits but may determine limits using a number of options. These options include establishing ''effluent limits on a case-by-case basis, using EPA's water quality criteria published under section 304(a) of the CWA, supplemented where necessary by other relevant information'' (40 CFR 122.44(d)(1)(vi)(B)). Thus, to the extent that the State is implementing its narrative criteria by applying the CWA section 304(a) criteria, this rule does not impose any incremental costs because the criteria in this rule are identical to the CWA section 304(a) criteria. Alternatively, to the extent that the State is implementing its narrative criteria on a ''case-by-case basis'' using ''other relevant information'' in its permits this rule may impose incremental indirect costs because the criteria in these permits may not be based on CWA 304(a) criteria. Both of these approaches to establishing effluent limits are in full compliance with the CWA.

Because a specific basis for effluent limits in all existing permits in California is not known, it is not possible to determine a precise estimate of the indirect costs of this rule. The incremental costs of the rule may be as low as zero, or as high as $61 million. The high estimate of costs is based on the possibility that most of the effluent limits now in effect are not based on 304(a) criteria. EPA evaluated these

indirect costs using two different approaches. The first approach uses existing discharge data and makes assumptions about future State NPDES permit limits. Actual discharge levels are usually lower than the level set by current NPDES permit limits. This approach, representing the low-end scenario, also assumes that some of the discretionary mechanisms that would enhance flexibility (*e.g.,* site specific criteria, mixing zones) would be granted by the State. The second approach uses a sample of existing permit limits and assumes that dischargers are actually discharging at the levels contained in their permits and makes assumptions about limits statewide that would be required under the rule. This approach, representing the high-end scenario, also assumes that none of the discretionary mechanisms that would enhance flexibility (*e.g.,* site specific criteria, mixing zones) would be granted by the State. These two approaches recognize that the State has significant flexibility and discretion in how it chooses to implement standards within the NPDES permit program, the EA by necessity includes many assumptions about how the State will implement the water quality standards. These assumptions are based on a combination of EPA guidance and current permit conditions for the facilities examined in this analysis. To account for the uncertainty of EPA's implementation assumptions, this analysis estimates a wide range of costs and benefits. By completing the EA, EPA intends to inform the public about how entities might be potentially affected by State implementation of water quality standards in the NPDES permit program. The costs and benefits sections that follow summarize the methodology and results of the analysis.

1. Costs

EPA assessed the potential compliance costs that facilities may incur to meet permit limits based on the criteria in today's rule. The analysis focused on direct compliance costs such as capital costs and operation and maintenance costs (O&M) for end-of-pipe pollution control, indirect source controls, pollution prevention, monitoring, and costs of pursuing alternative methods of compliance.

The population of facilities with NPDES permits that discharge into California's enclosed bays, estuaries and inland surface waters includes 184 major dischargers and 1,057 minor dischargers. Of the 184 major facilities, 128 are publicly owned treatment works (POTWs) and 56 are industrial facilities. Approximately 2,144 indirect dischargers designated as significant industrial users discharge wastewater to those POTWs. In the EA for the proposed CTR, EPA used a three-phased process to select a sample of facilities to represent California dischargers potentially affected by the State's implementation of permit limits based on the criteria contained in this rule.

The first phase consisted of choosing three case study areas for which data was thought to exist. The three case studies with a total of 5 facilities included: the South San Francisco Bay (the San Jose/Santa Clara Water Pollution Control Plant and Sunnyvale Water Pollution Control Plant); the Sacramento River (the Sacramento Regional Wastewater Treatment Plant); and the Santa Ana River (the City of Riverside Water Quality Control Plant and the City of Colton Municipal Wastewater Treatment Facility). The second phase consisted of selecting five additional major industrial dischargers to complement the case-study POTWs.

The third phase involved selecting 10 additional facilities to improve the basis for extrapolating the costs of the selected sample facilities to the entire population of potentially affected dischargers. The additional 10 facilities were selected such that the group examined: (1) Was divided between major POTWs and major industrial discharger categories in proportion to the numbers of facilities in the State; (2) gave greater proportionate representation to major facilities than minor facilities based on a presumption that the majority of compliance costs would be incurred by major facilities; (3) gave a proportionate representation to each of four principal conventional treatment processes typically used by facilities in specified industries in California; and (4) was representative of the proportionate facilities located within the different California Regional Water Quality Control Boards. Within these constraints, facilities were selected at random to complete the sample.

In the EA for today's final rule, EPA primarily used the same sample as the EA for the proposed rule with some modifications. EPA increased the number of minor POTWs and minor industrial facilities in the sample. EPA randomly selected four new minor POTW facilities and five new minor industrial facilities to add to the sample. The number of sample facilities selected in each area under the jurisdiction of a Regional Water Quality Control Board was roughly proportional to the universe of facilities in each area.

For those facilities that were projected to exceed permit limits based on the criteria, EPA estimated the incremental costs of compliance. Using a decision matrix or flow chart, costs were developed for two different scenarios—a ''low-end'' cost scenario and a ''high-end'' cost scenario—to account for a range of regulatory flexibility available to the State when implementing permit limits based on the water quality criteria. The assumptions for baseline loadings also vary over the two scenarios. The low-end scenario generally assumed that facilities were discharging at the maximum effluent concentrations taken from actual monitoring data, while the high-end scenario generally assumed that facilities were discharging at their current effluent limits. The decision matrix specified assumptions used for selection of control options, such as optimization of existing treatment processes and operations, in-plant pollutant minimization and prevention, and end-of-pipe treatment.

The annualized potential costs that direct and indirect dischargers may incur as a result of State implementation of permit limits based on water quality standards using today's criteria are estimated to be between $33.5 million and $61 million. EPA believes that the costs incurred as a result of State implementation of these permit limits will approach the low-end of the cost range. Costs are unlikely to reach the high-end of the range because State authorities are likely to choose implementation options that provide some degree of flexibility or relief to point source dischargers. Furthermore, cost estimates for both scenarios, but especially for the high-end scenario, may be overstated because the analysis tended to use conservative assumptions in calculating these permit limits and in establishing baseline loadings. The baseline loadings for the high-end were based on current effluent limits rather than actual pollutant discharge data. Most facilities discharge pollutants in concentrations well below current effluent limits. In addition, both the high-end and low-end cost estimates in the EA may be slightly overstated since potential costs incurred to reduce chloroform discharges were included in these estimates. EPA made a decision to reserve the chloroform human health criteria after the EA was completed.

Under the low-end cost scenario, major industrial facilities and POTWs would incur about 27 percent of the potential costs, indirect dischargers would incur about 70 percent of the potential costs, while minor dischargers would incur about 3 percent. Of the major direct dischargers, POTWs would incur the largest share of projected costs (87 percent). However, distributed

among 128 major POTWs in the State, the average cost per plant would be $61,000 per year. Chemical and petroleum industries would incur the highest cost of the industrial categories (5.6 percent of the annual costs, with an annual average of $25,200 per plant). About 57 percent of the low-end costs would be associated with pollution prevention activities, while nearly 38 percent would be associated with pursuing alternative methods of compliance under the regulations.

Under the high-end cost scenario, major industrial facilities and POTWs would incur about 94 percent of the potential costs, indirect dischargers would incur about 17 percent of the potential costs, while minor dischargers would incur about 5 percent. Among the major, direct dischargers, two categories would incur the majority of potential costs—major POTWs (82 percent), Chemical/Petroleum Products (9 percent). The average annual per plant cost for different industry categories would ranges from zero to $324,000. The two highest average cost categories would be major POTWs ($324,000 per year) and Chemical/Petroleum Products ($221,264 per year). The shift in proportion of potential costs between direct and indirect dischargers is due to the assumption that more direct dischargers would use end-of-pipe treatment under the high-end scenario. Thus, a smaller proportion of indirect dischargers would be impacted under the high-end scenario, since some municipalities are projected to add end-of-pipe treatment which would reduce the need for controls from indirect discharges. Over 91 percent of the annual costs are for waste minimization and treatment optimization costs. Waste minimization would represent nearly 84% of the total annual costs. Capital and operation and maintenance costs would make up less than 9 percent of annual costs.

Cost-Effectiveness: Cost-effectiveness is estimated in terms of the cost of reducing the loadings of toxic pollutants from point sources. The cost-effectiveness is derived by dividing the projected annual costs of implementing permit limits based on water quality standards using today's criteria by the toxicity-weighted pounds (pound-equivalents) of pollutants removed. Pound-equivalents are calculated by multiplying pounds of each pollutant removed by the toxic weight (based on the toxicity of copper) for that pollutant.

Based on this analysis, State implementation of permit limits based on today's criteria would be responsible for the reduction of about 1.1 million to 2.7 million toxic pound-equivalents per year, or 15 to 50 percent of the toxic-weighted baseline loadings for the high- and low-end scenarios, respectively. The cost-effectiveness of the scenarios would range from $22 (high-end scenario) to $31 (low-end scenario) per pound-equivalent.

2. Benefits

The benefits analysis is intended to provide insight into both the types and potential magnitude of the economic benefits expected as a result of implementation of water quality standards based on today's criteria. To the extent feasible, empirical estimates of the potential magnitude of the benefits were developed and then compared to the estimated costs of implementing water quality standards based on today's criteria.

To perform a benefits analysis, the types or categories of benefits that apply need to be defined. EPA relied on a set of benefits categories that typically apply to changes in the water resource environment. Benefits were categorized as either use benefits or passive (nonuse) benefits depending on whether or not they involve direct use of, or contact with, the resource. The most prominent use benefit categories are those related to recreational fishing, boating, and swimming. Another use benefit category of significance is human health risk reduction. Human health risk reductions can be realized through actions that reduce human exposure to contaminants such as exposure through the consumption of fish containing elevated levels of pollutants. Passive use benefits are those improvements in environmental quality that are valued by individuals apart from any use of the resource in question.

Benefits estimates were derived in this study using an approach in which benefits of discrete large-scale changes in water quality beyond present day conditions were estimated wherever feasible. A share of those benefits was then apportioned to implementation of water quality standards based on today's criteria. The apportionment estimate was based on a three-stage process:

First, EPA assessed current total loadings from all sources that are contributing to the toxics-related water quality problems observed in the State. This defines the overall magnitude of loadings. Second, the share of total loadings that are attributable to sources that would be controlled through implementation of water quality standards based on today's criteria was estimated. Since this analysis was designed to focus only on those controls imposed on point sources, this stage of the process entailed estimating the portion of total loadings originating from point sources. Third, the percentage reduction in loadings expected due to implementation of today's criteria was estimated and then multiplied by the share of point source loadings to calculate the portion of benefits that could be attributed to implementation of water quality standards based on today's criteria.

Total monetized annual benefits were estimated in the range of $6.9 to $74.7 million. By category, annual benefits would be $1.3 to $4.6 million for avoided cancer risk, $2.2 to $15.2 million for recreational angling, and $3.4 to $54.9 million for passive use benefits.

There are numerous categories of potential or likely benefits that have been omitted from the quantified and monetized benefit estimates. In terms of potential magnitudes of benefit, the following are likely to be significant contributors to the underestimation of the monetized values presented above:

- Improvements in water-related (in-stream and near stream) recreation apart from fishing. The omission of potential motorized and nonmotorized boating, swimming, picnicking, and related in-stream and stream-side recreational activities from the benefits estimates could contribute to an appreciable underestimation of total benefits. Such recreational activities have been shown in empirical research to be highly valued, and even modest changes in participation and or user values could lead to sizable benefits statewide. Some of these activities can be closely associated with water quality attributes (notably, swimming). Other recreational activities may be less directly related to the water quality improvements, but might nonetheless increase due to their association with fishing, swimming, or other activities in which the participants might engage.
- Improvements in consumptive and nonconsumptive land-based recreation, such as hunting and wildlife observation. Improvements in aquatic habitats may lead (via food chain and related ecologic benefit mechanisms) to healthier, larger, and more diverse populations of avian and terrestrial species, such as waterfowl, eagles, and otters. Improvements in the populations for these species could manifest as improved hunting and wildlife viewing opportunities, which might in turn increase participation and user day values for such activities. Although the scope of the benefits analysis has not allowed a quantitative assessment of these values at either pre- or post-rule

conditions, it is conceivable that these benefits could be appreciable.

• Improvements in human health resulting from reduction of non-cancer risk. EPA estimated that implementation of water quality standards based on the criteria would result in a reduction of mercury concentrations in fish tissue and, thus, a reduction in the hazard from consumption of mercury contaminated fish. However, EPA was unable to monetize benefits due to reduced non-cancer health effects.

• Human health benefits for saltwater anglers outside of San Francisco Bay were not estimated. The number of saltwater anglers outside of San Francisco Bay is estimated to be 673,000 (based on Huppert, 1989, and U.S. FWS, 1993). The omission of other saltwater anglers may cause human health benefits to be underestimated. In addition, benefit estimates in the EA may be slightly overstated since potential benefits from reductions in chloroform discharges were included in these estimates. EPA made a decision to reserve the chloroform human health criteria after the EA was completed.

EPA received a number of comments which requested the Agency use the cost-benefit analysis in the EA as a factor in setting water quality criteria. EPA does not use the EA as a basis in determining protective water quality criteria. EPA's current regulations at 40 CFR 131.11 state that the criteria must be based on sound scientific rationale and must protect the designated use. From the outset of the water quality standards program, EPA has explained that while economic factors may be considered in designating uses, they may not be used to justify criteria that are not protective of those uses. 44 FR 25223–226, April 30, 1979. See e.g. *Mississippi Commission on Natural Resources* v. *Costle,* 625 F. 2d 1269, 1277 (5th Cir. 1980). EPA reiterated this interpretation of the CWA and its implementing regulations in discussing section 304(a) recommended criteria guidance stating that ''they are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects and do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water.'' 63 FR 36742 and 36762, July 7, 1998.

I. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

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

J. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating any regulation for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows an Agency to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government Agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of the affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and EPA informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act (UMRA)) for State, local, or tribal governments or the private sector. Today's rule imposes no enforceable duty on any State, local or Tribal governments or the private sector; rather, the CTR promulgates ambient water quality criteria which, when combined with State-adopted uses, will create water quality standards for those water bodies with adopted uses. The State will then use these resulting water quality standards in implementing its existing water quality control programs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule establishes ambient water quality criteria which, by themselves do not directly impact any entity. The State will implement these criteria by ensuring that NPDES permits result in discharges that will meet these criteria. In so doing, the State will have considerable discretion. Until the State implements these water quality standards, there will be no effect of this rule on any entity. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

K. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact of a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small businesses (based on SBA size

standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

Under the CWA water quality standards program, States must adopt water quality standards for their waters that must be submitted to EPA for approval. If the Agency disapproves a State standard and the State does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA has authority to promulgate criteria or standards in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Act. These State standards (or EPA-promulgated standards) are implemented through various water quality control programs including the National Pollutant Discharge Elimination System (NPDES) program that limits discharges to navigable waters except in compliance with an EPA permit or permit issued under an approved State NPDES program. The CWA requires that all NPDES permits must include any limits on discharges that are necessary to meet State water quality standards.

Thus, under the CWA, EPA's promulgation of water quality criteria or standards establishes standards that the State, in turn, implements through the NPDES permit process. The State has considerable discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. In circumstances where there is more than one discharger to a water body that is subject to water quality standards or criteria, a State also has discretion in deciding on the appropriate limits for the different dischargers. While the State's implementation of federally-promulgated water quality criteria or standards may result indirectly in new or revised discharge limits for small entities, the criteria or standards themselves do not apply to any discharger, including small entities.

Today's rule, as explained above, does not itself establish any requirements that are applicable to small entities. As a result of EPA's action here, the State of California will need to ensure that permits it issues include limits as necessary to meet the water quality standards established by the criteria in today's rule. In so doing, the State will have a number of discretionary choices associated with permit writing. While California's implementation of today's rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

The RFA requires analysis of the economic impact of a rule only on the small entities subject to the rule's requirements. Courts have consistently held that the RFA imposes no obligation on an Agency to prepare a small entity analysis of the effect of a rule on entities not regulated by the rule. *Motor & Equip. Mrfrs. Ass'n* v. *Nichols,* 142 F.3d 449, 467 & n.18 (D.C. Cir. 1998)(quoting *United States Distribution Companies* v. *FERC,* 88 F.3d 1105, 1170 (D.C. Cir. 1996); see also *American Trucking Association, Inc.* v. *EPA,* 175 F.3d 1027 (D.C. Cir. 1999). This final rule will have a direct effect only on the State of California which is not a small entity under the RFA. Thus, individual dischargers, including small entities, are not directly subject to the requirements of the rule. Moreover, because of California's discretion in implementing these standards, EPA cannot assess the extent to which the promulgation of this rule may subsequently affect any dischargers, including small entities. Consequently, certification under section 605(b) is appropriate. *State of Michigan, et al.* v. *U.S. Environmental Protection Agency,* No. 98–1497 (D.C. Cir. Mar. 3, 2000), slip op. at 41–42.

L. Paperwork Reduction Act

This action requires no new or additional information collection, reporting, or record keeping subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

M. Endangered Species Act

Pursuant to section 7(a) of the Endangered Species Act (ESA), EPA has consulted with the U.S. Fish and Wildlife Service and the U.S. National Marine Fisheries Service (collectively, the Services) concerning EPA's rulemaking action for the State of California. EPA initiated informal consultation in early 1994, and completed formal consultation in April 2000. As a result of the consultation, EPA modified some of the provisions in the final rule.

As part of the consultation process, EPA submitted to the Services a Biological Evaluation for their review in October of 1997. This evaluation found that the proposed CTR was not likely to jeopardize the continued existence of any Federally listed species or result in the destruction or adverse modification of designated critical habitat. In April of 1998, the Services sent EPA a draft Biological Opinion which tentatively found that EPA's proposed rule would jeopardize the continued existence of several Federally listed species and result in the destruction or have adverse effect on designated critical habitat. After lengthy discussions with the Services, EPA agreed to several changes in the final rule and the Services in turn issued a final Biological Opinion finding that EPA's action would not likely jeopardize the continued existence of any Federally listed species or result in the destruction or adverse modification of designated critical habitat. EPA's Biological Evaluation and the Services' final Biological Opinion are contained in the administrative record for today's rule.

In order to ensure the continued protection of Federally listed threatened and endangered species and to protect their critical habitat, EPA agreed to reserve the aquatic life criteria for mercury and the acute freshwater aquatic life criterion for selenium. The Services believe that EPA's proposed criteria are not sufficiently protective of Federally listed species and should not be promulgated. EPA agreed that it would reevaluate these criteria in light of the Services concerns before promulgating them for the State of California. Other commitments made by EPA are described in a letter to the Services dated December 16, 1999; this letter is contained in the administrative record for today's rule.

N. 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. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a major rule as defined

by 5 U.S.C. 804(2). This rule will be effective May 18, 2000.

O. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected 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 nor does it impose substantial direct compliance cots on them. Today's rule will only address priority toxic pollutant water quality criteria for the State of California and does not apply to waters in Indian country. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

P. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus 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.

This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Q. Executive Order 13132 on Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of 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 does not have federalism implications. It 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. The rule does not affect the nature of the relationship between EPA and States generally, for the rule only applies to water bodies in California. Further, the rule will not substantially affect the relationship of EPA and the State of California, or the distribution of power or responsibilities between EPA and the State. The rule does not alter the State's authority to issue NPDES permits or the State's considerable discretion in implementing these criteria. The rule simply implements Clean Water Act section 303(c)(2)(B) requiring numeric ambient water quality criteria for which EPA has issued section 304(a) recommended criteria in a manner that is consistent with previous regulatory guidance that the Agency has issued to implement CWA section 303(c)(2)(B). Further, this rule does not preclude the State from adopting water quality standards that meet the requirements of the CWA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local government representatives in developing this rule. EPA and the State reached an agreement that to best utilize its respective resources, EPA would promulgate water quality criteria and the State would concurrently work on a plan to implement the criteria. Since the proposal of this rule, EPA has kept State officials fully informed of changes to the proposal. EPA has continued to invite comment from the State on these changes. EPA believes that the final CTR incorporates comments from State officials and staff.

R. Executive Order 13045 on Protection of Children From Environmental Health Risks and Safety Risks

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.

While this final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, we nonetheless have reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. As a matter of EPA policy, we therefore have assessed the environmental health or safety effects of ambient water quality criteria on children. The results of this assessment are contained in section F.3., Human Health Criteria.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: April 27, 2000.

Carol Browner,

Administrator.

For the reasons set out in the preamble, part 131 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—[Amended]

2. Section 131.38 is added to subpart D to read as follows:

§ 131.38 Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California.

(a) *Scope.* This section promulgates criteria for priority toxic pollutants in the State of California for inland surface waters and enclosed bays and estuaries. This section also contains a compliance schedule provision.

(b)(1) Criteria for Priority Toxic Pollutants in the State of California as described in the following table:

BILLING CODE 6560–50–P

A		B Freshwater		C Saltwater		D Human Health (10^{-6} risk for carcinogens) For consumption of:	
# Compound	CAS Number	Criterion Maximum Conc. [d] B1	Criterion Continuous Conc. [d] B2	Criterion Maximum Conc. [d] C1	Criterion Continuous Conc. [d] C2	Water & Organisms (μg/L) D1	Organisms Only (μg/L) D2
1. Antimony	7440360					14 a,s	4300 a,t
2. Arsenic [b]	7440382	340 i,m,w	150 i,m,w	69 i,m	36 i,m		
3. Beryllium	7440417					n	n
4. Cadmium [b]	7440439	4.3 e,i,m,w,x	2.2 e,i,m,w	42 i,m	9.3 i,m	n	n
5a. Chromium (III)	16065831	550 e,i,m,o	180 e,i,m,o			n	n
5b. Chromium (VI) [b]	18540299	16 i,m,w	11 i,m,w	1100 i,m	50 i,m	n	n
6. Copper [b]	7440508	13 e,i,m,w,x	9.0 e,i,m,w	4.8 i,m	3.1 i,m	1300	
7. Lead [b]	7439921	65 e,i,m	2.5 e,i,m	210 i,m	8.1 i,m	n	n
8. Mercury [b]	7439976	[Reserved]	[Reserved]	[Reserved]	[Reserved]	0.050 a	0.051 a
9. Nickel [b]	7440020	470 e,i,m,w	52 e,i,m,w	74 i,m	8.2 i,m	610 a	4600 a
10. Selenium [b]	7782492	[Reserved] p	5.0 q	290 i,m	71 i,m	n	n
11. Silver [b]	7440224	3.4 e,i,m		1.9 i,m			
12. Thallium	7440280					1.7 a,s	6.3 a,t
13. Zinc [b]	7440666	120 e,i,m,w,x	120 e,i,m,w	90 i,m	81 i,m		
14. Cyanide [b]	57125	22 o	5.2 o	1 r	1 r	700 a	220,000 a,j
15. Asbestos	1332214					7,000,000 fibers/L k,s	
16. 2,3,7,8-TCDD (Dioxin)	1746016					0.000000013 c	0.000000014 c
17. Acrolein	107028					320 s	780 t
18. Acrylonitrile	107131					0.059 a,c,s	0.66 a,c,t
19. Benzene	71432					1.2 a,c	71 a,c
20. Bromoform	75252					4.3 a,c	360 a,c
21. Carbon Tetrachloride	56235					0.25 a,c,s	4.4 a,c,t
22. Chlorobenzene	108907					680 a,s	21,000 a,j,t
23. Chlorodibromomethane	124481					0.401 a,c	34 a,c
24. Chloroethane	75003						
25. 2-Chloroethylvinyl Ether	110758						

26. Chloroform	67663					[Reserved]	[Reserved]
27. Dichlorobromomethane	75274					0.56 a,c	46 a,c
28. 1,1-Dichloroethane	75343						
29. 1,2-Dichloroethane	107062					0.38 a,c,s	99 a,c,t
30. 1,1-Dichloroethylene	75354					0.057 a,c,s	3.2 a,c,t
31. 1,2-Dichloropropane	78875					0.52 a	39 a
32. 1,3-Dichloropropylene	542756					10 a,s	1,700 a,t
33. Ethylbenzene	100414					3,100 a,s	29,000 a,t
34. Methyl Bromide	74839					48 a	4,000 a
35. Methyl Chloride	74873					n	n
36. Methylene Chloride	75092					4.7 a,c	1,600 a,c
37. 1,1,2,2-Tetrachloroethane	79345					0.17 a,c,s	11 a,c,t
38. Tetrachloroethylene	127184					0.8 c,s	8.85 c,t
39. Toluene	108883					6,800 a	200,000 a
40. 1,2-Trans-Dichloroethylene	156605					700 a	140,000 a
41. 1,1,1-Trichloroethane	71556					n	n
42. 1,1,2-Trichloroethane	79005					0.60 a,c,s	42 a,c,t
43. Trichloroethylene	79016					2.7 c,s	81 c,t
44. Vinyl Chloride	75014					2 c,s	525 c,t
45. 2-Chlorophenol	95578					120 a	400 a
46. 2,4-Dichlorophenol	120832					93 a,s	790 a,t
47. 2,4-Dimethylphenol	105679					540 a	2,300 a
48. 2-Methyl-4,6-Dinitrophenol	534521					13.4 s	765 t
49. 2,4-Dinitrophenol	51285					70 a,s	14,000 a,t
50. 2-Nitrophenol	88755						
51. 4-Nitrophenol	100027						
52. 3-Methyl-4-Chlorophenol	59507						
53. Pentachlorophenol	87865	19 f,w	15 f,w	13	7.9	0.28 a,c	8.2 a,c,j
54. Phenol	108952					21,000 a	4,600,000 a,j,t
55. 2,4,6-Trichlorophenol	88062					2.1 a,c	6.5 a,c
56. Acenaphthene	83329					1,200 a	2,700 a
57. Acenaphthylene	208968						
58. Anthracene	120127					9,600 a	110,000 a

59. Benzidine	92875					0.00012 a,c,s	0.00054 a,c,t
60. Benzo(a)Anthracene	56553					0.0044 a,c	0.049 a,c
61. Benzo(a)Pyrene	50328					0.0044 a,c	0.049 a,c
62. Benzo(b)Fluoranthene	205992					0.0044 a,c	0.049 a,c
63. Benzo(ghi)Perylene	191242						
64. Benzo(k)Fluoranthene	207089					0.0044 a,c	0.049 a,c
65. Bis(2-Chloroethoxy)Methane	111911						
66. Bis(2-Chloroethyl)Ether	111444					0.031 a,c,s	1.4 a,c,t
67. Bis(2-Chloroisopropyl)Ether	39638329					1,400 a	170,000 a,t
68. Bis(2-Ethylhexyl)Phthalate	117817					1.8 a,c,s	5.9 a,c,t
69. 4-Bromophenyl Phenyl Ether	101553						
70. Butylbenzyl Phthalate	85687					3,000 a	5,200 a
71. 2-Chloronaphthalene	91587					1,700 a	4,300 a
72. 4-Chlorophenyl Phenyl Ether	7005723						
73. Chrysene	218019					0.0044 a,c	0.049 a,c
74. Dibenzo(a,h)Anthracene	53703					0.0044 a,c	0.049 a,c
75. 1,2 Dichlorobenzene	95501					2,700 a	17,000 a
76. 1,3 Dichlorobenzene	541731					400	2,600
77. 1,4 Dichlorobenzene	106467					400	2,600
78. 3,3'-Dichlorobenzidine	91941					0.04 a,c,s	0.077 a,c,t
79. Diethyl Phthalate	84662					23,000 a,s	120,000 a,t
80. Dimethyl Phthalate	131113					313,000 s	2,900,000 t
81. Di-n-Butyl Phthalate	84742					2,700 a,s	12,000 a,t
82. 2,4-Dinitrotoluene	121142					0.11 c,s	9.1 c,t
83. 2,6-Dinitrotoluene	606202						
84 Di-n-Octyl Phthalate	117840						
85. 1,2-Diphenylhydrazine	122667					0.040 a,c,s	0.54 a,c,t
86. Fluoranthene	206440					300 a	370 a
87. Fluorene	86737					1,300 a	14,000 a
88. Hexachlorobenzene	118741					0.00075 a,c	0.00077 a,c
89. Hexachlorobutadiene	87683					0.44 a,c,s	50 a,c,t
90. Hexachlorocyclopentadiene	77474					240 a,s	17,000 a,j,t
91. Hexachloroethane	67721					1.9 a,c,s	8.9 a,c,t

92. Indeno(1,2,3-cd) Pyrene	193395					0.0044 a,c	0.049 a,c
93. Isophorone	78591					8.4 c,s	600 c,t
94. Naphthalene	91203						
95. Nitrobenzene	98953					17 a,s	1,900 a,j,t
96. N-Nitrosodimethylamine	62759					0.00069 a,c,s	8.1 a,c,t
97. N-Nitrosodi-n-Propylamine	621647					0.005 a	1.4 a
98. N-Nitrosodiphenylamine	86306					5.0 a,c,s	16 a,c,t
99. Phenanthrene	85018						
100. Pyrene	129000					960 a	11,000 a
101. 1,2,4-Trichlorobenzene	120821						
102. Aldrin	309002	3 g		1.3 g		0.00013 a,c	0.00014 a,c
103. alpha-BHC	319846					0.0039 a,c	0.013 a,c
104. beta-BHC	319857					0.014 a,c	0.046 a,c
105. gamma-BHC	58899	0.95 w		0.16 g		0.019 c	0.063 c
106. delta-BHC	319868						
107. Chlordane	57749	2.4 g	0.0043 g	0.09 g	0.004 g	0.00057 a,c	0.00059 a,c
108. 4,4'-DDT	50293	1.1 g	0.001 g	0.13 g	0.001 g	0.00059 a,c	0.00059 a,c
109. 4,4'-DDE	72559					0.00059 a,c	0.00059 a,c
110. 4,4'-DDD	72548					0.00083 a,c	0.00084 a,c
111. Dieldrin	60571	0.24 w	0.056 w	0.71 g	0.0019 g	0.00014 a,c	0.00014 a,c
112. alpha-Endosulfan	959988	0.22 g	0.056 g	0.034 g	0.0087 g	110 a	240 a
113. beta-Endosulfan	33213659	0.22 g	0.056 g	0.034 g	0.0087 g	110 a	240 a
114. Endosulfan Sulfate	1031078					110 a	240 a
115. Endrin	72208	0.086 w	0.036 w	0.037 g	0.0023 g	0.76 a	0.81 a,j
116. Endrin Aldehyde	7421934					0.76 a	0.81 a,j
117. Heptachlor	76448	0.52 g	0.0038 g	0.053 g	0.0036 g	0.00021 a,c	0.00021 a,c
118. Heptachlor Epoxide	1024573	0.52 g	0.0038 g	0.053 g	0.0036 g	0.00010 a,c	0.00011 a,c
119-125. Polychlorinated biphenyls (PCBs)			0.014 u		0.03 u	0.00017 c,v	0.00017 c,v
126. Toxaphene	8001352	0.73	0.0002	0.21	0.0002	0.00073 a,c	0.00075 a,c
Total Number of Criteria [h]		22	21	22	20	92	90

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Footnotes to Table in Parargraph (b)(1):

a. Criteria revised to reflect the Agency q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of October 1, 1996. The fish tissue bioconcentration factor (BCF) from the 1980 documents was retained in each case.

b. Criteria apply to California waters except for those waters subject to objectives in Tables III–2A and III–2B of the San Francisco Regional Water Quality Control Board's (SFRWQCB) 1986 Basin Plan, that were adopted by the SFRWQCB and the State Water Resources Control Board, approved by EPA, and which continue to apply.

c. Criteria are based on carcinogenicity of 10 (-6) risk.

d. Criteria Maximum Concentration (CMC) equals the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time without deleterious effects. Criteria Continuous Concentration (CCC) equals the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (4 days) without deleterious effects. ug/L equals micrograms per liter.

e. Freshwater aquatic life criteria for metals are expressed as a function of total hardness (mg/L) in the water body. The equations are provided in matrix at paragraph (b)(2) of this section. Values displayed above in the matrix correspond to a total hardness of 100 mg/l.

f. Freshwater aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows: Values displayed above in the matrix correspond to a pH of 7.8. CMC = exp(1.005(pH) − 4.869). CCC = exp(1.005(pH) − 5.134).

g. This criterion is based on 304(a) aquatic life criterion issued in 1980, and was issued in one of the following documents: Aldrin/Dieldrin (EPA 440/5–80–019), Chlordane (EPA 440/5–80–027), DDT (EPA 440/5–80–038), Endosulfan (EPA 440/5–80–046), Endrin (EPA 440/5–80–047), Heptachlor (440/5–80–052), Hexachlorocyclohexane (EPA 440/5–80–054), Silver (EPA 440/5–80–071). The Minimum Data Requirements and derivation procedures were different in the 1980 Guidelines than in the 1985 Guidelines. For example, a ''CMC'' derived using the 1980 Guidelines was derived to be used as an instantaneous maximum. If assessment is to be done using an averaging period, the values given should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.

h. These totals simply sum the criteria in each column. For aquatic life, there are 23 priority toxic pollutants with some type of freshwater or saltwater, acute or chronic criteria. For human health, there are 92 priority toxic pollutants with either ''water + organism'' or ''organism only'' criteria. Note that these totals count chromium as one pollutant even though EPA has developed criteria based on two valence states. In the matrix, EPA has assigned numbers 5a and 5b to the criteria for chromium to reflect the fact that the list of 126 priority pollutants includes only a single listing for chromium.

i. Criteria for these metals are expressed as a function of the water-effect ratio, WER, as defined in paragraph (c) of this section. CMC = column B1 or C1 value x WER; CCC = column B2 or C2 value x WER.

j. No criterion for protection of human health from consumption of aquatic organisms (excluding water) was presented in the 1980 criteria document or in the 1986 Quality Criteria for Water. Nevertheless, sufficient information was presented in the 1980 document to allow a calculation of a criterion, even though the results of such a calculation were not shown in the document.

k. The CWA 304(a) criterion for asbestos is the MCL.

l. [Reserved]

m. These freshwater and saltwater criteria for metals are expressed in terms of the dissolved fraction of the metal in the water column. Criterion values were calculated by using EPA's Clean Water Act 304(a) guidance values (described in the total recoverable fraction) and then applying the conversion factors in § 131.36(b)(1) and (2).

n. EPA is not promulgating human health criteria for these contaminants. However, permit authorities should address these contaminants in NPDES permit actions using the State's existing narrative criteria for toxics.

o. These criteria were promulgated for specific waters in California in the National Toxics Rule (''NTR''), at § 131.36. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays or estuaries and waters of the State defined as inland, i.e., all surface waters of the State not ocean waters. These waters specifically include the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta. This section does not apply instead of the NTR for this criterion.

p. A criterion of 20 ug/l was promulgated for specific waters in California in the NTR and was promulgated in the total recoverable form. The specific waters to which the NTR criterion applies include: Waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; and waters of Salt Slough, Mud Slough (north) and the San Joaquin River, Sack Dam to the mouth of the Merced River. This section does not apply instead of the NTR for this criterion. The State of California adopted and EPA approved a site specific criterion for the San Joaquin River, mouth of Merced to Vernalis; therefore, this section does not apply to these waters.

q. This criterion is expressed in the total recoverable form. This criterion was promulgated for specific waters in California in the NTR and was promulgated in the total recoverable form. The specific waters to which the NTR criterion applies include: Waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; and waters of Salt Slough, Mud Slough (north) and the San Joaquin River, Sack Dam to Vernalis. This criterion does not apply instead of the NTR for these waters. This criterion applies to additional waters of the United States in the State of California pursuant to 40 CFR 131.38(c). The State of California adopted and EPA approved a site-specific criterion for the Grassland Water District, San Luis National Wildlife Refuge, and the Los Banos State Wildlife Refuge; therefore, this criterion does not apply to these waters.

r. These criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays or estuaries including the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta. This section does not apply instead of the NTR for these criteria.

s. These criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the Sacramento-San Joaquin Delta and waters of the State defined as inland (*i.e.,* all surface waters of the State not bays or estuaries or ocean) that include a MUN use designation. This section does not apply instead of the NTR for these criteria.

t. These criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays and estuaries including San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; and waters of the State defined as inland (i.e., all surface waters of the State not bays or estuaries or ocean) without a MUN use designation. This section does not apply instead of the NTR for these criteria.

u. PCBs are a class of chemicals which include aroclors 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825, and 12674112, respectively. The aquatic life criteria apply to the sum of this set of seven aroclors.

v. This criterion applies to total PCBs, e.g., the sum of all congener or isomer or homolog or aroclor analyses.

w. This criterion has been recalculated pursuant to the 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water, Office of Water, EPA–820-B–96–001, September 1996. See also Great Lakes Water Quality Initiative Criteria Documents for the Protection of Aquatic Life in Ambient Water, Office of Water, EPA–80–B–95–004, March 1995.

x. The State of California has adopted and EPA has approved site specific criteria for the Sacramento River (and tributaries) above Hamilton City; therefore, these criteria do not apply to these waters.

General Notes to Table in Paragraph (b)(1)

1. The table in this paragraph (b)(1) lists all of EPA's priority toxic pollutants whether or not criteria guidance are available. Blank spaces indicate the absence of national section 304(a) criteria guidance. Because of variations in chemical nomenclature systems, this listing of toxic pollutants does not duplicate the listing in Appendix A to 40 CFR Part 423–126 Priority Pollutants. EPA has added the Chemical Abstracts Service (CAS) registry numbers, which provide a unique identification for each chemical.

2. The following chemicals have organoleptic-based criteria recommendations that are not included on this chart: zinc, 3-methyl-4-chlorophenol.

3. Freshwater and saltwater aquatic life criteria apply as specified in paragraph (c)(3) of this section.

(2) Factors for Calculating Metals Criteria. Final CMC and CCC values should be rounded to two significant figures.

(i) $CMC = WER \times (Acute\ Conversion\ Factor) \times (\exp\{m_A[\ln(hardness)]+b_A\})$

(ii) $CCC = WER \times (Acute\ Conversion\ Factor) \times (\exp\{m_C[\ln(hardness)]+b_C\})$

(iii) Table 1 to paragraph (b)(2) of this section:

Metal	m_A	b_A	m_C	b_C
Cadmium	1.128	−3.6867	0.7852	−2.715
Copper	0.9422	−1.700	0.8545	−1.702
Chromium (III)	0.8190	3.688	0.8190	1.561
Lead	1.273	−1.460	1.273	−4.705
Nickel	0.8460	2.255	0.8460	0.0584
Silver	1.72	−6.52		
Zinc	0.8473	0.884	0.8473	0.884

Note to Table 1: The term ''exp'' represents the base e exponential function.

(iv) Table 2 to paragraph (b)(2) of this section:

Metal	Conversion factor (CF) for freshwater acute criteria	CF for freshwater chronic criteria	CF for saltwater acute criteria	CF [a] for saltwater chronic criteria
Antimony	([d])	([d])	([d])	([d])
Arsenic	1.000	1.000	1.000	1.000
Beryllium	([d])	([d])	([d])	([d])
Cadmium	[b] 0.944	[b] 0.909	0.994	0.994
Chromium (III)	0.316	0.860	([d])	([d])
Chromium (VI)	0.982	0.962	0.993	0.993
Copper	0.960	0.960	0.83	0.83
Lead	[b] 0.791	[b] 0.791	0.951	0.951
Mercury	.....	.....	.....	.....
Nickel	0.998	0.997	0.990	0.990
Selenium	.....	([c])	0.998	0.998
Silver	0.85	([d])	0.85	([d])
Thallium	([d])	([d])	([d])	([d])
Zinc	0.978	0.986	0.946	0.946

Footnotes to Table 2 of Paragraph (b)(2):

[a] Conversion Factors for chronic marine criteria are not currently available. Conversion Factors for acute marine criteria have been used for both acute and chronic marine criteria.

[b] Conversion Factors for these pollutants in freshwater are hardness dependent. CFs are based on a hardness of 100 mg/l as calcium carbonate ($CaCO_3$). Other hardness can be used; CFs should be recalculated using the equations in table 3 to paragraph (b)(2) of this section.

[c] Bioaccumulative compound and inappropriate to adjust to percent dissolved.

[d] EPA has not published an aquatic life criterion value.

Note to Table 2 of Paragraph (b)(2): The term ''Conversion Factor'' represents the recommended conversion factor for converting a metal criterion expressed as the total recoverable fraction in the water column to a criterion expressed as the dissolved fraction in the water column. See ''Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria'', October 1, 1993, by Martha G. Prothro, Acting Assistant Administrator for Water available from Water Resource Center, USEPA, Mailcode RC4100, M Street SW, Washington, DC, 20460 and the note to § 131.36(b)(1).

(v) Table 3 to paragraph (b)(2) of this section:

	Acute	Chronic
Cadmium	CF=1.136672—[(ln {hardness}) (0.041838)]	CF = 1.101672—[(ln {hardness})(0.041838)]
Lead	CF=1.46203—[(ln {hardness})(0.145712)]	CF = 1.46203—[(ln {hardness})(0.145712)]

(c) *Applicability.* (1) The criteria in paragraph (b) of this section apply to the State's designated uses cited in paragraph (d) of this section and apply concurrently with any criteria adopted by the State, except when State regulations contain criteria which are more stringent for a particular parameter and use, or except as provided in footnotes p, q, and x to the table in paragraph (b)(1) of this section.

(2) The criteria established in this section are subject to the State's general rules of applicability in the same way and to the same extent as are other Federally-adopted and State-adopted numeric toxics criteria when applied to the same use classifications including mixing zones, and low flow values below which numeric standards can be exceeded in flowing fresh waters.

(i) For all waters with mixing zone regulations or implementation procedures, the criteria apply at the appropriate locations within or at the boundary of the mixing zones; otherwise the criteria apply throughout the water body including at the point of discharge into the water body.

(ii) The State shall not use a low flow value below which numeric standards can be exceeded that is less stringent than the flows in Table 4 to paragraph (c)(2) of this section for streams and rivers.

(iii) Table 4 to paragraph (c)(2) of this section:

Criteria	Design flow
Aquatic Life Acute Criteria (CMC).	1 Q 10 or 1 B 3
Aquatic Life Chronic Criteria (CCC).	7 Q 10 or 4 B 3
Human Health Criteria.	Harmonic Mean Flow

Note to Table 4 of Paragraph (c)(2): 1. CMC (Criteria Maximum Concentration) is the water quality criteria to protect against acute effects in aquatic life and is the highest instream concentration of a priority toxic pollutant consisting of a short-term average not to be exceeded more than once every three years on the average.

2. CCC (Continuous Criteria Concentration) is the water quality criteria to protect against chronic effects in aquatic life and is the highest in stream concentration of a priority toxic pollutant consisting of a 4-day average not to be exceeded more than once every three years on the average.

3. 1 Q 10 is the lowest one day flow with an average recurrence frequency of once in 10 years determined hydrologically.

4. 1 B 3 is biologically based and indicates an allowable exceedence of once every 3 years. It is determined by EPA's computerized method (DFLOW model).

5. 7 Q 10 is the lowest average 7 consecutive day low flow with an average recurrence frequency of once in 10 years determined hydrologically.

6. 4 B 3 is biologically based and indicates an allowable exceedence for 4 consecutive days once every 3 years. It is determined by EPA's computerized method (DFLOW model).

(iv) If the State does not have such a low flow value below which numeric standards do not apply, then the criteria included in paragraph (d) of this section apply at all flows.

(v) If the CMC short-term averaging period, the CCC four-day averaging period, or once in three-year frequency is inappropriate for a criterion or the site to which a criterion applies, the State may apply to EPA for approval of an alternative averaging period, frequency, and related design flow. The State must submit to EPA the bases for any alternative averaging period, frequency, and related design flow. Before approving any change, EPA will publish for public comment, a document proposing the change.

(3) The freshwater and saltwater aquatic life criteria in the matrix in paragraph (b)(1) of this section apply as follows:

(i) For waters in which the salinity is equal to or less than 1 part per thousand 95% or more of the time, the applicable criteria are the freshwater criteria in Column B;

(ii) For waters in which the salinity is equal to or greater than 10 parts per thousand 95% or more of the time, the applicable criteria are the saltwater criteria in Column C except for selenium in the San Francisco Bay estuary where the applicable criteria are the freshwater criteria in Column B (refer to footnotes p and q to the table in paragraph (b)(1) of this section); and

(iii) For waters in which the salinity is between 1 and 10 parts per thousand as defined in paragraphs (c)(3)(i) and (ii) of this section, the applicable criteria are the more stringent of the freshwater or saltwater criteria. However, the Regional Administrator may approve the use of the alternative freshwater or saltwater criteria if scientifically defensible information and data demonstrate that on a site-specific basis the biology of the water body is dominated by freshwater aquatic life and that freshwater criteria are more appropriate; or conversely, the biology of the water body is dominated by saltwater aquatic life and that saltwater criteria are more appropriate. Before approving any change, EPA will publish for public comment a document proposing the change.

(4) *Application of metals criteria.* (i) For purposes of calculating freshwater aquatic life criteria for metals from the equations in paragraph (b)(2) of this section, for waters with a hardness of 400 mg/l or less as calcium carbonate, the actual ambient hardness of the surface water shall be used in those equations. For waters with a hardness of over 400 mg/l as calcium carbonate, a hardness of 400 mg/l as calcium carbonate shall be used with a default Water-Effect Ratio (WER) of 1, or the actual hardness of the ambient surface water shall be used with a WER. The same provisions apply for calculating the metals criteria for the comparisons provided for in paragraph (c)(3)(iii) of this section.

(ii) The hardness values used shall be consistent with the design discharge conditions established in paragraph (c)(2) of this section for design flows and mixing zones.

(iii) The criteria for metals (compounds #1—#13 in the table in paragraph (b)(1) of this section) are expressed as dissolved except where otherwise noted. For purposes of calculating aquatic life criteria for metals from the equations in footnote i to the table in paragraph (b)(1) of this section and the equations in paragraph (b)(2) of this section, the water effect ratio is generally computed as a specific pollutant's acute or chronic toxicity value measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. To use a water effect ratio other than the default of 1, the WER must be determined as set forth in Interim Guidance on Determination and Use of Water Effect Ratios, U.S. EPA Office of Water, EPA–823–B–94–001, February 1994, or alternatively, other scientifically defensible methods adopted by the State as part of its water quality standards program and approved by EPA. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in paragraph (b)(2) of this section must be determined as required in paragraph (c)(4)(ii) of this section. Water hardness must be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium should be approximately the same in standard laboratory toxicity testing water as in the site water.

(d)(1) Except as specified in paragraph (d)(3) of this section, all waters assigned any aquatic life or human health use classifications in the Water Quality Control Plans for the various Basins of the State (''Basin Plans'') adopted by the California State Water Resources Control Board (''SWRCB''), except for ocean waters covered by the Water Quality Control Plan for Ocean Waters of California (''Ocean Plan'') adopted by the SWRCB with resolution Number 90–27 on March 22, 1990, are subject to the criteria in paragraph (d)(2) of this section, without exception. These criteria apply to waters identified in the Basin Plans. More particularly, these criteria apply to waters identified in the Basin Plan chapters designating beneficial uses for waters within the region. Although the State has adopted several use designations for each of these waters, for purposes of this action, the specific standards to be applied in paragraph (d)(2) of this section are based on the presence in all waters of some aquatic life designation and the presence or absence of the MUN use designation (municipal and domestic supply). (See Basin Plans for more detailed use definitions.)

(2) The criteria from the table in paragraph (b)(1) of this section apply to the water and use classifications defined in paragraph (d)(1) of this section as follows:

Water and use classification	Applicable criteria
(i) All inland waters of the United States or enclosed bays and estuaries that are waters of the United States that include a MUN use designation.	(A) Columns B1 and B2—all pollutants (B) Columns C1 and C2—all pollutants (C) Column D1—all pollutants
(ii) All inland waters of the United States or enclosed bays and estuaries that are waters of the United States that do not include a MUN use designation.	(A) Columns B1 and B2—all pollutants (B) Columns C1 and C2—all pollutants (C) Column D2—all pollutants

(3) Nothing in this section is intended to apply instead of specific criteria, including specific criteria for the San Francisco Bay estuary, promulgated for California in the National Toxics Rule at § 131.36.

(4) The human health criteria shall be applied at the State-adopted 10 (−6) risk level.

(5) Nothing in this section applies to waters located in Indian Country.

(e)*Schedules of compliance.* (1) It is presumed that new and existing point source dischargers will promptly comply with any new or more restrictive water quality-based effluent limitations (''WQBELs'') based on the water quality criteria set forth in this section.

(2) When a permit issued on or after May 18, 2000 to a new discharger contains a WQBEL based on water quality criteria set forth in paragraph (b) of this section, the permittee shall comply with such WQBEL upon the commencement of the discharge. A new discharger is defined as any building, structure, facility, or installation from which there is or may be a ''discharge of pollutants'' (as defined in 40 CFR 122.2) to the State of California's inland surface waters or enclosed bays and estuaries, the construction of which commences after May 18, 2000.

(3) Where an existing discharger reasonably believes that it will be infeasible to promptly comply with a new or more restrictive WQBEL based on the water quality criteria set forth in this section, the discharger may request approval from the permit issuing authority for a schedule of compliance.

(4) A compliance schedule shall require compliance with WQBELs based on water quality criteria set forth in paragraph (b) of this section as soon as possible, taking into account the dischargers' technical ability to achieve compliance with such WQBEL.

(5) If the schedule of compliance exceeds one year from the date of permit issuance, reissuance or modification, the schedule shall set forth interim requirements and dates for their achievement. The dates of completion between each requirement may not exceed one year. If the time necessary for completion of any requirement is more than one year and is not readily divisible into stages for completion, the permit shall require, at a minimum, specified dates for annual submission of progress reports on the status of interim requirements.

(6) In no event shall the permit issuing authority approve a schedule of compliance for a point source discharge which exceeds five years from the date of permit issuance, reissuance, or modification, whichever is sooner. Where shorter schedules of compliance are prescribed or schedules of compliance are prohibited by law, those provisions shall govern.

(7) If a schedule of compliance exceeds the term of a permit, interim permit limits effective during the permit shall be included in the permit and addressed in the permit's fact sheet or statement of basis. The administrative record for the permit shall reflect final permit limits and final compliance dates. Final compliance dates for final permit limits, which do not occur during the term of the permit, must occur within five years from the date of issuance, reissuance or modification of the permit which initiates the compliance schedule. Where shorter schedules of compliance are prescribed or schedules of compliance are prohibited by law, those provisions shall govern.

(8) The provisions in this paragraph (e), Schedules of compliance, shall expire on May 18, 2005.

[FR Doc. 00–11106 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Thursday,
May 18, 2000

Part IV

National Credit Union Administration

12 CFR Parts 716 and 741

Privacy of Consumer Financial Information; Requirements for Insurance; Final Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 716 and 741

Privacy of Consumer Financial Information; Requirements for Insurance

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is issuing a final privacy rule applicable to all federally-insured credit unions, as required by the recently enacted Gramm-Leach-Bliley Act (the GLB Act or Act). The final rule requires credit unions to have a privacy policy and provide certain disclosures and notices to individuals about whom credit unions collect nonpublic personal information. It also restricts a credit union's ability to disclose nonpublic personal information, including giving individuals in some cases an opportunity to opt out of the disclosure. In drafting the rule, the NCUA participated as part of an interagency group composed of representatives from the NCUA, the Federal Trade Commission, the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, Secretary of the Treasury, and Securities and Exchange Commission (collectively, the Agencies). The other Agencies are also required to issue regulations to implement the GLB Act. NCUA's final rule takes into account the unique circumstances of federally-insured credit unions and their members but is comparable and consistent with the regulations of the other Agencies as required by the GLB Act.

EFFECTIVE DATE: This rule is effective November 13, 2000. However, compliance is not required until July 1, 2001.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp or Regina M. Metz, Staff Attorneys, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

I. Background

On February 24, 2000, NCUA issued a proposed privacy regulation as required by the GLB Act. 65 FR 10988, March 1, 2000. The comment period for the proposed rule ended March 31, 2000. Ninety-nine comments were received on the proposal, 26 from natural person credit unions; two from corporate credit unions; four from national credit union trade associations; 20 from state credit union leagues; one from a credit union service organization; one from the Congressional Privacy Caucus; five from law firms; seven from insurance companies; three from banks; two from federal agencies; 13 from businesses; one from a special interest group; one from a private party; and 13 from miscellaneous trade groups.

As required by the GLB Act, the NCUA has consulted with the other Agencies to ensure that its final rule is consistent and comparable with the final rules of the other Agencies. However, the NCUA's rule takes into account the comments received from the credit union community. Those commenters asked NCUA to take into account the unique nature of credit union structure and operations, particularly, the relationship between a credit union and its members and credit unions and credit union service organizations (CUSOs).

NCUA's final rule mirrors the other Agencies' final rules except for modifications appropriate to address the different circumstances of credit unions such as references to credit unions, CUSOs, members and nonmembers. The section-by-section summary of comments that follows points out those provisions that differ from the other Agencies' final rules. Besides differences in terms or definitions, a significant modification is in the use of examples in the rule. All of the Agencies' final rules will contain examples to aid understanding. NCUA has attempted to use examples pertinent to credit union circumstances and, therefore, has changed or deleted some examples used in the other Agencies' rule.

NCUA and the other Agencies are adding subparts to the table of contents in the final rule and reorganizing some of the subsections. NCUA and the other Agencies are also changing some of the language in the section names in the table of contents so that references to various notices are consistent with one another. In addition, NCUA and the other Agencies are revising various terms so that terminology is used consistently in the final rule and changing the passive voice to the active voice in several places. In some places, such as § 716.6, long provisions are broken into lists. Lastly, NCUA and the other Agencies are adding sample clauses as an appendix to the final rule.

NCUA and the other Agencies are developing examination standards and guidelines. A credit union's compliance with this rule will be reviewed as part of the regular examination process.

II. Summary of Comments

The NCUA requested comment on all aspects of the proposed rule as well as comment on specific provisions and issues highlighted in the proposal. Below is a discussion of the comments and changes to the proposal based on the comments. If a provision was not commented on and is not being changed in the final rule, the discussion from the proposal is not repeated.

Section 716.1 Purpose and Scope

Proposed paragraph (b) set out the scope of the NCUA rule, stating that it applies to all federally-insured credit unions. Section 505(a)(2) of the GLB Act provides that the NCUA Board has enforcement authority for federally-insured credit unions and any subsidiaries. One commenter objected to the statement in the proposal that, while CUSOs may be considered ''subsidiaries,'' the Federal Credit Union Act does not give the NCUA direct regulatory or supervisory authority over CUSOs. The commenter states that NCUA should take regulatory responsibility for CUSOs so that there is one regulator for all credit union activities. In addition to the fact that NCUA does not have direct regulatory or supervisory authority over these entities, NCUA's position is that CUSOs should be regulated, depending on the type of business in which they engage, by the primary regulators for those activities. For example, a CUSO engaged in securities brokerage activities would be subject to the Securities and Exchange Commission's privacy regulation.

The NCUA Board specifically requested comment on whether it would be appropriate to exempt federally-insured corporate credit unions from the rule because the membership of corporate credit unions, with the exception of a few natural person incorporators, is natural person credit unions, not consumers. Twelve of the 13 commenters that responded requested that corporates be exempt. The one commenter in opposition to exemption was the Congressional Privacy Caucus. Its reason for opposing exemption is persuasive, namely that there is no authority in the GLB Act for an exemption, and therefore, if a corporate has a customer or consumer it should be required to provide the appropriate notice.

The commenters in support of exemption noted that: a corporate credit union's only contact with a consumer is

through a natural person credit union; a corporate is member-owned and should be defined as an affiliate of each of its member owners; a corporate cannot perform under the burden of having to provide a privacy notice directly to natural persons; since the few natural person members a corporate may have only maintain a share account and receive no other consumer services, the rule should clarify that those individuals are not consumers; and, if a corporate receives nonpublic personal information about a natural person as part of processing member accounts for a natural person credit union, it is required to adhere to the ''reuse of information'' limitations in section 502(c)of the GLB Act. One commenter notes that a natural person credit union may disclose nonpublic personal information to a corporate credit union in connection with a proposed or actual securitization of a loan portfolio. The commenter incorrectly equates this type of activity with ''servicing and processing transactions.'' The proposal treated those individuals whose loans are purchased by a credit union as customers of the credit union. The final rule treats them as consumers, unless the credit union is servicing their loan, then they are members/customers. Therefore, a corporate credit union's duty to provide notice and an opportunity to opt out to individuals whose loans it purchases is only triggered if the corporate is servicing the loan or sharing nonpublic personal information about the consumers with nonaffiliated third parties that are not within an exception.

The Board agrees with the Congressional Privacy Caucus that it has no authority to exempt corporate credit unions. It appears from the comments that a corporate credit union will rarely have natural person members or customers. Members appear limited to those corporate credit unions that have natural person incorporators that maintain a share account. Those members are limited in number and so the burden to provide initial and annual notices should be minimal. On the other hand, corporate credit unions may have consumers. Consistent with the interpretation discussed in the Federal Trade Commission's proposal and now part of the final rule, the Board does not consider the members of a natural person credit union, that itself is a member of a corporate credit union, to be the corporate credit union's members or consumers, if the corporate credit union merely provides services to the natural person credit union. In this case, the corporate credit union may receive financial information about the natural person credit union's members, but it is only as a result of providing a service to its own member credit union. 65 FR 11174, 11177 (March 1, 2000). The final rule, consistent with the other Agencies, has added an example to the definition of consumer to clarify this. 12 CFR 716.3(e)(2)(iv). In that situation, the corporate is governed by the limitations on redisclosure in § 716.11.

NCUA, consistent with the other Agencies, has clarified in its final rule that initial notices are always required for customers, now defined as members, but not always for consumers by replacing ''consumer'' with ''member'' in paragraph (a)(1) and relying on paragraph (a)(2) to address consumers.

The final rule adds language to paragraph (b)(1) to clarify that commercial or agricultural purposes are included within the business purpose exemption. In addition language is added to this paragraph, clarifying that nothing in this part modifies, limits or supersedes the standards governing certain health information promulgated by the Secretary of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996.

Section 716.2 Rule of Construction

Proposed § 716.2 of the rule set out a rule of construction intended to clarify the effect of the examples used in the rule. It stated that the examples are not exclusive and that compliance with an example, to the extent applicable, constituted compliance with the rule. A few commenters objected to having the examples in the rule and suggested that they be an Appendix to the rule, so that they are not misinterpreted as being part of the regulation. An equal number of commenters supported having the examples in the rule. They found it helpful to have the examples adjacent to the provision they are clarifying. The Board agrees with those commenters and has retained the examples in the rule and at the request of the commenters provided additional examples where appropriate.

Several commenters requested that NCUA provide examples of model forms. The Board is including, as an Appendix to the rule, examples of disclosure language that a credit union may, if applicable, use as part of its disclosure.

Section 716.3 Definitions

(a) and (g) *Affiliate and Control.* The proposed rule defined ''affiliate'' and ''control'' using the same definitions as the other Agencies. The Board asked for comment on whether the definitions should be amended to reflect the particular relationship between a credit union and its CUSO. The proposal, adopting the definition in section 509(6) of the GLB Act, stated that an affiliation is found when one company controls, is controlled by, or is under common control with another company. It defined control as a 25% ownership interest; control in any manner over the election of directors or management; or the power to exercise a controlling influence over the management or policies of a company as determined by NCUA.

All 41 commenters that commented on this issue supported having a different definition of control. One of the reasons given in support of a different definition was that CUSOs are much more limited than bank affiliates. The Federal Credit Union Act (FCU Act) limits whom CUSOs can serve and the services they can provide. CUSOs must primarily serve credit unions and their members, and their services must be related to the routine operations of credit unions. Therefore, because of statutory limitations, CUSOs are closely affiliated with credit unions in the types of services they provide and the persons or entities they serve.

The commenters noted that the FCU Act limits the amount a federal credit union can invest in a CUSO to one percent of its paid-in unimpaired capital and surplus, making it difficult for a small credit union to have a 25% ownership interest in certain kinds of CUSOs. The commenters concluded that the proposed definition has a discriminatory impact on smaller credit unions because it will result in fewer smaller credit unions having affiliates and, therefore, smaller credit unions will have more burdensome disclosure requirements than larger credit unions.

Several of the commenters stressed that credit unions are part of a cooperative movement that includes their CUSOs. They all work together to solve operational problems and help credit unions compete. There are often more than four credit unions investing in one CUSO. Members of the credit union view the CUSO as an extension of their credit union, and, in their minds, it is an affiliate of their credit union.

A few commenters suggested that certain types of CUSOs should not be covered under the privacy rules because they are performing credit union functions on behalf of the credit union's members. The examples given were shared branching and ATM services. It is unclear what the commenters meant by this comment but, if their concern was that credit unions be able to share

with those CUSOs, these types of activities are specifically excluded from the opt out requirements by § 716.10. If on the other hand, their concern is that CUSOs that are also financial institutions not be subject to the privacy regulation, the Agency with primary regulatory authority over the CUSO will make that determination. Section 716.3(e)(2)(iv) of the final rule clarifies that members of the credit union would not be the CUSO's customer or consumer if the CUSO's function is limited to providing services to the natural person credit union and, as part of that service, it receives financial information about the natural person credit union's member.

The proposed rule included examples of entities that are affiliates for credit unions. For a federal credit union, the only entity that is an affiliate is a CUSO, as addressed in 12 CFR part 712, that is controlled by the federal credit union. For a state-chartered credit union, an affiliate is a company that is controlled by a credit union. One commenter asked that the example for state-chartered credit unions be changed to ''a company that is controlled by one or more credit unions.'' The current example does not limit control to one credit union, it merely addresses how one credit union has an affiliate. The number of credit unions affiliated with a particular company will be determined by the definition of control, not by changing the example of how a credit union is an affiliate of a company.

The Board asked for comment on whether a CUSO that is 100% owned by credit unions should be considered an affiliate of all the investing credit unions, regardless of whether any one credit union owns 25%. Although unanimous in their desire to expand the definition, the commenters had different suggestions on how to handle the issue of control. Several opposed limiting the expansion to 100% credit union owned because: A limited partnership CUSO would never qualify because the CUSO rule does not permit a credit union to be a general partner; CUSOs were often started in a cooperative manner with a state league as the initial investor; and majority credit union owned CUSOs often have some non-credit union investors because of the nature of their product or service or because of the need for additional capital.

Some of the suggestions for control of a CUSO were: 100% credit union owned; 100% credit union or CUSO owned; 100% credit union or credit union related entity owned; primarily or wholly owned by credit unions; 65% credit union owned; 25% credit union owned; and any credit union ownership.

Rather than change the definition of control, the NCUA Board believes that it should remain consistent and comparable with the other Agencies, and so it has added an example to category (3) of the definition that recognizes the unique relationship between a credit union and its CUSO. Category (3) states that control of a company includes the power to exercise control, directly or indirectly over the management or policies of the company, as determined by the NCUA. The new example states that NCUA will presume a controlling influence if the CUSO is 67% credit union owned. This percentage reflects a controlling interest by credit unions in the CUSO. In addition, the Board suggests credit unions that do not fall within the example, but believe that they have the power to exercise control, directly or indirectly, over the management or policies of their CUSO, petition the Board for a determination. The Board will process these requests for action pursuant to § 790.3 of the rules. 12 CFR 790.3.

(b) *Clear and conspicuous.* Title V of the GLB Act and the proposed rule required that various notices be ''clear and conspicuous.'' The proposed rule defined this term to mean that the notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice. The proposed rule did not mandate the use of any particular technique for making the notices clear and conspicuous, but instead allowed each credit union the flexibility to decide for itself how best to comply with this requirement. Ways in which a notice may satisfy the clear and conspicuous standard would include, for instance, using a plain-language caption, in a type set easily seen, that is designed to call attention to the information contained in the notice. Other plain language principles were provided in the examples that follow the general rule.

Several commenters recommended that the Board replace this definition with one more consistent with other Federal Reserve Board regulation definitions or modify the examples. In the final rule, NCUA and the other Agencies have retained the definition in the proposed rule, but revised the examples. The examples are not mandatory. A credit union must decide for itself how best to comply with the general rule, and may use techniques not listed in the examples.

Several commenters requested that the Board provide clarification on the form of the notice and whether it is permissible to insert it in a newsletter or statement. The final rule clarifies that a credit union may provide the notice separately or combined with another document if the notice uses distinctive type size, style, and graphic devices.

The final rule also provides examples of how notices provided on a web site can be clear and conspicuous. This might entail, for instance, a dialogue box that pops up whenever a member accesses a web page or a simple graphic (hypertext link or hotlink) near the top of the page or in close proximity to the credit union's logo. Other elements on the web site, such as text, graphics, hyperlinks, or sound, should not distract the consumer's attention away from the notice. The example also provides that the credit union should either place the notice or a link to the notice on a screen that consumers frequently access, such as a home page. Any link to the notice should be labeled appropriately to convey the importance, nature, and relevance of the notice.

(c) *Collect.* The proposed rule in § 716.3(c) defined collect as ''to obtain information that is organized or retrievable on a personally identifiable basis, irrespective of the source of the underlying information.'' Several commenters recommended NCUA specify whether information that is organized or retrievable only in the aggregate is excluded from the definition. In the final rule, the NCUA and the other Agencies are revising the definition to specify that information must be organized or retrievable by the credit union by the individual's name or by identifying number, symbol, or other particular assigned to the individual.

(e),(i) and (j) *Consumer, Customer, and Customer relationship; (n) and (o) Member and Member relationship.* The proposed rule defined ''customer'' as any consumer who has a customer relationship with a particular credit union. A customer relationship means that there is an ongoing relationship between the credit union and a consumer. These definitions paralleled the ones used by the other Agencies. Eleven commenters requested that the term ''member'' be used rather than customer. Some of those commenters suggested that only members be considered customers. This suggestion is contrary to the GLB Act that makes a distinction between the protections for consumers who obtain a financial product or services and those consumers that establish a relationship of a more lasting nature. Sometimes, those consumers with relationships of a more lasting nature are not actual members of the credit union and so, the

definition of customer cannot be limited to actual members.

Some of the reasons in support of using the term ''member,'' rather than ''customer,'' and including certain nonmembers within that category were that: credit unions have a unique relationship with their members and that relationship should be reflected in their regulations; and only a member is entitled to borrow, vote, and serve on the board of a credit union.

The Board agrees with the commenters that a credit union's relationship with its members is unique and so, it has substituted the term ''member'' for ''customer'' in the final rule. NCUA used this same approach successfully in its Truth in Savings Rule. 12 CFR part 707. However, the Board cautions credit unions that the term ''member,'' as used in this rule, essentially parallels the term ''customer'' used by the other Agencies. The term ''member'' includes individuals who are not actually members, but are entitled to the same privacy protections provided to members. Examples of individuals that fall within the definition of ''member'' in part 716 are nonmember joint account holders, nonmembers establishing an account at a low-income designated credit union and nonmembers holding an account in a state-chartered credit union under state law.

Several commenters stated that customer relationship is too broadly defined and should not apply to the situation where a credit union purchases a nonmember's loan, but not the servicing rights. NCUA and the other Agencies agree and are deleting this relationship from the definition of member/customer relationship. A consumer will be the member/customer of the financial institution that holds the servicing rights and a consumer of the other financial institutions that own the loan.

Several commenters asked that the final rule clarify that a series of isolated transactions does not transform a consumer to a member/customer. The final rule has added an ''s'' to isolated transaction to clarify this point.

A few commenters noted that notices and an opportunity to opt out should not have to be provided to both the consumer and the consumer's legal representative. NCUA and the other Agencies agree and are amending § 716.3(e)(1) to reflect that it is the consumer ''or'' the consumer's legal representative.

(f) *Federal functional regulator.* NCUA, consistent with the other Agencies, adopted the definition of ''government regulator'' in proposed rule § 716.3(m) to include the federal functional regulators, as defined in the GLB Act, the state insurance authorities, the Department of Treasury, and the Federal Trade Commission. One commenter objected to the definition and asked NCUA to revise it to include state regulators. The rule already takes into account the role of state regulators on the issue of affiliates.

In the final rule, the NCUA and the other Agencies are deciding not to use a definition for government regulator and instead have restated the definition for ''Federal functional regulator'' from the GLB Act. The term is used in the exception set out in § 716.15(a)(4) for disclosures to law enforcement agencies, including a federal functional regulator, the Department of Treasury, a state insurance authority, and the Federal Trade Commission.

(l), (m) Financial institution and Financial product or service. The proposed rule defined ''financial institution'' in § 716.3(k) as any institution the business of which is engaging activities that are financial in nature, or incidental to such financial activities, as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). The proposed rule also exempted from the definition of ''financial institution'' those entities specifically excluded by the GLB Act. The proposed rule defined ''financial product or service'' in § 716.3(l) as any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k). The definition included the financial institution's evaluation of information collected in connection with an application by a consumer for a financial service or product even if the application is ultimately rejected or withdrawn. It also included the distribution of information about a consumer for the purpose of assisting the consumer obtain a financial product or service. In the final rule, NCUA, consistent with the other Agencies, no longer includes such distribution of information to be a financial service. Other than this change, NCUA has retained both definitions in § 716.3(l) and (m) of the final rule, but NCUA has added examples of financial institutions.

Several commenters requested that the Board list financial activities or attach section 4(k) to part 716. One commenter provided sample language. One commenter supported a *de minimis* exception for companies whose consumer component is less than one percent. A few commenters requested that the Board adopt the Federal Trade Commission's example which provides that an entity is a financial institution if it is significantly engaged in financial activities, such as a retailer that extends credit by issuing its own credit card directly to consumers. The Federal Trade Commission also provided an example that a financial institution does not include a business that only accepts payment by check or cash, or through credit cards issued by others, or through deferred payment or ''lay-away'' plans. A few commenters also requested that the Board clarify the definition of financial products and services or expand it with examples.

Examples of activities that are financial in nature include: lending, exchanging, transferring, investing for others, or safeguarding money or securities; insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any state; providing financial, investment, or economic advisory services; and underwriting, dealing in, or making a market in securities. Examples of activities that are incidental to financial activities include: brokering or servicing loans; leasing real or personal property (or acting as agent, broker, or advisor in such leasing) without operating, maintaining or repairing the property; appraising real or personal property; check guaranty, collection agency, credit bureau, and real estate settlement services; providing financial or investment advisory activities including tax planning, tax preparation, and instruction on individual financial management; management consulting and counseling activities (including providing financial career counseling); courier services for banking instruments; printing and selling checks and related documents; community development or advisory activities; selling money orders, savings bonds, or traveler's checks. The activities also include leasing real or personal property (or acting as agent, broker, or advisor in such leasing) where the lease is functionally equivalent to an extension of credit; acting as fiduciary; providing investment, financial, or economic advisory services; and operating a travel agency in connection with financial services. The Board of Governors of the Federal Reserve and the Department of Treasury have authority under section 4(k) to determine other activities in the future to be financial in nature or incidental to financial activities.

Due to the wide range of activities that are defined as financial in nature under section 4(k) of the Bank Holding Company Act, the definition of ''financial institution'' encompasses a broad spectrum of businesses. In the final rule, the NCUA has added examples of financial institutions, including nontraditional financial institutions. These may include, but are not limited to: personal property appraisers; real estate appraisers; career counselors for employees in financial occupations; digital signature services; courier services; real estate settlement services; manufacturers of computer software and hardware; and travel agencies operated in connection with financial services. However, many entities that are within the broad definition of financial institution likely will not be subject to the rule's disclosure requirements because not all financial institutions have consumers.

(q), (r), and (s) Nonpublic personal information, Personally identifiable financial information, and Publicly available information.

(q) *Nonpublic personal information.* The Board invited comment on two alternative interpretations of the definition of nonpublic personal information in proposed § 716.3(o). Alternative A defined nonpublic personal information to include personally identifiable financial information and any list, description, or other grouping of consumers and any publicly available information pertaining to them that is derived using personally identifiable financial information. The proposed rule excluded publicly available information from the scope of ''nonpublic personal information'' when the information is part of a list, description, or other grouping of consumers that is derived without using personally identifiable financial information. The example that followed the general definition clarified that publicly available information and other identifying information about consumers, such as addresses, would be considered nonpublic personal information if the information is derived from information consumers provided to a financial institution on an application.

Alternative B would have permitted a financial institution to release publicly available information regardless of the source, but still would have prohibited the release of this information as part of a list, description or other grouping of consumers that was derived using personally identifiable financial information. Thus, under alternative B, a credit union could have disclosed the name, address, or other information available to the general public about an individual, as long as it was not disclosed as part of a list.

Alternative A would have required compliance with the notice and opt out requirements if the credit union had received such information from the individual. Under alternative A, in order for the information to be considered publicly available, the credit union would have had to obtain the information from government records, widely distributed media, or government-mandated disclosures. The fact that information was available from those sources would have been immaterial if the credit union did not actually obtain the information from one of them.

Approximately 40 commenters supported alternative B, that information should not be nonpublic personal information if it is publicly available. A few commenters supported alternative A. The Congressional Privacy Caucus urged the Agencies to adopt alternative A because, unless the financial institution has actually obtained the data from a public source, it cannot be certain the information is publicly available. The consensus of the interagency group is to adopt the broader, alternative B, with modifications. Therefore, nonpublic personal information does not include publicly available information, except if it is disclosed in the form of a list derived using personal identifiable financial information.

The final rule adopts an approach that the NCUA and the other Agencies believe incorporates the benefits of both alternatives. Under the final rule, information will be deemed to be ''publicly available'' and therefore excluded from the definition of ''nonpublic personal information'' if a credit union reasonably believes that the information is lawfully made available to the general public from one of the three categories of sources listed in the rule. 12 CFR § 716.3(s)(2). In this way, a credit union will be able to avoid the burden of having to actually obtain information from a public source, but will not be free simply to assume that information is publicly available without some reasonable basis for that belief. The final rule cites, as an example of information a credit union might reasonably believe to be publicly available, the fact that someone has a loan that is secured by a mortgage in jurisdictions where mortgages are recorded. 12 CFR § 716.3(s)(3)(iii)(1). The rule also states that a credit union will have a reasonable basis to believe that a telephone number is publicly available if the credit union either looked the number up in a telephone book or was informed by the consumer that the number is not unlisted. 12 CFR § 716.3(s)(iii)(2).

NCUA also specifically invited comment on whether the definition of ''nonpublic personal information'' would cover information about a consumer that contains no indicators of a consumer's identity. Approximately 40 commenters said no, that aggregated data should not be nonpublic personal information because it is not personally identifiable.

Some commenters contended that the fact that an individual is a customer or consumer of a financial institution is not nonpublic personal information. They also requested that the regulation allow financial institutions to sell lists of consumers and customers. A couple of commenters concurred with the Board's inclusion of lists of consumers as nonpublic personal information.

The final rule in § 716.3(q) includes examples of lists that would and would not be considered nonpublic personal information. A list of individuals' names and street addresses that is derived using personally identifiable financial information, other than publicly available information, would be nonpublic personal information. Such a list that is not derived using personally identifiable financial information and does not indicate that individuals on the list are a consumer of the credit union would not be nonpublic personal information.

(r) *Personally identifiable financial information.* The GLB Act defined ''nonpublic personal information'' to include ''personally identifiable financial information'' but did not define the latter term. The proposed rule in § 716.3(p) generally defined personally identifiable information as information a credit union obtains in connection with providing a consumer a financial service or product. A few commenters supported this definition. Approximately 30 commenters said that proposed definition is too broad and that personally identifiable financial information should not include nonfinancial information.

NCUA continues to believe that this approach creates a workable and clear standard for distinguishing information that is financial from information that is not, while at the same time giving meaning to the word ''financial.'' The broad scope of what is deemed a ''financial product or service'' under the GLB Act requires a comparably broad scope of what is deemed ''financial information.''

NCUA and the other Agencies have revised the definition in the final rule

§ 716.3(r) to add a couple of additional examples of what would and would not be personally identifiable financial information. One of the new examples of personally identifiable financial information is information the credit union collects through an Internet cookie, an information collecting device from a web server. A new example of what would not be personally identifiable financial information is information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers, such as account numbers, names or addresses.

NCUA has retained other examples of personally identifiable financial information from the proposed rule. One such example is the fact that an individual has been a credit union's member or has obtained a financial product or service from it. NCUA disagrees with those commenters who maintain that member relationships should not be considered personally identifiable financial information. Clearly, information that a particular person has a member relationship identifies that person, and this is personally identifiable. The NCUA believes that this information is also financial, because it communicates that the person has a financial relationship with the credit union. While this information would in many cases be a matter of public record, that does not change the analysis of whether the information is personally identifiable financial information.

(s) *Publicly available information.* The proposed rule in § 716.3(q) defined ''publicly available information'' as information lawfully made available to members of the general public that is obtained from three broad types of sources: Official public records, widely distributed media, or information from public disclosures required by law. The proposed rule stated that information obtained over the Internet would be considered publicly available information if it was obtainable from a site available to the general public without requiring a password or similar restriction.

The Board invited comment on what information should be considered publicly available, particularly in the context of information available over the Internet. Approximately 35 commenters wrote that publicly available information includes information that could be derived from a public source, even if it is obtained from a nonpublic source, such as an application for financial services. Several commenters wrote that publicly available information should include name, address, and phone number. A couple of commenters suggested that the Board model its definition after the Securities and Exchange Commission's definition of publicly available information.

The NCUA and the other Agencies have modified and adopted the Securities and Exchange Commission's proposed definition in the final rule. NCUA's final rule defines ''publicly available information'' as information the financial institution has a reasonable basis to believe is lawfully made available to the general public from the three broad types of sources. 12 CFR 716.3(s). The NCUA and the other Agencies have decided that financial institutions have a reasonable basis to believe information is lawfully available to the general public if they take steps to determine that the information is of the type available to the general public and, if an individual can direct that the information not be made available to the general public, that an individual has not done so. The examples of what constitutes a reasonable basis were discussed in the above section on nonpublic personal information.

Publicly available information will be excluded from the scope of ''nonpublic personal information,'' whether or not the credit union obtains it from a publicly available source (unless, as previously noted, it is part of a list of consumers that is derived using personally identifiable financial information). Under this approach, the fact that a consumer has given publicly available information to a credit union would not automatically extend to that information the protections afforded to nonpublic personal information.

Several commenters objected to the example in § 716.3(q)(2)(ii) of the proposed rule that publicly available information from widely distributed media includes information from an Internet site that is available to the general public ''without requiring a password or similar restriction.'' The NCUA and the other Agencies agree with the commenters that some web sites require a password or fee to obtain public information. Therefore, the example in the final rule provides that widely distributed media includes information from a web site that is available to the general public on an unrestricted basis. The fact that a web site has a fee or password does not render the web site restricted.

Subpart A—Privacy and Opt Out Notices

Section 716.4 Initial Privacy Notice to Consumers Required

The GLB Act requires a financial institution to provide an initial notice of its privacy policies and practices in two circumstances. For customers, the notice must be provided at the time of establishing a customer relationship. For credit unions, ordinarily this will be at the time an individual applies for membership. For consumers who do not become members, the credit union must provide the notice prior to disclosing nonpublic personal information about the consumer to a nonaffiliated third party.

Proposed § 716.4(a) required a credit union to provide an individual a privacy notice prior to the time that it establishes a customer relationship. The final rule provides that the credit union must provide the initial notice not later than the time it has established a member relationship. Nothing in the proposed rule is intended to discourage a credit union from providing a privacy notice at an earlier point in the relationship to make it easier for an individual to compare several institutions' privacy policies and practices in advance of conducting transactions.

The final rule provides in § 716.4(c)(2) that a credit union establishes a member relationship with a consumer when the credit union originates or the consumer's loan. However, if the credit union transfers the servicing rights to a loan, the membership relationship transfers with the servicing rights. The final rule provides examples of this ''loan rule'' in § 716.4(c)(3)(ii), including examples of a credit union that originates the loan and retains the servicing rights or purchases the servicing rights to the loan.

A few commenters requested that the rule not require a new opt out notice when an existing customer opens a new account. NCUA agrees that it is unnecessary for a credit union to provide a member with additional copies of its initial notice every time the member obtains a financial product or service. The final rule in § 716.4(d) contains a new provision that the credit union need not provide a new privacy notice to an existing member who has already received a notice that was accurate with respect to the new financial product or service. If the credit union's privacy policies and practices have changed, the credit union may provide the member with a revised privacy notice if it chooses to do so. Under § 716.8, the credit union would

have to provide a new privacy notice if the new account was not covered by the previously provided notice.

The proposed rule in § 716.4(f) provided that, if a credit union and consumer orally enter into a contract for financial services over the telephone, the credit union may provide the consumer with the initial notice after providing the service so as not to delay the transaction. Several commenters wrote that when accounts are opened over the phone it would be reasonable for the credit union to provide the disclosures, including opt out notices at a reasonable time after the transaction, such as within 20 days. They contended that the rule should not require the consumer to consent to the subsequent delivery of the notice. This would be consistent with the requirements under the Truth in Savings Act. One commenter wrote that the notice should be in writing at the time the service is provided, not later.

Consistent with the proposed rule, the final rule allows, in some cases, for subsequent delivery of initial notices within a reasonable time after the credit union establishes a member relationship and examples of this under § 716.4(e). First, the credit union may provide notice after the fact if the establishment of the member relationship is not at the customer's election. This might occur, for instance, when a share account is transferred. Second, a credit union may send notice after establishing a member relationship when to do otherwise would substantially delay the consumer's transaction and the consumer agrees to receive the notice at a later time. An example of this would be when a transaction is conducted over the telephone and the member desires prompt delivery of the financial product or service. Third, the final rule also permits after-the-fact notices when an independent third party arranges the member relationship on the credit union's behalf without its prior knowledge. Typical of this type of arrangement would be the submission to a credit union by a college's financial aid office of a completed student loan application along with a request for prompt disbursement upon the credit union's acceptance of the application.

The Board notes that in most situations, and particularly in situations involving the establishment of a member relationship in person, a credit union should give the initial notice at a point when the consumer still has a meaningful choice about whether to enter into the member relationship. The exceptions listed in the examples, while not exhaustive, are intended to illustrate the less frequent situations when delivery either would pose a significant impediment to the conduct of a routine business practice or the consumer agrees to receive the notice later in order to obtain a financial product or service immediately.

In circumstances when it is appropriate to deliver an initial notice after the member relationship is established, a credit union should deliver the notice within a reasonable time thereafter. A few commenters requested that the final rule specify precisely how many days a credit union has in which to deliver the notice under these circumstances. However, the Board believes that a rule prescribing the maximum number of days would be inappropriate because (a) the circumstances of when an after-the-fact notice is appropriate are likely to vary significantly, and (b) a rule that attempts to accommodate every circumstance is likely to provide more time than is appropriate in many instances. Thus, rather than establish a rule that the Board believes may be viewed as applicable in all circumstances, the Board elected to retain the more general rule as set out in the proposal in § 716.4(e)(1).

As the Board noted in the preamble to the proposed rule, nothing in the rule is intended to discourage a credit union from providing an individual with a privacy notice at an earlier point in the relationship if the institution wishes to do so in order to make it easier for the individual to compare its privacy policies and practices with those of other financial institutions in advance of conducting transactions. The Board requested comment on who should receive a notice where there is more than one party to an account. Approximately 50 commenters replied that the regulation should require only that the primary account holder should receive the notice and right to opt out. The reasons in support of giving only the primary account holder notice and opt out rights were that: This is consistent with other regulations; some joint account holders are minors; some live in the same households as each other; addresses for some joint account holders are not available; and it would be burdensome to provide notice and opt out to all account holders. A few commenters wrote that the financial institution should have the option to offer more than one party to an account individual notice and opt out rights and incur the extra cost.

The commenters who noted that one notice is consistent with other regulations cited those implementing the Equal Credit Opportunity Act (Regulation B, 12 CFR part 202) and the Truth in Lending Act (Regulation Z, 12 CFR part 225). Commenters noted that under both regulations, a financial institution is permitted to give only one notice. The authorities cited include requirements that the financial institution give disclosures, as appropriate, to the ''primary applicant'' if this is readily apparent (in the case of Regulation B; *see* 12 CFR 202.9(f)) or to a person ''primarily liable on the account'' (in the case of Regulation Z; *see* 12 CFR 226.5(b)).

The Board found these comments persuasive with respect to financial products and services, other than loans (including lines of credit). The Board believes that co-makers and guarantors on loans should receive the notice and right to opt out because of the extent and nature of nonpublic personal information provided to the credit union in conjunction with these types of transactions. Co-makers and guarantors of loans are entitled to receive separate notices. The final rule in § 716.4(f) provides that if two or more consumers obtain a financial product or service, other than a loan, from the credit union jointly, it may satisfy the initial notice requirement by providing one initial notice to those consumers jointly, but that either consumer may exercise the opt out right.

For ease of reference, the final rule provides in § 716.4(g) that credit unions should refer to § 716.9 for methods of delivering an initial privacy notice or § 716.6 for initial notices for nonmember consumers.

Section 716.5 Annual Privacy Notice to Members Required

The proposed rule required a credit union to provide customers with a clear and conspicuous notice that accurately reflects the privacy policies and practices, once during any period of twelve consecutive months. Although the GLB Act requires financial institutions to provide annual notices to customers, several commenters recommended eliminating the requirement. A few commenters wrote that the Board should require credit unions to send the notice once every calendar year, not once annually, so that they can send the notices to all customers in a mass mailing with other required disclosures. The final rule provides that the credit union may define the 12-consecutive-month period, and includes a new example.

The Board requested comment on whether the example of dormant accounts provides a clear standard for whether an individual is exempt from the annual notice requirement and whether the applicable standard should

be the credit union's policies or state law. The Board also requested comment on whether the standard should apply to members as well as nonmembers.

A few commenters supported application of the dormant account standard under state law. Several commenters supported use of the term inactive instead of dormant. Several commenters wrote that the credit union's policy on inactive accounts, rather than state law on dormant accounts should apply. These commenters contended that reliance on state dormancy laws might produce conflicting results and unnecessary burden for credit unions operating in more than one state. Several commenters supported a standard of 12 months with no documented account activity rather than either term. The final rule retains the examples and uses the term inactive instead of dormant. The Board believes an example that suggests credit unions look to their own inactive account policies provides adequate guidance and greater flexibility than suggesting credit unions look to state dormancy laws.

Some commenters said members and nonmembers should be treated the same with regard to the standard for dormant accounts. The Board has retained the distinction between nonmember and member inactive accounts because a credit union may still have a duty to provide notices to an individual who is a member under the credit union's bylaws, regardless of whether a member's account has been declared inactive. The duty to provide notice to an individual who is a member under the credit union's bylaws only ceases when the member relationship terminates.

Section 716.6 Information To Be Included in Initial and Annual Privacy Notices

The proposed rule provides the required content for the initial and annual notices to customers. The proposed rule required notices to include: categories of nonpublic personal information that a credit union may collect; categories it may disclose; categories of affiliates and nonaffiliated third parties to whom a credit union discloses nonpublic personal information; information about former customers; information disclosed to service providers; the right to opt out; disclosures made under the Fair Credit Reporting Act (FCRA); and confidentiality, security, and integrity standards. The final rule provides that a credit union need only include each of the above items that apply to it, but may include other information.

Several commenters found these requirements burdensome and more detailed than the GLB Act requires. One commenter requested that the right to opt out not be disclosed in the privacy notice. A few commenters requested that the Board use the plain language of the GLB Act for the content of the notice and delete other requirements. The final rule provides that a credit union may send a short-form initial notice with an opt out notice for nonmember consumers under § 716.6(c). This short-form must state that a privacy notice is available upon request and provide a reasonable means, such as a toll-free number, by which the consumer may obtain the notice.

The proposed rule requested comment on whether a disclosure that a credit union makes disclosures as permitted by law to nonaffiliated third parties in addition to those described in the notice would be adequate. Several commenters wrote that this disclosure was adequate. A couple of commenters objected to this disclosure because the GLB Act specifically exempts notice in these instances and it could cause consumer confusion. The final rule retains the provision for disclosures as permitted by law as the NCUA and the other Agencies proposed it.

Several commenters requested that the Board clarify the meaning of the terms ''categories of information'' that are ''collected'' and ''disclosed'' and amend the examples. A few commenters recommended the rule retain the examples used for the categories of information collected and repeat those examples for the categories of information disclosed. NCUA and the other Agencies are revising and expanding the examples for these terms in the final rule in § 716.6(e).

One commenter suggested that the Board create an exemption from the annual notice requirement for credit unions that do not share nonpublic personal information with nonaffiliated third parties. NCUA and the other Agencies are rejecting this suggestion, but the final rule in § 716.6(e)(5) permits credit unions to provide simplified notices if they do not disclose or intend to disclose nonpublic personal information to affiliates or nonaffiliated third parties except under the exceptions authorized in §§ 716.14 and 716.15.

The proposed rule stated that the NCUA was in the process of preparing proposed section 501 standards relating to administrative, technical, and physical safeguards. A few commenters wrote that credit unions need guidance on security standards. The NCUA intends to issues proposed standards as an appendix to this regulation for notice and public comment in approximately one month.

A couple of commenters wrote that the disclosures of who has access to the information were unnecessary and could be harmful to a financial institution's security. The final rule provides that the credit union need only describe in general terms who is authorized to have access to the information and provides an example in § 716.6(e)(6).

A few commenters requested that the rule clarify that the privacy policies and practices of several different affiliated financial institutions may be described on a single notice. Related to this point, commenters requested that the final rule address whether affiliated financial institutions, each of whom has a customer or member relationship with the same consumer, may elect to send only one notice to the consumer on behalf of all of the affiliates covered by the notice and have that one notice satisfy the disclosure obligations under § 716.4 of each affiliate. NCUA and the other Agencies agree that financial institutions should be able to combine initial disclosures in one document. The final rule reflects this flexibility, in § 716.6(e)(7). NCUA and the other Agencies emphasize that the notice must be accurate for all financial institutions using the notice.

Section 716.7 Form of Opt Out Notice to Consumers and Opt Out Methods

The proposed rule in § 716.8 provided as an example that a credit union will provide adequate notice of the right to opt out if it identifies: The categories of information that may be disclosed; the categories of nonaffiliated third parties to whom the information may be disclosed; and that the consumer may opt out of those disclosures. The final rule adds that the credit union should also identify the financial products or services that the consumer obtains, either singly or jointly from the credit union, to which the opt out direction would apply.

The proposed rule also provided several examples by which a credit union may provide a reasonable means for the consumer to opt out, including check off boxes, self-addressed stamped reply forms, and electronic mail addresses. Approximately 20 commenters requested that the Board delete the stamped reply example, contending it is unreasonable, unfair, costly to financial institutions, and not a statutory requirement. A couple of commenters supported the concept of stamped reply forms so that opting out would be convenient for the consumer.

In the final rule, the Board has deleted the reference to self-addressed and stamped, but has retained the example of a reply form in § 716.7(a)(2)(ii)(B).

Several commenters wrote that they supported allowing opt outs by electronic means. The final rule retains this example in § 716.7(a)(2)(ii)(C).

A few commenters recommended that the Board permit the consumer to opt out orally. Approximately 16 commenters requested that the final rule include an example of opt out by means of a toll-free telephone number. The final rule adds the example of a credit union providing a toll-free telephone number that consumers may call to opt out in § 716.7(a)(2)(ii)(D).

The proposed rule stated that a credit union does not provide a reasonable means of opting out if it requires a consumer to send his or her own letter informing the credit union of the opt out election. One commenter supported this interpretation. Four commenters disagreed and wrote that the proposed rule goes beyond the GLB Act on this issue. The final rule retains this example in § 716.7(a)(2)(iii)(A). The final rule also provides another example of an unreasonable means of opting out. This would be if the credit union describes in a subsequent opt out notice that a consumer may opt out by designating check-off boxes that were provided with the initial notice, but not included with the subsequent notice.

Several commenters requested that the Board provide that credit unions will be able to impose their own requirements on how consumers opt out. For example, a commenter requested that the Board permit credit unions to require customers to submit account numbers with an opt out request. The final rule provides that a credit union may require each consumer to opt out through a specific means, if it is reasonable for that consumer. 12 CFR 716.7(a)(2)(iv). The final rule provides that a credit union may provide the opt out notice together with or on the same form as the initial notice. 12 CFR 716.7(b).

NCUA requested comment on how the right to opt out should apply to joint account holders and trustees of commingled trust accounts, where a trustee manages a single account on behalf of multiple beneficiaries. For the same reasons as in the discussion on initial notice under § 716.4, approximately 50 commenters supported only requiring that the primary account holder get a right to opt out. A few commenters wrote that either party on a joint account should have the right to opt out. One commenter requested that, if one party to a joint account wants to opt out, the financial institution should honor his or her request. The final rule provides that the credit union need only provide one opt out notice to holders of accounts, other than loans, but that either party to the joint account may exercise an opt out direction. 12 CFR 716.7(d). The final rule provides that the credit union may treat the opt out direction by a joint consumer as applying to all of the associated joint consumers or permit each joint consumer to opt out separately. The final rule also provides an example. 12 CFR 716.7(d)(5).

With regard to application of the right to opt out to trustees, as previously discussed in connection with the definition of consumer, 12 CFR § 716.3(e)(1), a credit union need not provide notice to both a consumer and a consumer's legal representative. Thus, a credit union may provide notice of the right to opt out to either the beneficiaries or their legal representative.

The proposed rule in § 716.8(d) stated that a consumer has the right to opt out at any time. The proposed rule also required that the sharing of nonpublic personal information stop promptly when the consumer opts out. Some commenters asked the Board to clarify in the final rule how long a credit union has after receiving an opt out to cease disclosing nonpublic personal information to nonaffiliated third parties. Several commenters requested that the rule provide no opt out rights once a sharing or affinity program has begun. Several commenters requested that the right to opt out should only affect disclosures after the consumer has opted out and should not apply retroactively. One commenter requested that the rule require a financial institution has to comply with a consumer's subsequent opt out within 30 days of his or her request.

The final rule retains the consumer's continuing right to opt out. 12 CFR 716.7(f). The final rule also requires the sharing of nonpublic personal information to stop as soon as reasonably practicable after the credit union receives the opt out direction. 12 CFR 716.7(e). NCUA, consistent with the other Agencies, believes that it is appropriate to retain this more general rule in light of the wide range of practices throughout the financial institutions industry. A potential drawback of a more prescriptive rule is that a credit union might use the standard as a safe harbor in all instances and thus fail to honor an opt out as early as it is otherwise capable of doing. Another drawback is that a standard that is set in light of current industry practices and capabilities is likely to become outmoded quickly as advances in technology increase efficiency. NCUA therefore declines to adopt a more rigid standard, and instead retains the rule as set out in § 716.7(e) of the final rule.

The proposed rule in § 716.8(e) stated that an opt out will continue until a consumer revokes it in writing, or, if the consumer agrees, electronically. The final rule retains those requirements in § 716.7(g). The final rule clarifies that when the member relationship terminates, the opt out direction continues to apply to information collected during the relationship. If the individual then enters into a new member relationship with the credit union, the former opt out direction does not apply to the new relationship. 12 CFR 716.7(g)(2). The final rule states that requirements for delivery of the opt out notices are found in § 716.9. 12 CFR 716.7(h).

NCUA requested comment on the regulatory burden of complying with opt out notices. How do credit unions expect to give opt out opportunities? How many opt outs do credit unions expect to receive and need to process? Commenters who responded generally did not address these issues with specificity, but some stated that complying with the opt out notice requirements and directions will be burdensome.

Section 716.8 Revised Privacy Notices

For ease of reference in the final rule, NCUA and the other Agencies are grouping the provisions concerning revised notices into one section. The proposed rule contained requirements that a credit union send a customer a new notice and opt out when there is a change in terms. A couple of commenters recommended eliminating these requirements. A couple of commenters recommended the Board revise the language to specify a ''material'' change in terms. One commenter wrote that when a financial institution changes its terms, a consumer's prior opt out should remain in effect for 30 days while he or she is permitted to consider the new right to opt out. NCUA and the other Agencies are retaining these requirements in the final rule as proposed, but are adding an additional example. The new example provides that the credit union must provide a revised policy notice if it discloses nonpublic personal information to a nonaffiliated third party about a former customer who has not had the opportunity to exercise an opt out right regarding that disclosure. The final rule moves the requirements

for delivery of the revised notices to § 716.9.

Section 716.9 Delivering Privacy and Opt Out Notices

In the proposed rule, the rules governing how credit unions must provide the initial and annual privacy notices and opt out notices were found in various sections depending on the type of notice. For ease of reference in the final rule, NCUA and the other Agencies are grouping the provisions concerning delivery of privacy and opt out notices into one section.

The proposed rule provided that the notices may be delivered in writing or, if the consumer agrees, electronically. The proposed rule required that the credit union provide the notices so that each recipient can reasonably be expected to receive actual notice. A few commenters objected to the requirement that the credit union must reasonably expect the customer will receive the notice. Their reasons were that this requirement is: Not expressly stated in the statute, not consistent with other disclosure regulations, and burdensome. The final rule in § 716.9(a) contains the requirements for any privacy notices and opt out notices, including short-form initial notices.

The proposed rule provided examples of acceptable methods of delivery of the notice to customers where the credit union may reasonably expect the customer will receive the notice. The Board requested comment on the regulatory burden of providing the initial notice and the methods credit unions expect to use to provide the notice.

One commenter recommended the reference to sending the consumer an electronic mail notice be deleted because a preferable method would be for a customer to access the notice on a secure site. Several commenters requested that the regulation provide examples of other means of electronic delivery, such as posting the notice on the web and informing the consumer to access the site, or sending an electronic mail with a link to the notice. The final rule retains the examples of reasonable and unreasonable expectations of delivery in § 716.9(b).

The proposed rule stated that oral notices alone are insufficient. A few commenters requested that oral notice be permitted where the financial institution establishes the customer relationship over the telephone. A few commenters objected that it would be costly to train staff to provide oral notices. The final rule retains the provision that oral notices alone are insufficient in § 716.9(d).

Several commenters wrote that providing the annual notice will be burdensome and a waste of resources. One commenter requested that credit unions not be required to send the notice unless their policies have changed. Some commenters requested that the regulation permit the credit union to comply with the annual notice requirement by posting the notice on its web site. NCUA and the other Agencies agree with the commenters. For annual notices only, the final rule permits a credit union to reasonably expect a member to receive notice if the member uses the credit union's web site to access financial products and services electronically, agrees to receive notices there, and the credit union posts the current privacy policy there in a clear and conspicuous manner. 12 CFR § 716.9(c).

Several commenters requested that customers should be able to waive the right to receive the annual notice. Another commenter wrote that a credit union should be able to comply with the law by providing the policy to customers only upon their request. A couple of commenters requested that credit unions should not have to send the notice to customers who have opted out. The final rule permits the credit union to reasonably expect that a member will receive actual notice of the privacy notice if he or she has requested the credit union refrain from sending any information regarding the member relationship and the current policy remains available to the member upon request. 12 CFR 716.9(c).

The proposed rule in § 716.4(g) required the credit union to provide the notice to the customer in a form that can be retained or obtained at a later time, in a written form or if the customer agrees, in electronic form. Some commenters supported the requirement for the notice to be retainable or obtainable and some opposed it as burdensome. A few commenters wrote that the Board should delete the requirement that the consumer must agree to the electronic form. One commenter suggested that the agreement should be implied if the customer initiates an electronic transaction.

NCUA requested comment on whether there are situations where providing notice by mail is impracticable. Several commenters suggested the credit union should not have to provide the notice by mail if the credit union does not have the customer's current address. Some commenters suggested that the credit union should not have to provide the disclosures at all if it does not have the address or another way to contact the customer.

Section 716.9(e) of the final rule retains the requirement that the initial notice, annual notice, and any revised notice be given in a way so that the member may either retain them or access them at a later time and provides examples, such as mailing the notice to the last known address. NCUA acknowledges that, in some cases, credit unions will not have any means of delivery.

Subpart B—Limits on Disclosures

Section 716.10 Limits on Disclosure of Nonpublic Personal Information to Nonaffiliated Third Parties

NCUA and the other Agencies are moving the main operative provisions from § 716.7 in the proposed rule to § 716.10 in the final rule. The proposed rule in § 716.7 required that a credit union give the consumer a reasonable opportunity to opt out before it discloses the consumer's information. The proposed rule provided an example that when a credit union has mailed a privacy notice to a customer, he or she will have 30 days to opt out. NCUA invited comment on whether 30 days is a reasonable opportunity to opt out in the case of notices sent by mail. Several commenters requested that NCUA remove the reference to 30 days. Several commenters wrote that 30 days was a reasonable time period. A few commenters recommended 15 days and one recommended 60 days. The final rule retains 30 days as an example of a reasonable period of time to allow the consumer to opt out by mailing a form, calling a toll-free number, or any other reasonable means. 12 CFR 716.10(a)(3)(i).

NCUA also requested comment on whether an example in the context of transactions conducted using an electronic medium would be helpful. One commenter wrote that three days was a reasonable period for the consumer to opt out when the delivery of the notice was by electronic methods. A few commenters requested that the Board specify a uniform time frame as a reasonable opt out period, no matter how the credit union has delivered the notice. The Board agrees with these commenters. The final rule adds an example of reasonable opportunity to opt out by electronic means for a member who opens an on-line account with a credit union. If the credit union makes the notices available on its web site, the member may opt out by any reasonable means within 30 days after the date he or she acknowledges receipt of a notice. 12 CFR 716.10(a)(3)(ii).

The proposed rule also provided an example of a reasonable method for the consumer to opt out in an isolated transaction. One commenter recommended not requiring the opt out to be a necessary part of the transaction. A couple of commenters recommended allowing the consumer to opt out at a later time by mail. The final rule retains the example from the proposed rule. 12 CFR 716.10(a)(3)(iii).

A couple of commenters requested that the Board clarify the description of partial opt outs. The Board believes the description is adequate and the final rule retains the description from the proposed rule. 12 CFR 716.10(c).

Section 716.11 Limits on Redisclosure and Reuse of Information

Section 716.12 of the proposed rule implemented the GLB Act's limitations on redisclosure and reuse of nonpublic personal information about consumers. Section 502(c) provides that a nonaffiliated third party that receives nonpublic personal information from a financial institution shall not, directly or through an affiliate of the third party, disclose the information to any person that is not affiliated with either the financial institution or the third party, unless the disclosure would be lawful if made directly by the financial institution. The final rule revises the language and adds examples.

Paragraph (a)(1) of the proposed rule set out the GLB Act's redisclosure limitation as it applies to a credit union that receives information from another financial institution. Paragraph (b)(1) of the proposed rule mirrored the provisions of paragraph (a)(1), but applied the redisclosure limits to any nonaffiliated third party that receives nonpublic personal information from a credit union.

The Board requested comment on whether subsequent disclosures by the third party to parties other than the credit union are lawful. One commenter wrote that no third party reuse should be allowed. Approximately 11 commenters thought some reuse by third parties should be allowed as permitted by law or the exceptions.

Some of these commenters criticized imposing limits on reuse premised on the conclusion that Congress, by addressing limits on redisclosures in section 502(c) of the GLB Act, provided the only limits that may be imposed on what a recipient of nonpublic personal information can do with that information. The Board, consistent with the other Agencies, disagrees with that premise. Section 502(c) is silent on the question of reuse, making it necessary to look to the overall purpose of the statute to determine whether the Board should impose limits on the ability of nonaffiliated third parties to reuse nonpublic personal information that they receive from a credit union. The Board, consistent with the other Agencies, believes that the overall purposes of subpart A of Title V of the Act makes it appropriate to impose limits on reuse, depending on whether the information was obtained pursuant to one of the exceptions in section 502(e) of the GLB Act (as implemented by §§ 716.14 and 716.15 of the final rule).

When disclosures are made in connection with one of the purposes set out in section 502(e), those disclosures are exempt from the notice and opt out protections altogether. A consumer has no right to prohibit those disclosures or even to know more than the financial institution is making the disclosures ''as permitted by law.'' The only protection afforded by the statute for disclosures made under section 502(e) is the limited nature of the exceptions. The Board believes it would be inappropriate to undermine the protection by allowing the recipient of nonpublic personal information to reuse the information for any purpose, including marketing.

By contrast, when a consumer decides not to opt out after being given adequate notices and the opportunity to do so, that consumer has made a decision to permit the sharing of his or her nonpublic personal information to the categories of entities identified in the financial institution's notices. The consumer's primary protection in the case of a disclosure falling outside the 502(e) exceptions comes from receiving the mandatory disclosures and the right to opt out. The statute provides only the additional protection in section 502(c), restricting a recipient's ability to redisclose information to entities that are not affiliated with either the recipient or the financial institution making the disclosure initially. Thus, if a consumer permits a financial institution to disclose nonpublic personal information to the categories of nonaffiliated third parties that are described in the institution's notices, recipients of that nonpublic personal information appear authorized under the statute to make disclosures that comply with those notices.

To implement this statutory scheme, the Board, consistent with the other Agencies, has retained a limit on reuse in addition to the limit on redisclosures. The final rule addresses a credit union's disclosure of the information it receives from a financial institution to: The credit union's own affiliates, the financial institution's affiliates, and others. A credit union may disclose the information to its affiliates who, in turn, may disclose and use the information only to the same extent as the credit union. Second, a credit union may disclose the information to the affiliates of the financial institution from whom the credit union received the information. Third, a credit union may disclose and use the information pursuant to the exceptions under §§ 716.14 and 716.15. The limits on redisclosure and reuse that apply to recipients of information and their affiliates will vary, depending on whether the information was provided pursuant to one of the exceptions in §§ 716.14 and 716.15.

If a credit union received the nonpublic personal information from a financial institution pursuant to an exception under §§ 716.14 and 716.15, the credit union may disclose the information to its affiliates or to affiliates of the financial institution from which the information was received. In addition, the credit union may disclose and use the information pursuant to an exception in 716.14 or 716.15 in the ordinary course of business to carry out the activity covered by that exception. 12 CFR 716.11(a)(1)(iii). An example of this is if a credit union performs correspondent services for another credit union and receives a list containing member information, the credit union performing the services may disclose the list in response to a subpoena or to its attorneys, accountants, or auditors. The credit union could not use the list for its own marketing or disclose the list to a third party for marketing. The credit union's affiliates may disclose and use the information, but only to the extent permissible for the credit union.

If a credit union received the nonpublic personal information from a financial institution other than pursuant to an exception under § 716.14 or 716.15, the credit union may disclose the information to its affiliates or to the affiliates of the financial institution that made the initial disclosure. In addition, the credit union may disclose the information to any other person if the disclosure would be lawful if the financial institution made the disclosure directly to that person. The final rule also provides an example. The credit union may disclose a list it receives from a financial institution to another nonaffiliated third party only if the financial institution could have lawfully disclosed it to the nonaffiliated third party. The credit union may disclose the list in accordance with the privacy policy of the financial institution, as limited by the opt out directions of each

consumer whose information the credit union intends to disclose. The affiliates of the credit union may disclose the information only to the extent that the credit union may disclose the information.

The Board requested comment on whether the rule should require a credit union that discloses nonpublic personal information to a nonaffiliated third party to develop policies and procedures to ensure that the third party complies with the limits on redisclosure of that information. Approximately 25 commenters thought that the credit union should not be responsible for third party compliance because it would be burdensome and unnecessary. A few commenters replied that financial institutions should develop policies and procedures on third party compliance. A few commenters wrote that the Board should suggest confidentiality agreements between credit unions and vendors. One commenter suggested that a credit union should use due diligence when selecting the third party.

The Board, consistent with the other Agencies, has given these comments due consideration and § 716.11 of the final rule does not impose a specific duty on credit unions to monitor third parties' use of nonpublic personal information provided by the credit unions. The Board notes, however, that credit unions may have contracts in place that limit what the recipient may do with the information. The Board also notes that the limits on reuse as stated in the final rule provide a basis for an action to be brought against an entity that violates those limits.

Paragraphs (c) and (d) of the final rule mirror the provisions of paragraphs (a) and (b) of the final rule. The same general redisclosure and reuse limits apply to any nonaffiliated financial institution that receives nonpublic personal information from a credit union as would apply to a credit union that receives such information from a nonaffiliated financial institution.

Section 716.12 Limits on Sharing of Account Number Information for Marketing Purposes

Section 502(d) of the GLB Act prohibits a financial institution from disclosing, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer. Proposed § 716.13 restated this statutory prohibition with minor stylistic changes intended to make the rule easier to read.

A few commenters recommended that the Board clarify that these limits only apply to credit card accounts, transaction accounts and deposit accounts. Several commenters requested that the Agencies provide a definition and specific examples of a transaction account. A few commenters requested confirmation that transaction accounts do not include mortgage accounts or insurance accounts. The final rule clarifies that a transaction account is an account other than a share account or credit card account, and does not include an account to which a third party cannot initiate a charge. 12 CFR 716.12(c)(2).

The Board also requested comment on whether a flat prohibition would disrupt routine, unobjectionable practices. Several commenters were concerned that it would disrupt the practices of a service provider who prepares and distributes monthly credit union statements and includes literature about products with the statement. Approximately 18 commenters requested that the Board clarify that the scope of the prohibition is narrow. One commenter requested that the Agencies adopt this rule unchanged from the proposed and not add any exceptions.

The commenters requested clarification that the limits on sharing do not apply to a financial institution itself or those acting on behalf of the financial institution. Some credit unions noted that they use agents or service providers to conduct marketing on the credit union's behalf. This might occur, for instance, when a credit union instructs a service provider that assists in the delivery of monthly statements to include a ''statement stuffer'' with the statement informing consumers about a financial product or service offered by the credit union. NCUA, consistent with the other Agencies, recognizes the need to disclose account numbers in this instance, and believes that there is little risk to the consumer presented by such disclosure. Similarly, NCUA recognizes that a credit union may use agents to market the credit union's own financial products and services. Commenters advocating that the final rule exclude disclosures to agents stated that the agents effectively act as the credit union in the marketing of its financial products and services. These commenters suggested that there was no more reason to preclude sharing the account numbers with an agent hired to market the credit union's financial products and services than there would be to preclude sharing between two departments of the same credit union.

The final rule provides for an exception to the prohibition on account number disclosure to the credit union's agent or service provider solely in order to perform marketing for the credit union's products or services, as long as the agent or service provider cannot directly initiate charges to the account. 12 CFR 716.12(b)(1).

The Board requested comment on whether the GLB Act prohibits a credit union from disclosing encrypted account numbers to a marketing firm if the credit union does not provide the key to the marketer. The Board also requested comment on whether an exception could avoid creating risks that may arise when a third party is provided access to a consumer's account. Approximately 21 commenters requested that the rule permit a financial institution to disclose an encrypted, truncated, scrambled, reference, or similarly coded form number to identify a customer. NCUA, consistent with the other Agencies, believes that consumers will be adequately protected by disclosures of encrypted account numbers that do not enable the recipient to access the consumer's account. The final rule provides a negative example that an account number, or similar form of access number or code, does not include a number or code in an encrypted form, if the credit union does not provide the recipient with a means to decode the number or code. 12 CFR 716.12(c)(1).

The Board also requested comment on whether a consumer should be able to consent to the disclosure of his or her account number and what standards should apply. All of the approximately ten commenters who commented on this issue wrote that the regulation should state that a consumer may consent to disclosure. A few commenters requested that the rule permit credit unions to share a customer's account number with a third party if the customer actually purchases the marketed product. The final rule addresses consumer consent in § 716.15, and does not address it again in this section.

Several commenters requested that a credit union should be able to disclose an account number to a participant in a private label credit card program or an affinity or similar program where participants are identified to the member when the member enters the program. Under these programs, a consumer typically will be offered certain benefits, often by a retail merchant, in return for using a credit card that is issued by a particular financial institution. In the example of a private label credit card, the consumer

understands the need for the merchant and the financial institution to share the consumer's account number. The NCUA and the other Agencies believe this sort of disclosure is appropriate and does not create a significant risk to the consumer. The final rule provides for this exception in § 716.12(b)(2) where the participants are identified to the consumer at the time the consumer enters into the program.

Subpart C—Exceptions

Section 716.13 Exception to Opt Out Requirements for Service Providers and Joint Marketing

Section 502(b) of the GLB Act creates an exception to the opt out rules for the disclosure of information to service providers and for marketing. A consumer will not have the right to opt out of disclosing nonpublic personal information to nonaffiliated third parties under these circumstances, if the credit union satisfies certain requirements. Section 502(b) of the GLB Act provides that the financial institution must ''fully disclose'' to the consumer that it will provide this information to the nonaffiliated third party before the information is shared. This disclosure should be provided as part of the initial notice that is required by § 716.4. NCUA invited comment on whether the proposed rule in § 716.9 appropriately implemented the requirement of ''full'' disclosure.

A couple of commenters suggested that consumers should be fully informed of the parties to the joint marketing agreements. One supported this approach so that members can report abuses to NCUA. Another commenter opposed specific, separate disclosures for joint marketing agreements. The Board believes that the notice requirement as proposed satisfies the full disclosure requirement of the GLB Act and, therefore, retains the same notice requirement in the final rule.

The GLB Act allows the Agencies to impose requirements on the disclosure of information pursuant to the exception for service providers beyond those imposed in the statute. NCUA, like the other Agencies, did not do so in the proposed rules, but invited comment on whether additional requirements should be imposed, and, if so, what those requirements should address. Approximately ten commenters wrote that the Agencies should reconsider this exception for opt out requirements for service providers and also eliminate the notice requirement. These commenters wrote that the notice and contract requirements under § 502(b) should not apply to outsourcing arrangements where the third party agent, processor or server is performing operational functions on behalf of the credit union. They requested that service providers instead should be exempt from notice and opt out requirements under the § 716.10 exception. The final rule in § 716.13 retains application of this section to service providers because it is statutory.

One commenter requested that the Agencies provide examples of this service provider exception. The exception would apply, for example, to service providers whose services are not necessary in order for the credit union to provide financial services or products to consumers. The final rule provides a new example, that if a credit union discloses nonpublic personal information to a financial institution with whom it performs joint marketing, the contract must prohibit the institution from disclosing or using the information except as necessary to carry out the joint marketing or under an exception in § 716.14 or 716.15 in the ordinary course of business to carry out that marketing.

The proposed rule in § 716.9 required the credit union to enter into a contract with the third party that requires the third party to maintain the confidentiality of the information. Several commenters requested that the Board exempt existing contracts from the requirement of the confidentiality provision or extend the time frame for existing contracts to comply. The final rule provides a two-year grandfather period for service agreements entered into before July 1, 2000, under § 716.18(c).

The proposed rule in § 716.9 provided that the contract should require the third party: (i) To maintain the confidentiality of the information at least to the same extent as is required for the credit union; and (ii) to use the information solely for the purposes for which the information is disclosed or as otherwise permitted by the exceptions in § § 716.10 and 716.11 of the proposed rule. The final rule in § 716.13 deletes the first provision as redundant and clarifies that the use under the exceptions (§ § 716.14 and 716.15 of the final rule) is in the ordinary course of business to carry out the purposes for which the credit union disclosed the information.

The Board requested comment on the application of the exception to credit unions that contract with credit scoring vendors to evaluate borrower creditworthiness. Approximately nine commenters responded that the exception should be interpreted so that it does not inhibit credit scoring, market response, or consumer behavioral models.

NCUA sought comment on whether the rule should require a credit union to take steps to assure itself that the product being jointly marketed and the other participants in the joint marketing agreement do not present undue risks for the credit union. Several commenters opposed the Board requiring credit unions to take steps to ensure that the products and participants do not present undue risks. One commenter wrote that Letter to Credit Unions No. 150 already provides adequate protection against undue risks. One commenter supported the credit unions taking steps against undue risks. The final rule does not add new requirements to ensure against undue risks.

Section 716.14 Exceptions to Notice and Opt Out Requirements for Processing and Servicing Transactions

The proposed rule in § 716.13 set out certain exceptions for disclosures of nonpublic personal information in connection with the administration, processing, servicing, and sale of a consumer's account. One commenter suggested the Board should apply the exception in cases where the use of information is for the benefit of the credit union and not the third party. Several commenters requested that the Board make the rule consistent with the plain language of the GLB Act and use the terms ''in connection with,'' not ''required'' for servicing. NCUA and the other Agencies agree with the commenters. NCUA has made stylistic changes and has revised its use of the terms ''in connection with'' in the final rule. NCUA has also deleted the reference to underwriting insurance at the consumer's request or for reinsurance purposes, because credit unions do not engage directly in those activities.

Several of the commenters requested that the Board broaden the exception and clarify the definition and list examples of servicing transactions. Approximately ten commenters requested that the Board clarify that the exceptions should include collection activities or products or services associated with a loan, such as those to protect collateral securing a loan. Commenters also recommended adding other examples to the list of exceptions, such as private label credit cards, electronic funds transfer transactions, statement mailing, ATMs, mechanical breakdown insurance, gap insurance on leasing, and one credit union phoning another to check on available funds before depositing a check drawn on the

other credit union. Some of these examples have been included and the Board believes they are sufficiently illustrative of transactions that would qualify as servicing transactions.

Section 716.15 Other Exceptions to Notice and Opt Out Requirements

The proposed rule in § 716.11 set out other exceptions, not made in connection with the administration, processing, servicing, and sale of a consumer's account. One of the exceptions was for disclosures made with the consent or at the direction of the consumer. The Board requested comment whether it should add safeguards to this exception to minimize the potential for consumer confusion. One commenter recommended that the Agencies not allow the consumer consent provision to be a way to evade the notice and opt out in the rest of the GLB Act.

Several commenters wrote that the consumer consent requirement should be a flexible requirement that the consumer can exercise by phone, email, or Internet. A few commenters requested that the Agencies eliminate the consent requirement. A couple of commenters wrote that the exception should permit implied consent.

Approximately ten commenters wrote that the consent exception should permit financial institutions to share nonpublic personal information about consumers with third parties with whom they have co-branding and affinity relationships. For example, in these cases, the name of a third party who is the provider of a financial product is prominently displayed on credit cards or private label cards. If the third party is a financial institution, the proposed rule already provided an exception to the opt out requirement. Commenters requested that the same exception should also apply where the third party is not a financial institution. Commenters wrote that an opt out requirement would be burdensome and would delay providing customers the benefits they expect to receive.

After considering these comments, the NCUA and the other Agencies have decided to adopt this section of the final rule in § 716.15 virtually as proposed in § 716.11. However, the NCUA and the other Agencies are changing the reference in the proposed rule from government regulator to federal functional regulator, the Secretary of Treasury, a state insurance authority, and the Federal Trade Commission.

Subpart D—Relation to Other Laws; Effective Date

Section 716.16 rotection of Fair Credit Reporting Act

The Agencies and NCUA are adopting § 716.16 as proposed in § 716.15.

Section 716.17 Relation to State Laws

Section 507 of the GLB Act states that Title V does not preempt any state law that provides greater protections than are provided by Title V. Determinations of whether a state law or Title V provides greater protections are to be made by the Federal Trade Commission after consultation with the agency that regulates either the party filing a complaint or the credit union about whom the complaint was filed. Determinations of whether state or federal law afford greater protections may be initiated by any interested party or on the Federal Trade Commission's own motion.

Proposed § 716.15 was substantively identical to section 507. Although statutorily mandated, many commenters felt compelled to note the hardship, if not impossibility, it will be for financial institutions to comply with the federal regulation and the many different state laws that may apply to them. The difficulties include: when to follow state law; what state law to follow; and redesigning computer systems to take into account the different requirements.

One commenter suggested that ''federal credit unions may be subject to a state compliance examination'' in states where state law is controlling. The Board would treat compliance by a federal credit union with a state privacy law the same as it treats a federal credit union's compliance with other controlling state law. The NCUA will coordinate with the appropriate state regulator to ensure that a federal credit union is in compliance with the controlling state privacy provisions.

Section 716.18 Effective Date; Transition Rule

Section 510 of the GLB Act states that, as a general rule, the relevant provisions of Title V take effect 6 months after the date on which rules are required to be prescribed. However, section 510(1) authorizes the Agencies to prescribe a later date in the rules enacted pursuant to section 504.

Proposed § 716.16(a) had an effective date of November 13, 2000. NCUA invited comment on whether six months following adoption of final rules was sufficient to enable credit unions to comply with the rules. Fifty-four of the 55 commenters that commented on this provision requested that the effective date for mandatory compliance be extended. The sole dissenting commenter was the Congressional Privacy Caucus.

The Congressional Privacy Caucus' rationale was that six months is sufficient time for financial institutions to comply. The other 54 commenters offered a variety of reasons why six months is not sufficient. Some of the reasons in support of extending the compliance date were: operationally and financially it is a burden for financial institutions because they must identify customers and consumers and the sources and uses of consumer information, train staff, prepare disclosure statement and reprogram computers; prompt corrective action compliance, Y2K compliance and end of year timing, all make this a difficult period for credit unions to comply; credit unions would not be able to include the disclosure with their annual statements; this is the holiday season which is a busy time for the members and the post office; this was not budgeted for in the 2000 budget; and Congress gave the Agencies authority to extend the compliance date. Some commenters noted that, if financial institutions are required to rush compliance, there is a much greater likelihood of mistakes.

The Board agrees that six months after publication of the final rule may be insufficient time in certain instances for a credit union to ensure that its forms, systems, and procedures comply with the rule. In order to accommodate situations requiring additional time, the Board retained the effective date of November 13, 2000, but, consistent with its authority under section 510(1) of the GLB Act to extend the effective date, the Board will give credit unions until July 1, 2001 to be in full compliance with the regulation.

Credit unions are expected, however, to begin compliance efforts promptly, to use the period prior to June 30, 2001, to implement and test their systems, and be in full compliance by July 1, 2001. Given that this provides credit unions with slightly over 13 months in which to comply with the rule, the Board has determined that there no longer is any need for a separate phase-in for providing initial notices. Thus, a credit union will need to deliver all required opt out notices and initial notices before July 1, 2001. The final rule provides a new example that the credit union provides an initial notice to consumers who are members as of July 1, 2001, if by that date, it has established a system for providing initial notice to all new members and has mailed the initial notice to all existing members.

Credit unions are encouraged to provide disclosures as soon as practicable. Depending on the readiness of a credit union to process opt out elections, credit unions might wish to consider including the privacy and opt out notices in the same mailing as is used to provide tax information to members in the first quarter of 2001 to increase the likelihood that a member will not mistake the notices for an unwanted solicitation. The Board believes that this extension represents a fair balance between those seeking prompt implementation of the protections afforded by the statute and those concerned about the reliability of the systems that are put in place.

In response to a concern by some commenters that existing service contracts may not comply with § 716.13(a)(2) of the final rule, the NCUA and the other Agencies are agreeing to postpone the mandatory compliance date for existing third party service contracts to state that the third party agrees to maintain the confidentiality of nonpublic personal information, until July 1, 2002. All third party service contracts entered into after July 1, 2000, however, must comply with the requirement.

Appendix A

Approximately 19 commenters requested that the Agencies provide sample or model disclosure forms of the notice. The Board, consistent with the other Agencies, has provided sample disclosure language in Appendix A to its final rule. The Board urges credit unions to carefully review whether these clauses accurately reflect a given credit union's policies and practices before using the clauses. Credit unions are free to use different language and to include as much detail as they think is appropriate in their notices.

The sample clauses are intended to minimize the burden and costs to credit unions, including small credit unions. This is especially true for small credit unions that only share nonpublic personal information with nonaffiliated third parties pursuant to the exceptions provided in § § 716.14 and 716.15. These credit unions may provide relatively simple initial and annual notices to members.

III. Regulatory Procedures

A. Paperwork Reduction Act

NCUA has submitted the reporting requirements in Parts 716 and 741 to the Office of Management and Budget and is awaiting approval and issuance of a new OMB control number (3133;____). Approximately 20 commenters wrote that this regulation will result in increased costs. Several commenters also wrote that there will be increased paperwork burden. Commenters cited dollar amounts from $500 to ten million dollars, for system changes, staff hours, and mailing costs. A few commenters wrote that the cost may depend on what their vendors will charge to upgrade their systems. One commenter wrote that there would be no increased costs. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB number. The control number will be displayed in the table at 12 CFR part 795.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires, subject to certain exceptions, that NCUA prepare an initial regulatory flexibility analysis (IRFA) with a proposed rule and a final regulatory flexibility analysis (FRFA) with a final rule, unless NCUA certifies that the rule will not have a significant economic impact on a substantial number of small credit unions. For purposes of the Regulatory Flexibility Act, and in accordance with NCUA's authority under 5 U.S.C. 601(4), NCUA has determined that small credit unions are those with less than one million dollars in assets. *See* 12 CFR 791.8(a). NCUA's final rule will apply to approximately 1,626 small credit unions, out of a total of approximately 10,627 federally-insured credit unions.

At the time of issuance of the proposed rule, NCUA could not make such a determination for certification. Therefore, NCUA issued an IRFA pursuant to section 603 of the Regulatory Flexibility Act. After reviewing the comments submitted in response to the proposed rule, NCUA believes that it does not have sufficient information to determine whether the final rule would have a significant economic impact on a substantial number of small credit unions. Therefore, pursuant to section 604 of the Regulatory Flexibility Act, NCUA provides the following FRFA.

This FRFA incorporates NCUA's initial findings, as set forth in the IRFA; addresses the comments submitted in response to the IRFA; and describes the steps NCUA has taken in the final rule to minimize the impact on small entities, consistent with the objectives of the GLB Act. Also, in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), NCUA will in the near future issue a Small Credit Union Compliance Guide to assist small credit unions in complying with this rule.

1. *Statement of the Need and Objectives of the Rule.* The final rule implements the provisions of Title V, Subtitle A of the GLB Act addressing consumer privacy. In general, these statutory provisions require financial institutions to provide notice to consumers about an institution's privacy policies and practices, restrict institutions from sharing nonpublic personal information about consumers with nonaffiliated third parties, and permit consumers to prevent institutions from disclosing nonpublic personal information about them to certain nonaffiliated third parties by ''opting out'' of that disclosure. Section 504 of the GLB Act requires NCUA and the other Agencies, in consultation with representatives of state insurance authorities, to prescribe ''such regulations as may be necessary'' to carry out the purposes of Title V, Subtitle A. NCUA believes that the final rule gives credit unions greater certainty on how to comply with the statute.

2. *Summary of Significant Issues Raised in Public Comments and Assessment of Issues.* NCUA does not have a practicable or reliable basis for quantifying the costs of the proposed rule or any alternatives, but sought comment on the potential costs. NCUA specifically requested information on the costs of creating privacy policy disclosures, distributing privacy policy disclosures, implementing ''opt out'' disclosure and processing requirements, and complying with the proposed rule in its entirety.

The comments varied, and were not specific to small credit unions. Approximately 20 commenters wrote that this regulation will result in increased costs. Commenters cited dollar amounts from $500 to ten million dollars, for system changes, staff hours, and mailing costs. A few commenters wrote that the cost may depend on what their vendors will charge to upgrade their systems. One commenter wrote that there would be no increased costs.

After considering the comments received, NCUA does not have a practicable or reliable basis for quantifying the costs of implementing the requirements of the GLB Act. We expect that compliance costs will vary significantly between credit unions depending on information sharing practices.

NCUA believes that the new compliance requirements will indeed create additional economic costs for some credit unions, especially those that choose to disclose information to nonaffiliated third parties. Most, if not,

all of these costs result from requirements expressly mandated by the GLB Act. These costs include, but are not limited to: (1) Reviewing current information sharing practices; (2) determining operational and computer programming changes necessary; (3) identifying sources and uses of member information; (4) preparing disclosure forms; and (5) training staff. Credit unions that disclose nonpublic personal information about consumers to nonaffiliated third parties will be required to provide opt out notices to consumers, as well as a reasonable opportunity to opt out of certain disclosures. These credit unions will have to develop systems for keeping track of consumers' opt out directions. Some credit unions, particularly those that disclose nonpublic information about consumers to nonaffiliated third parties, may need the advice of legal counsel to ensure that they comply with the rule.

However, NCUA continues to believe that the costs of implementing the opt out provisions of the final rule will be insubstantial for credit unions that do not disclose nonpublic personal information about consumers to nonaffiliated third parties. These credit unions may provide relatively simple initial and annual notices to consumers with whom they establish member relationships. However, NCUA cannot determine either the number or identity of credit unions that will not disclose nonpublic personal information about consumers to nonaffiliated third parties.

In the IRFA, NCUA recognized that the Congressional Conferees on the Act wished to ensure that smaller financial institutions are not placed at a competitive disadvantage by a statutory regime that permits certain information to be shared freely within an affiliate structure while limiting the ability to share that same information with nonaffiliated third parties. The Conferees stated that, in prescribing regulations, the federal regulatory agencies should take into consideration any adverse competitive effects upon small commercial banks, thrifts, and credit unions. *See* H.R. Conf. Rep. No. 106–434, at 173 (1999).

Accordingly, NCUA also sought comment on whether the requirements of the Act and this rule will create additional burden for small credit unions, particularly those that disclose nonpublic personal information about consumers to nonaffiliated third parties. In connection with any such burden, NCUA requested comment on whether any exemptions for small credit unions would be appropriate. A few commenters suggested that small credit unions not have to provide opt out notices, but those suggestions were not consistent with the objectives of the GLB Act. Although NCUA could exempt small credit unions from providing a notice and opportunity for consumers to opt out of certain information disclosures, NCUA does not believe that such an exemption would be appropriate, given the purpose of the Act to protect the confidentiality and security of nonpublic personal information about consumers.

Several commenters noted that small credit unions are penalized by the definition of ''control'' in the rule. The Board has added an example to the definition of control that will assist small credit unions.

Further, NCUA, consistent with the other Agencies, has revised some of the requirements in the final rule so that they are less burdensome. The discussion below reviews some of the other significant changes:

a. *Sample disclosure clauses* (Appendix A to Part 716) and Compliance Guide for Certain Credit Unions (Supplementary Information, Part V). Many commenters expressed concern over the amount of detail that appears to be required in both initial and annual notices. In addition, many of the commenters requested model forms for guidance as to the level of detail required. NCUA did not intend for the disclosures to be overly detailed and thus, burdensome for credit unions and potentially overwhelming for consumers. In response to these comments, Appendix A to Part 716 contains sample clauses to clarify the level of detail that NCUA believes is necessary and appropriate to be consistent with the statute.

NCUA has also provided additional assistance under the caption ''Guidance for Certain Credit Unions'' (Guidance). Supplementary Information, Part V. The Guidance generally clarifies the operation of the final rule. It also provides an example of a notice for small credit unions that only share nonpublic personal information with nonaffiliated third parties pursuant to the exceptions provided in §§ 716.14 and 716.15. The Guidance may be used in conjunction with the sample clauses contained in Appendix A.

The sample clauses under Appendix A and the Guidance are intended to minimize the burden and costs to credit unions, including small credit unions. This is especially true for small credit unions that only share nonpublic personal information with nonaffiliated third parties pursuant to the exceptions provided in §§ 716.14 and 716.15. These credit unions may provide relatively simple initial and annual notices to members.

b. *Definition of nonpublic personal information.* In the preamble to the proposed rule, NCUA offered for comment two alternatives for defining nonpublic personal information. The first, (Alternative A) deemed information as publicly available only if a credit union *actually obtained* the information from a public source, whereas the second (Alternative B) treated information as publicly available if a credit union *could* obtain it from such a source. A significant majority of commenters favored Alternative B. Many commenters suggested that implementing Alternative A would be overly burdensome. Credit unions would have to develop some sort of methodology to distinguish between information obtained from consumers, versus information obtained through public sources. In response to these comments, the final rule adopts a modified version of Alternative B (refer to Section-by-section analysis for additional information) that treats information as publicly available if a credit union could obtain the information from a public source. The final rule addresses the concerns of credit unions—including small credit unions—by adopting the least economically burdensome definition of nonpublic personal information.

c. *Effective date.* Section 510 of the GLB Act states that, as a general rule, the relevant provisions of Title V take effect six months after the date on which rules are required to be prescribed, *i.e.,* November 12, 2000. However, section 510(1) authorizes the NCUA and the other Agencies to prescribe a later date in the rules enacted pursuant to section 504. The proposed rule sought comment on the effective date prescribed by the statute. The overwhelming majority of commenters requested additional time to comply with the final rule. Several commenters noted that credit unions may encounter difficulty managing the expenses and resources required to comply with the final rule as the credit union's budget for the current year was established prior to the issuance of the proposed regulation. This may be especially true for small credit unions that face already tight budgetary constraints due to heightened competition. In response to these concerns, NCUA has retained the effective date of November 13, 2000, but, consistent with its authority under section 510(1) of the GLB Act to extend the effective date, NCUA will give credit unions until July 1, 2001 to be in full compliance with the regulation. This

additional time will allow credit unions to properly budget for any necessary expenses and staff resources required to comply with this rule and to make all necessary operational changes.

d. *New notices not required for each new financial product or service.* Some commenters expressed concern that the proposed rule may require a new initial notice each time a consumer obtains a new financial product or service. This would be especially burdensome for credit unions that adopt a universal privacy policy that covers multiple products and services. To address these concerns and minimize economic burden, the final rule was clarified to instruct credit unions that a new initial notice is not required if the credit union has given its initial notice to the member, and that initial notice remains accurate with respect to the new product or service.

e. *Short form initial notice for consumers.* In the proposed rule, credit unions were required to provide consumers a copy of a credit union's complete initial notice even when there is no member relationship. NCUA agrees with commenters that suggested that the statute's objectives for the initial notice requirements could be achieved in a less burdensome way. Therefore, NCUA has exercised its exemptive authority as provided in section 504(b) to create an exception to the general rule that otherwise requires a credit union to provide a consumer with both the initial and opt out notices before disclosing nonpublic personal information about that consumer to nonaffiliated third parties. A credit union may provide a ''short-form'' initial notice along with the opt out notice to a consumer with whom the credit union does not have a member relationship. This short-form notice must state that the disclosure containing information about the credit union's privacy policies and practices is available upon request and provide one or more reasonable means by which the consumer may obtain a copy of the notice. This provision in the final rule will lessen the burden on credit unions, including small credit unions.

3. *Steps to Minimize the Significant Economic Impact on Small Entities Consistent with the Objectives of the GLB Act.* The objectives of Title V of the GLB Act are that each financial institution has an affirmative and continuing obligation to respect the privacy of its consumers and to protect the security and confidentiality of those consumers' nonpublic personal information. NCUA carefully considered comments that suggested a variety of alternatives that could minimize the economic and overall burden of complying with the final rule. As stated above, NCUA has made changes to the proposal as a result of the comments that it hopes will ease the burden for small credit unions.

Nonetheless, the statute does not authorize the NCUA to create exemptions from the GLB Act based on a credit union's size or to mandate different compliance standards for small credit unions. The rule applies to all federally-insured credit unions, regardless of size. Moreover, different compliance standards would be inconsistent with the purposes of the GLB Act.

NCUA believes that the burden is relatively small for credit unions that only disclose nonpublic personal information about consumers to nonaffiliated third parties pursuant to the exceptions provided under §§ 716.14 and 716.15. NCUA's determination is based on an analysis of comments received in response to the proposed rule. These credit unions may provide relatively simple initial and annual notices to consumers with whom they establish member relationships. At this time, it is not clear if information-sharing among affiliates in large institutional entities will place small credit unions at a disadvantage. NCUA believes that further experience under the regulation would be appropriate before considering any exemptions in this area for small credit unions.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule will apply to all federally-insured credit unions, but it 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. Section 507 of the GLB Act states that state law may provide greater consumer protections than this proposed rule. In that event, federal law would not preempt state law. NCUA has determined the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedures Act. 5 U.S.C. 551. NCUA has recommended to The Office of Management and Budget that it determine that this is not a major rule, and is awaiting its determination.

E. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

IV. Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose minimal regulatory burden. Some commenters responded that the rule is not understandable and intrusive if implemented as proposed. The majority of the commenters did not address this issue.

V. Guidance for Certain Credit Unions

To minimize the burden and costs to a credit union and generally clarify the operation of the final rule, NCUA and the other Agencies are including this compliance guide that may be used in conjunction with the sample clauses contained in Appendix A. This guide specifically applies to a credit union that: (1) Does not have any affiliates; only discloses nonpublic personal information to nonaffiliated third parties in accordance with an exception under § § 716.14 and 716.15, such as in connection with servicing or processing a financial product or service that a consumer requests or authorizes; and (3) does not intend to reserve the right to disclose nonpublic personal information to nonaffiliated third parties, except under § § 716.14 and 716.15.[1]

In general, if a credit union discloses nonpublic personal information to nonaffiliated third parties only as

[1] A credit union that discloses or reserves the right to disclose nonpublic personal information to a nonaffiliated third party under other circumstances must comply with other provisions in the rule, notably §§ 716.7, 716.8, and 716.3, if applicable. A creidt union that discloses or reserves the right to disclose nonpublic personal information to an affiliate must comply with other provisions in the rule, notably § 716.6(a)(7), if applicable.

authorized under an exception, then that credit union's only responsibilities under the regulation are to provide an initial and annual notice of its privacy policies and practices to each of its members. The credit union is not required to provide an opt out notice to its member.

A. *Initial notice to members.* A credit union must provide a notice of its policies and practices to each of its members. A member is a natural person who has a continuing relationship with a credit union, as described in § 716.4(c). For instance, an individual who is accepted for membership under the credit union's bylaws is a member of that credit union. By contrast, an individual who uses a credit union's ATM to withdraw funds from a checking account maintained at *another* financial institution is not a member of that credit union. Even if an individual repeatedly uses a credit union's ATM that individual is not the credit union's member. In other words, the credit union is obligated to provide an initial and annual notices to each of its own members, but not its consumers.

B. *Time to provide initial notice.* A credit union must provide a notice of its policies and practices to each of its members not later than when it establishes a member relationship (§ 716.4(a)(1)). For instance, a credit union must provide a notice to an individual not later than when he or she is accepted for membership. Thus, a credit union can provide the notice to a potential member together with the membership agreement and signature card.

If an existing member of a credit union obtains a new financial product or service from it, that credit union need not provide another initial notice to him or her (§ 716.4(d)) if the initial notice has covered the subsequent product.

For instance, if Alison Individual walks into Credit Union for the first time on July 2, 2001, to apply for membership and open a share account, Credit Union complies with this provision of the rule if it provides an initial notice to Alison together with the documents that constitute the contract for membership and the share account. When Alison is accepted for membership and opens her account on that day, she becomes a member of Credit Union. Allison maintains her membership and, six months later, returns to Credit Union to obtain a loan. If the initial notice that Credit Union provided to Alison was accurate when she became a member and opened her account, then Credit Union need not provide another initial notice to her when she obtains the loan because it has provided the notice to Allison when she became a member.

C. *Method of providing the initial notice.* A credit union must provide its initial notice so that each member can reasonably be expected to receive actual notice, in writing, of its privacy policies and practices (§ 716.9(a)). For example, a credit union may provide the initial notice by mailing a printed copy of it together with the documents and other materials that constitute the share account agreement or at an earlier time. Similarly, a credit union may provide the initial notice by hand-delivering a printed copy of it to the member together with the documents that constitute the membership and share account agreement or at an earlier time.

D. *Compliance with initial notice requirement for existing members by effective date.* A credit union is required to provide an initial notice to each of its current members not later than July 1, 2001 (§ 716.18(b)). A credit union complies with this provision of the rule if it mails a printed copy of the notice to the member's last known address.

E. *Annual notice.* During the continuation of the member relationship, a credit union also must provide an annual notice to the member, as described in § 716.5(a). A credit union must provide an annual notice to each member at least once in any period of 12 consecutive months during which the member relationship exists. A credit union may define the 12-consecutive-month period, but must consistently apply that period to the member. A credit union may define the 12-consecutive-month period as a calendar year and provide the annual notice to the member once in each calendar year following the calendar year in which it provided the initial notice.

For example, assume that Credit Union defines the 12-consecutive-month period as a calendar year and provides annual notices to all of its members on October 1 of each year. If Alison Individual is accepted for membership by Bonanza on July 2, 2001, and thereby becomes a member, then Credit Union must provide an initial notice to Alison together with the documents that constitute the contract for membership or at an earlier time. Credit Union also must provide an annual notice to Alison by December 31, 2002. If Credit Union provides an annual notice to Alison on October 1, 2002, as it does for other members, then it must provide the next annual notice to Alison not later than October 1, 2003.

F. *Method of providing the annual notice.* Like the initial notice, the annual notice must be provided so that each member can reasonably be expected to receive actual notice, in writing, of a credit union's privacy policies and practices (§ 716.9(a)). A credit union complies with this provision of the rule if it mails a printed copy of the notice to the member's last known address.

G. *Joint accounts.* If two or more members jointly obtain a financial product or service, other than a loan, then a credit union may provide one initial notice to those members jointly. Similarly, a credit union may provide one annual notice to those members jointly.

H. *Information described in the initial and annual notices.* The initial and annual notices must include an accurate description of the following four items of information:

1. The categories of nonpublic personal information that the credit union collects (§ 716.6(a)(1));

2. The fact that the credit union does not disclose nonpublic personal information about its current members to affiliates or nonaffiliated third parties, except as authorized by § § 716.14 and 716.15 (§ 716.6(a)(2)–(3)). When describing the categories with respect to those parties, the credit union is required to state only that it makes disclosures to other nonaffiliated third parties as permitted by law (§ 716.6(c));

3. The categories of nonpublic personal information about the credit union's former members that it discloses and the categories of affiliates and nonaffiliated third parties to whom it discloses nonpublic personal information about its former members (§ 716.6(a)(4));

4. The credit union's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information (§ 716.6(a)(8)).

For each of these four items of information above, a credit union may use a sample clause contained in Appendix A. The NCUA Board emphasizes that a credit union may use a sample clause only if that clause accurately describes its actual policies and practices.

I. *Sample notice.* A credit union (''Credit Union'') that (i) does not have any affiliates and (ii) only discloses nonpublic personal information to nonaffiliated third parties as authorized under § § 716.14 and 716.15, may comply with the requirements of § 716.6 of the rule by using the following sample notice, if applicable.

Credit union collects nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;

• Information about your transactions with us or others; and

• Information we receive from a consumer reporting agency. [2]

We do not disclose any nonpublic personal information about you to anyone, except as permitted by law.

If you decide to terminate your membership or become an inactive member, we will adhere to the privacy policies and practices as described in this notice.

Credit union restricts access to your personal and account information to those employees who need to know that information to provide products or services to you. Credit union maintains physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

J. *Initial and annual notices must be clear and conspicuous.* NCUA emphasizes that a credit union must ensure that both the initial and annual notices must be clear and conspicuous, as defined in § 716.3(b).

List of Subjects

12 CFR Part 716

Consumer protection, Credit unions, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 741

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on May 8, 2000.

Sheila A. Albin,

Acting Secretary of the Board.

For the reasons set out in the preamble, it is proposed that 12 CFR chapter VII be amended by adding a new part 716 to read as follows:

PART 16—PRIVACY OF CONSUMER FINANCIAL INFORMATION

Sec.
716.1 Purpose and scope.
716.2 Rule of construction.
716.3 Definitions.

Subpart A—Privacy and Opt Out Notices

716.4 Initial privacy notice to consumers required.
716.5 Annual privacy notice to members required.
716.6 Information to be included in initial and annual privacy notices.
716.7 Form of opt out notice to consumers and opt out methods.
716.8 Revised privacy notices.
716.9 Delivering privacy and opt out notices.

Subpart B—Limits on Disclosures

716.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.
716.11 Limits on redisclosure and reuse of information.
716.12 Limits on sharing of account number information for marketing purposes.

Subpart C—Exceptions

716.13 Exception to opt out requirements for service providers and joint marketing.
716.14 Exceptions to notice and opt out requirements for processing and servicing transactions.
716.15 Other exceptions to notice and opt out requirements

Subpart D—Relation To Other Laws; Effective Date

716.16 Protection of Fair Credit Reporting Act.
716.17 Relation to state laws.
716.18 Effective date; transition rule.

Appendix A to Part 716—Sample Clauses

Authority: 15 U.S.C. 6801 *et seq.*, 12 U.S.C. 1751 *et seq.*

§ 716.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the credit unions listed in paragraph (b) of this section. This part:

(1) Requires a credit union to provide notice to members about its privacy policies and practices;

(2) Describes the conditions under which a credit union may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a credit union from disclosing that information to most nonaffiliated third parties by ''opting out'' of that disclosure, subject to the exceptions in § § 716.13, 716.14, and 716.15.

(b) *Scope.* (1) This part applies only to nonpublic personal information about individuals who obtain financial products or services for personal, family or household purposes. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial or agricultural purposes. This part applies to federally-insured credit unions. This part refers to a federally-insured credit union as ''you'' or ''the credit union.''

(2) Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable financial information promulgated by the Secretary of Health and Human Services under the authority of §§ 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–1320d–8).

§ 716.2 Rule of construction.

The examples in this part and the sample clauses in appendix A of this part are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this part.

§ 716.3 Definitions.

As used in this part, unless the context requires otherwise:

(a)(1) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(2) *Examples.* (i) An affiliate of a federal credit union is a credit union service organization (CUSO), as provided in 12 CFR part 712, that is controlled by the federal credit union.

(ii) An affiliate of a federally-insured, state-chartered credit union is a company that is controlled by the credit union.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples.* (i) *Reasonably understandable.* You make your notice reasonably understandable if you:

(A) Present the information contained in the notice in clear, concise sentences, paragraphs and sections;

(B) Use short, explanatory sentences or bullet lists whenever possible;

(C) Use definite, concrete, everyday words and active voice whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology wherever possible; and

(F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* You design your notice to call attention to the nature and significance of the information in it if you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read;

(C) Provide wide margins and ample line spacing;

(D) Use boldface or italics for key words; and

(E) In a form that combines your notice with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars.

[2] A credit union is required to describe only those general categories that apply to its policies and practices. Accordingly, if a credit union does not collect information from ''a consumer reporting agency,'' for instance, then it need not describe that category in its notices.

(iii) *Notices on web sites.* If you provide notices on a web page, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text graphics, hyperlinks or sound) do not distract attention form the notice, and you either:

(A) Place the notice on a screen frequently accessed by consumers, such as a home page or a page on which transactions are conducted; or

(B) Place a link on a screen frequently accessed by consumers, such as a home page or a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(c) *Collect* means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association or similar organization.

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you, that is to be used primarily for personal, family or household purposes, or that individual's legal representative.

(2) *Examples.* (i) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain credit union membership is your consumer regardless of whether you establish a member relationship.

(ii) An individual who provides nonpublic personal information to you in connection with using your ATM is your consumer.

(iii) If you hold ownership or servicing rights to an individual's loan, the individual is your consumer, even if you hold those rights in conjunction with one or more financial institutions. (The individual is also a consumer with respect to the other financial institutions involved). This applies, even if you, or another financial institution with those rights, hire an agent to collect on the loan or to provide processing or other services.

(iv) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(v) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(f) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the NCUA determines. With respect to state-chartered credit unions, NCUA will consult with the appropriate state regulator prior to making its determination.

(4) *Example.* NCUA will presume a credit union has a controlling influence over the management or policies of a CUSO, if the CUSO is 67% owned by credit unions.

(h) *Credit union* means a federal or state-chartered credit union that the National Credit Union Share Insurance Fund insures.

(i) *Customer* means a consumer who has a customer relationship with a financial institution other than a credit union.

(j) *Customer relationship* means a continuing relationship between a consumer and a financial institution other than a credit union.

(k) *Federal functional regulator* means—

(1) The National Credit Union Administration Board;

(2) The Board of Governors of the Federal Reserve System;

(3) The Office of the Comptroller of the Currency;

(4) The Board of Directors of the Federal Deposit Insurance Corporation;

(5) The Director of the Office of Thrift Supervision; and

(6) The Securities and Exchange Commission.

(l)(1)*Financial institution* means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activity as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) Examples of financial institutions may include, but are not limited to: credit unions; banks; insurance companies; securities brokers, dealers, and underwriters; loan brokers and servicers; tax planners and preparation services; personal property appraisers; real estate appraisers; career counselors for employees in financial occupations; digital signature services; courier services; real estate settlement services; manufacturers of computer software and hardware; and travel agencies operated in connection with financial services.

(3) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(m) (1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(n) *Member* means a consumer who has a member relationship with you. For purposes of this part only, it will include certain nonmembers.

(o)(1) *Member relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family or household purposes. As noted in the examples, this will include certain consumers that are not your members.

(2) *Examples.* (i) A consumer has a continuing relationship with you if the consumer:

(A) Is your member as defined in your bylaws;

(B) Is a nonmember who has a share, share draft, or credit card account with you jointly with a member;

(C) Is a nonmember who has a loan that you service;

(D) Is a nonmember who has an account with you and you are a credit union that has been designated as a low-income credit union; or

(E) Is a nonmember who has an account in a federally-insured, state-chartered credit union pursuant to state law.

(ii) A consumer does not, however, have a member relationship with you if the consumer is a nonmember and:

(A) The consumer only obtains a financial product or service in isolated transactions, such as using your ATM to withdraw cash from an account maintained at another financial institution or purchasing travelers checks; or

(B) You sell the consumer's loan and do not retain the rights to service that loan. (p)(1) *Nonaffiliated third party* means any person except:

(i) Your affiliate; or

(ii) A person employed jointly by you and any company that is not your affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

(q)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as included on a list described in paragraph (q)(1)(ii) of this section; or

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information, other than publicly available information.

(3) *Examples of lists.* (i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information, other than publicly available information, such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived using personally identifiable financial information, other than publicly available information, either in whole or in part, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a credit union, other than publicly available information.

(r)(1) *Personally identifiable financial information* means any information:

(i) A consumer provides to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) Personally identifiable financial information does not include publicly available information.

(3) *Examples.* (i) *Information included.* Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain membership, a loan, credit card or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your members or has obtained a financial product or service from you;

(D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on a loan or servicing a loan;

(F) Any information you collect through an Internet ''cookie'' (an information collecting device from a web server); and

(G) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(s)(1) *Publicly available information* means any information that you have a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, state or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by federal, state or local law.

(2) *Reasonable basis.* You have a reasonable basis to believe that information is lawfully made available to the general public if you have taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that your member or consumer has not done so.

(3) *Examples.* (i) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or site operator requires a fee or a password, so long as access is available to the general public.

(iii) *Reasonable basis.* (1) You have a reasonable basis to believe that mortgage information is lawfully made available to the general public if you have determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(2) You have a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or have been informed by the consumer that the telephone number is not unlisted.

(t) *You* means a federally-insured credit union.

Subpart A—Privacy and Opt Out Notices

§ 716.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to a:

(1) *Member*, not later than when you establish a member relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer*, before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by § § 716.14 and 716.15.

(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 716.14 and 716.15; and

(2) You do not have a member relationship with the consumer.

(c) *When you establish a member relationship.* (1) *General rule.* You establish a member relationship when you and the consumer enter into a continuing relationship.

(2) *Special rule for loans.* You establish a member relationship with a consumer when you originate, or acquire the servicing rights to a loan to the consumer for personal, household or family purposes and that is the only basis for the member relationship. If you subsequently transfer the servicing rights to that loan to another financial institution, the member relationship transfers with the servicing rights.

(3)(i) *Examples of establishing member relationship.* You establish a member relationship when the consumer:

(A) Becomes your member under your bylaws;

(B) Is a nonmember and opens a credit card account with you jointly with a member under your procedures;

(C) Is a nonmember and executes the contract to open a share or share draft account with you or obtains credit from you jointly with a member, including an individual acting as a guarantor;

(D) Is a nonmember and opens an account with you and you are a credit union designated as a low-income credit union;

(E) Is a nonmember and opens an account with you pursuant to state law and you are a state-chartered credit union.

(ii) *Examples of loan rule.* You establish a member relationship with a consumer who obtains a loan for personal, family, or household purposes when you:

(A) Originate the loan to the consumer and retain the servicing rights; or

(B) Purchase the servicing rights to the consumer's loan.

(d) *Existing members.* When an existing member obtains a new financial product or service that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised policy notice, under § 716.8, that covers the member's new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that member was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a member relationship if:

(i) Establishing the member relationship is not at the member's election;

(ii) Providing notice not later than when you establish a member relationship would substantially delay the member's transaction and the member agrees to receive the notice at a later time.

(2) *Examples of exceptions.* (i) *Not at member's election.* Establishing a member relationship is not at the member's election if you acquire a member's deposit liability from another financial institution and the member does not have a choice about your acquisition.

(ii) *Substantial delay of member's transaction.* Providing notice not later than when you establish a member relationship would substantially delay the member's transaction when:

(A) You and the individual agree over the telephone to enter into a member relationship involving prompt delivery of the financial product or service; or

(B) You establish a member relationship with an individual under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between you and the member.

(iii) *No substantial delay of member's transaction.* Providing notice not later than when you establish a member relationship would not substantially delay the member's transaction when the relationship is initiated in person at your office or through other means by which the member may view the notice, such as on a web site.

(f) *Joint relationships.* If two or more consumers jointly obtain a financial product or service, other than a loan, from you, you may satisfy the requirements of paragraph

(a) of this section by providing one initial notice to those consumers jointly.

(g) *Delivery.* When you are required to deliver an initial privacy notice by this section, you must deliver it according to the methods in § 716.9. If you use a short-form initial notice for nonmember consumers according to § 716.6(c), you may deliver your privacy notice according to § 716.6(c)(3).

§ 716.5 Annual privacy notice to members required.

(a)(1) *General rule.* You must provide a clear and conspicuous notice to members that accurately reflects your privacy policies and practices not less than annually during the continuation of the member relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the member on a consistent basis.

(2) *Example.* You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the member once in each calendar year following the calendar year in which you provide the initial notice. For example, if a member opens an account on any day of year one, you must provide an annual notice to that member by December 31 of year two.

(b) (1) *Termination of member relationship.* You are not required to provide an annual notice to a former member.

(2) *Examples.* Your member becomes your former member when:

(i) An individual is no longer your member as defined in your bylaws;

(ii) In the case of a nonmember's share or share draft account, the account is inactive under the credit union's policies;

(iii) In the case of a nonmember's closed-end loan, the loan is paid in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(iv) In the case of a credit card relationship or other open-end credit relationship with a nonmember, you no longer provide any statements or notices to the nonmember concerning that relationship or you sell the credit card receivables without retaining servicing rights; or

(v) You have not communicated with the nonmember about the relationship for a period of twelve consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to the methods in § 716.9.

§ 716.6 Information to be included in initial and annual privacy notices.

(a) *General rule.* The initial and annual privacy notices under §§ 716.4 and 716.5 must include each of the following items of information that

applies to you or to the consumers to whom you send your privacy notice, in addition to any other information you wish to provide:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§ 716.14 and 716.15;

(4) The categories of nonpublic personal information about your former members that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose it, other than those parties to whom you disclose information under §§ 716.14 and 716.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 716.13 (and no other exception applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the consumer's right under § 716.10(a) to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosure of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosures you make under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under § § 716.14 and 716.15, you are not required to list those exceptions in the initial or annual privacy notices required by § § 716.4 and 716.5. When describing the categories with respect to those parties, you are required to state only that you make disclosures to other nonaffiliated third parties as permitted by law.

(c) *Short-form initial notice with opt out notice for nonmember consumers.* (1) You may satisfy the initial notice requirements in §§ 716.4(a)(2), 716.7(b), and 716.7(c) for a consumer who is not a member by providing a short-form initial notice at the same time as you deliver an opt out notice as required in § 716.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) You must deliver your short-form initial notice according to § 716.9. You are not required to deliver your privacy notice with your short form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to § 716.9.

(4) *Examples of obtaining privacy notice.* You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to a consumer immediately upon request.

(d) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(e) *Examples.* (1) *Categories of nonpublic personal information that you collect.*

You satisfy the requirement to categorize the nonpublic personal information that you collect if you list the following categories, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with you or your affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal information you disclose.* (i) You satisfy the requirement to categorize the nonpublic personal information that you disclose if you list the categories described in paragraph (e)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.

(ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal information you disclose.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information if you list the following categories, as applicable, and a few examples to illustrate the types of third parties in each category.

(i) Financial service providers;

(ii) Non-financial companies; and

(iii) Others.

(4) *Disclosures under exception for service providers and joint marketers.* If you disclose nonpublic personal information under the exception in § 716.13 to a nonaffiliated third party to market products or services that you offer alone or jointly with another financial institution, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(i) List the categories of nonpublic personal information you disclose, using the same categories and examples you used to meet the requirements of paragraphs (a)(2) of this section, as applicable; and

(ii) State whether the third party is:

(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or

(B) A financial institution with whom you have a joint marketing agreement.

(5) *Simplified notices.* If you do not disclose, and do not intend to disclose, nonpublic personal information about members or former members to affiliates or nonaffiliated third parties except as authorized under §§ 716.14 and 716.15, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9) and (c) of this section.

(6) *Confidentiality and security.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you do both of the following:

(i) Describe in general terms who is authorized to have access to the information.

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

(7) *Joint notice with affiliates.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as specified in the notice, as long as the notice is accurate with respect to you and the other institution.

§ 716.7 Form of opt out notice to consumers and opt out methods.

(a)(1) *Form of opt out notice.* If you are required to provide an opt out notice under § 716.10(a)(1), you must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples.* (i) *Adequate opt out notice.* You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you:

(A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose and all of the categories of nonaffiliated third parties to whom you disclose the information, as described in § 716.6(a)(2) and (3) and state that the consumer can opt out of the disclosure of that information; and

(B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form together with the opt out notice;

(C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your web site, if the consumer agrees to the electronic delivery of information; or

(D) Provide a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* You *do not* provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that was provided with the initial notice but not included with the subsequent notice.

(iv) *Specific opt out means.* You may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with § 716.4.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice later than required for the initial notice in accordance with § 716.4, you must also include a copy of the initial notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships.* (1) If two or more consumers jointly obtain a financial product or service, other than a loan, from you, you may provide only a single opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer as explained in the examples in paragraph (d)(5) of this section.

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer to apply to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require all joint consumers to opt out before you implement any opt out direction.

(5) *Example.* If John and Mary have a joint share account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so, and if John and Mary both opt out, you must permit one or both of them to notify you in a single response (such as on a form or through a telephone call).

(e) *Time to comply with opt out.* You must comply with the consumer's opt out direction as soon as reasonably practicable after you receive it.

(f) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(g) *Duration of consumer's opt out direction.* (1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a member relationship terminates, the member's opt out direction continues to apply to the nonpublic personal information that you collected during or related to the relationship. If the individual subsequently establishes a new member relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) *Delivery.* When you are required to deliver an opt out notice by this section, you must deliver it according to the methods in § 716.9.

§ 716.8 Revised privacy notices.

(a) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under § 716.4, unless:

(1) You have provided to the consumer a revised notice that accurately describes your policies and practices;

(2) You have provided to the consumer a new opt out notice;

(3) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

(b) *Examples.* (1) Except as otherwise permitted by § § 716.13, 716.14 and 716.15, you must provide a revised notice if you—

(i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Disclose nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Disclose nonpublic personal information about a former member to a nonaffiliated third party, and that former member has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third

party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to the methods in § 716.9.

§ 716.9 Delivering privacy and opt out notices.

(a) *How to provide notices.* You must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) (1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectations of actual notice.* You may not, however, reasonably expect that a consumer will receive actual notice if you:

(i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices;

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only.* You may reasonably expect that a member will receive actual notice of your annual privacy notice if:

(1) The member uses your web site to access financial products and services electronically and agrees to receive notices at your web site and you post your current privacy notice continuously in a clear and conspicuous manner on your web site; or

(2) The member has requested that you refrain from sending any information regarding the member relationship, and your current privacy notice remains available to the member upon request.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for members.* (1) For members only, you must provide the initial notice required by § 716.4 (a)(1), the annual notice required by § 716.5(a) and the revised notice required by § 716.8 so that the member can retain them or obtain them later in writing or, if the member agrees, electronically.

(2) *Examples of retention or accessibility.* You provide the privacy notice to the member so that the member can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the member;

(ii) Mail a printed copy of the notice to the last known address of the member upon request of the member; or

(iii) Make your current privacy notice available on a web site (or a link to another web site) for the member who obtains a financial product or service electronically and agrees to receive the notice at the web site.

Subpart B—Limits on Disclosures

§ 716.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.

(a) (1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 716.4;

(ii) You have provided to the consumer an opt out notice as required in § 716.7;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 716.13, 716.14 and 716.15.

(3) *Examples of reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days from the date you mailed the notices.

(ii) *By electronic means.* A member opens an on-line account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you make the notices available to the member on your web site and allow the member to opt out by any reasonable means within 30 days after the date that the member acknowledges receipt of the notices.

(iii) *Isolated transaction with consumer.* For an isolated transaction, such as the purchase of a traveler's check by a consumer, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information.* (1) You must comply with this section, regardless of whether you and the consumer have established a member relationship.

(2) Unless you comply with this section, you may not, directly or through an affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

§ 716.11 Limits on redisclosure and reuse of information.

(a)(1) *Information you receive under an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution under an exception in § 716.14 or 716.15 of this part, your disclosure and use of that information is limited as follows:

(i) You may disclose the information to the affiliates of the financial institution from which you received the information; and

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in § 716.14 or 716.15 in the ordinary course of business to carry out the

activity covered by the exception under which you received the information.

(2) *Example.* If you receive a member list from a credit union in order to provide correspondent services under the exception in § 716.14(a), you may disclose that information under any exception in § 716.14 or 716.15 in order to provide those services. For example, you could disclose the information in response to a properly authorized subpoena or to your attorneys, accountants, and auditors. You could not disclose that information to a third party for marketing purposes or use that information for your own marketing purposes.

(b)(1) *Information you receive outside of an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution other than under an exception in § 716.14 or 716.15 of this part, you may disclose the information only:

(i) To the affiliates of the financial institution from which you received the information;

(ii) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information;

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information; and

(iv) Pursuant to an exception in § 716.14 or 716.15.

(2) *Example.* If you obtain a customer list from a nonaffiliated financial institution outside of the exceptions in § § 716.14 and 716.15,

(i) You may use the list for your own purposes;

(ii) You may disclose that list to another non-affiliated third party only if the financial institution from which you purchased the list could have disclosed the list to that third party, that is you may disclose the list in accordance with the privacy policy of the financial institution from which you received the list, as limited by the opt out direction of each consumer whose nonpublic personal information you intend to disclose; and

(iii) You may disclose that list as permitted by § 716.14 or 716.15, such as to your attorneys or accountants.

(c) *Information you disclose under an exception.* If you disclose nonpublic personal information to a nonaffiliated third party under an exception in § 716.14 or 716.15 of this part, the disclosure and use of that information by the third party is limited as follows:

(1) The third party may disclose the information to your affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in § 716.14 or 716.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) *Information you disclose outside of an exception.* If you disclose nonpublic personal information to a nonaffiliated third party other than under an exception in § 716.14 or 716.15 of this part, the third party may disclose the information only:

(1) To your affiliates;

(2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information;

(3) To any other person, if the disclosure would be lawful if made directly to that person by you; and

(4) Pursuant to an exception in § 716.14 or 716.15.

§ 716.12 Limits on sharing of account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, share account or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

(1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider cannot directly initiate charges to the account; or

(2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the member when the member enters into the program.

(c) *Examples.* (1) *Account number.* An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as you do not provide the recipient with a means to decode the number or code.

(2) *Transaction account.* A transaction account is an account other than a share or credit card account. A transaction account does not include an account to which a third party cannot initiate a charge.

Subpart C—Exceptions

§ 716.13 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* (1) The opt out requirements in § § 716.7 and 716.10 do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(i) Provide the initial notice in accordance with § 716.4; and

(ii) Enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in § 716.14 or 716.15 in the ordinary course of business to carry out those purposes.

(2) *Example.* If you disclose nonpublic personal information under this section to a financial institution with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in § 716.14 or 716.15 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services that a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, *joint agreement* means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

§ 716.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 716.4(a)(2), the opt out in § § 716.7 and 716.10 and service providers and joint marketing in § 716.13 do not apply if

you disclose nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein; or

(C) The audit of debit, credit or other payment information.

§ 716.15 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice to consumers in § 716.4(a)(2), the opt out in § § 716.7 and 716.10 and service providers and joint marketing in § 716.13 do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, with respect to any person domiciled in that insurance authority's state that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with federal, state or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to you for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 716.7(f).

SUBPART D—RELATION TO OTHER LAWS; EFFECTIVE DATE

§ 716.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

§ 716.17 Relation to state laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order or interpretation in effect in any state, except to the extent that such state statute, regulation, order or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under state law.* For purposes of this section, a state statute, regulation, order or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Federal Trade Commission, after consultation with the National Credit Union Administration, on the Federal Trade Commission's own motion or upon the petition of any interested party.

§ 718.18 Effective date; transition rule.

(a) *Effective date.* This part is effective November 13, 2000. In order to provide sufficient time for you to establish policies and systems to comply with the requirements of this part, the National Credit Union Administration Board has

extended the time for compliance with this part until July 1, 2001.

(b)(1) *Notice requirement for consumers who were your members on the compliance date.* By July 1, 2001, you must provide an initial notice, as required by § 716.4, to consumers who are your members on July 1, 2001.

(2) *Example.* You provide an initial notice to consumers who are your members on July 1, 2001, if, by that date, you have established a system for providing an initial notice to all new members and have mailed the initial notice to all your existing members.

(c) *Two-year grandfathering of service agreements.* Until July 1, 2002, a contract that you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of § 716.13(a)(2) of this part, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the agreement was entered into on or before July 1, 2000.

APPENDIX A TO PART 716—SAMPLE CLAUSES

Credit unions, including a group of affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice.

A–1—Categories of information you collect (all credit unions)

You may use this clause, as applicable, to meet the requirement of § 716.6(a)(1) to describe the categories of nonpublic personal information you collect.

Sample Clause A–1:

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

A–2—Categories of information you disclose (credit unions that disclose outside of the exceptions)

You may use one of these clauses, as applicable, to meet the requirement of § 716.6(a)(2) to describe the categories of nonpublic personal information you disclose. These clauses may be used if you disclose nonpublic personal information other than as permitted by the exceptions in § § 716.13, 716.14, and 716.15.

Sample Clause A–2, Alternative 1:

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as ''your name, address, social security number, assets, and income''*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as ''your account balance, payment history, parties to transactions, and credit card usage''*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as ''your creditworthiness and credit history''*].

Sample Clause A–2, Alternative 2:

We may disclose all of the information that we collect, as described [*describe location in the notice, such as ''above'' or ''below''*].

A–3—Categories of information you disclose and parties to whom you disclose (credit unions that do not disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirements of § 716.6(a)(2), (3) and (4) to describe the categories of nonpublic personal information about members and former members that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. This clause may be used if you do not disclose nonpublic personal information to any party, other than as permitted by the exceptions in § § 716.14, and 716.15.

Sample Clause A–3:

We do not disclose any nonpublic personal information about our members and former members to anyone, except as permitted by law.

A–4—Categories of parties to whom you disclose (credit unions that disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of § 716.6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information. This clause may be used if you disclose nonpublic personal information other than as permitted by the exceptions in § § 716.13, 716.14, and 716.15, as well as when permitted by the exceptions in § § 716.14, and 716.15.

Sample Clause A–4:

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [*provide illustrative examples, such as ''mortgage bankers, securities broker-dealers, and insurance agents''*];
- Non-financial companies, such as [*provide illustrative examples, such as ''retailers, direct marketers, airlines, and publishers''*]; and
- Others, such as [*provide illustrative examples, such as ''non-profit organizations''*].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

A–5—Service provider/joint marketing exception

You may use one of these clauses, as applicable, to meet the requirements of § 716.6(a)(5) related to the exception for service providers and joint marketers in § 716.13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal information you disclose and the categories of third parties with whom you have contracted.

Sample Clause A–5, Alternative 1:

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as ''your name, address, social security number, assets, and income''*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as ''your account balance, payment history, parties to transactions, and credit card usage''*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as ''your creditworthiness and credit history''].*

Sample Clause A–5, Alternative 2:

We may disclose all of the information we collect, as described [*describe location in the notice, such as ''above'' or ''below''*] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

A–6—Explanation of opt out right (credit unions that disclose outside of the exceptions)

You may use this clause, as applicable, to meet the requirement of § 716.6(a)(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. This clause may be used if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 716.13, 716.14, and 716.15.

Sample Clause A–6:

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [*describe a reasonable means of opting out, such as ''call the following toll-free number: (insert number)*].

A–7—Confidentiality and security (all credit unions)

You may use this clause, as applicable, to meet the requirement of § 716.6(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Sample Clause A–7:

We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as ''those employees who need to know that information to provide products or services to you''*]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766, and 1781–1790. Section 741.4 is also authorized by 31 U.S.C. 3717.

2. Add § 741.220 to part 741 to read as follows:

§ 741.220 Privacy of consumer financial information.

Any credit union which is insured pursuant to Title II of the Act must adhere to the requirements stated in part 716 of this chapter.

[FR Doc. 00–12014 Filed 5–17–00; 8:45 am]

BILLING CODE 7535–01–U

Federal Register

Thursday,
May 18, 2000

Part V

Department of Education

National Institute on Disability and Rehabilitation Research, Office of Special Education and Rehabilitative Services; Final Funding Priorities for Research and Training Centers and Inviting Applications; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Final Funding Priorities for Fiscal Years 2000–2001 for Research and Training Centers.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces final funding priorities for three Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 2000–2001. The Assistant Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities take effect on June 19, 2000.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains final priorities for one RRTC related to Rehabilitation for Persons with Long-Term Mental Illness and two RRTCs related to Independent Living. The final priorities refer to NIDRR's Long Range Plan (the Plan). The Plan can be accessed on the World Wide Web at: *http://www.ed.gov/legislation/FedRegister/other/1999–12/68576.html.*

These final priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764).

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications is published in this issue of the **Federal Register**.

Analysis of Comments and Changes

On February 23, 2000 the Assistant Secretary published a notice of proposed priorities in the **Federal Register** (64 FR 9182). The Department of Education received 13 letters commenting on the notice of proposed priority by the deadline date. Technical and other minor changes—and suggested changes the Assistant Secretary is not legally authorized to make under statutory authority—are not addressed.

Rehabilitation Research and Training Centers

Rehabilitation of Persons with Long-term Mental Illness

Comment: Eleven commenters suggested that the RRTC should add a priority addressing the role of technology in self-determination.

Discussion: The RRTC is established for the purpose of conducting research that can facilitate improving services and supports for individuals with Long-Term Mental Illness (LTMI). NIDRR recognizes the need for better understanding of the role of technology in rehabilitation of individuals with disabilities, including applications of information technologies in the delivery of supports and services to individuals with LTMI.

Changes: The priority has been revised to require that applicants conduct research on technology in self-determination.

Comment: The request for application should specifically ask for research and development issues related to societal barriers that result from the problems related to the stigma and discrimination experienced by persons with mental illness.

Discussion: Applicants have the discretion to propose to address stigmas, discrimination, and barriers as they relate to self-determination. However, after consulting with officials at the National Institute on Mental Health (NIMH), NIDRR has determined that research on these topics duplicate NIMH research. NIDRR declines to add a requirement that applicants specifically address research and development issues related to societal barriers that result from the problems related to the stigma and discrimination experienced by persons with mental illness.

Change: None.

Comment: NIDRR is encouraged to examine opportunities to enhance self-determination efforts, particularly opportunities to expand consumer and family member initiated acts of self-determination in delivery of patient care and rehabilitative services and other self-determination efforts that are succeeding.

Discussion: The priority provides a discussion on the issue of enhancing opportunities to expand consumer and family member initiated acts of self-determination in delivery of patient care and rehabilitative services. The applicant has the discretion to pursue research related to all aspects of improving self-determination services and supports for individuals with LTMI in the proposal. The peer review process will evaluate the merits of the proposals.

Change: None.

Comment: NIDRR is encouraged to use resources to increase availability of evidence-based service delivery programs such as the Program of Assertive Community Treatment (PACT).

Discussion: The priority provides a discussion on the issue of community-based and evidence-based service delivery. Applicants could propose to address examples of evidence-based service delivery in fulfilling the requirements of the priority. However, NIDRR has no basis to determine that all applicants should be required to address this issue or to utilize a specific theory, model, or approach.

Change: None.

The Department of Education received two letters commenting upon the two proposed priorities on independent living.

Improved Management of CIL Programs and Services

Comment: One commenter suggested that NIDRR require the RRTC to address successful management practices applied by organizations in the for-profit sector that could be utilized by CILs.

Discussion: In the background statement, NIDRR notes that CILs operate in an environment of public and private and nonprofit and business entities. We agree that the for-profit sector may offer CILs models of successful management practices. In addressing the required research activities, applicants have the discretion to propose specific research approaches and theoretical perspectives. The peer review process will evaluate the merits of the proposals.

Changes: We have revised the fourth activity to reflect that business organizations are potential models of successful management for CILs.

Comment: One commenter recommended that the training to improve core competency skills be extended to all staff members, including

those facing barriers related to cultural and linguistic diversity. The same commenter recommended that the statement regarding evaluation of strategies for improved recruitment and retention of staff be worded so that it includes all center staff, with an emphasis on people from diverse backgrounds.

Discussion: In the background statement, NIDRR notes that staffing problems in general are an issue for CILs that must be addressed. Similarly, NIDRR recognizes that improvement of core competencies is an issue for all CIL staff. The language of the proposed activities needs to be changed to fully address the concerns of NIDRR.

Changes: NIDRR has revised the activities to clarify that the training needs and the recruitment and retention of all staff, including those who are geographically dispersed or cultural and linguistic minorities, must be addressed.

Comment: One commenter recommended that the focus be broadened to include examination of CIL partnerships with public and private agencies that may have newly acquired authority and resources aimed at the mission of employment of people with disabilities.

Discussion: In the priority, NIDRR notes that CILs operate in an environment of public and private and nonprofit and business entities. NIDRR notes that the ability to form effective working relationships with a range of organizations is essential for successful CIL operation. As noted in the background statement, recent developments in employment services and entitlement benefits for individuals pose additional challenges. NIDRR prefers to allow the applicant to develop and propose plans that draw upon the range of actors that may facilitate employment. The peer review process will evaluate the merits of the proposals.

Changes: None.

Il and the New Paradigm of Disability

Comment: One commenter indicated that the priority was not clearly worded when presenting the activity that references ''generic community services''.

Discussion: The background statement indicates that a challenge to facilitating independent living and community integration is the changing universe of disability. NIDRR encourages applicants to address a range of strategies that could facilitate advocacy and community services for persons with significant disabilities, including persons from a changing universe population. An applicant might propose to focus upon a range of appropriate populations with different degrees of need for services. The peer review process will evaluate the merits of the proposals.

Changes: None.

Comment: One commenter asked for clarification so that the priority explicitly includes ''the policy environment as part of the social environment'' cited in the opening paragraph.

Discussion: NIDRR has long supported policy research on disability and independent living. Inclusion of a policy focus is in line with positions established in the Plan.

Changes: The priority has been revised to explicitly include ''the policy environment''.

Rehabilitation Research and Training Centers

The authority for the RRTC program is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(b)(2)). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training. The Assistant Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

Priority 1: Long-Term Mental Illness

Background

The Surgeon General estimates that approximately 20 percent of the U.S. population experience a mental disorder in any given year, that 9 percent of the adult population have a diagnosable major mental illness, and that a subpopulation of 5.4 percent of the population is considered to have a significant mental illness (Kessler, R.C., McGonagle, K.A., Zhoa, S., Nelson, C.B., Hughes, M., Eshlemon, S., Wittchen, H.U., Kendler, K.S. (1994). Lifetime and 12-month prevalence of DSM–IIIR psychiatric disorders in the United States. Results from the National

Comorbidity Survey. Archives of General Psychiatry, 51–8–19). The costs to society of mental illness are substantial. The indirect costs of mental illness in 1990, stemming from lost productivity at work, school, or home, were estimated at $78.6 billion (Rice and Miller, 1996). As the population grows, the needs of a growing number of individuals with a significant mental illness are not being met. Only one in four adults with a diagnosable mental disorder receives treatment and one third of children and adolescents needing mental health services are treated (Manderscheid and Henderson, 1998), this can be attributed to many factors. Inadequate community resources, including lack of access to new medications and psychosocial treatments, unemployment, and lack of options for long-term care complicate the lives of individuals with long-term mental illness. Many individuals also experience homelessness, family disruptions, chronic medical conditions, alcohol and substance abuse, incarceration, and social isolation, as well as the potential for periodic exacerbation.

Quality is an important factor in the delivery of effective mental health services. Defining quality services is not an easy task, nor is there ready consensus on all components of the concept. The Institute of Medicine states that quality of services is ''the degree to which health services for individuals and populations increase the likelihood of desired health outcomes and are consistent with current professional knowledge'' (Marder, 1999). However, measuring the quality of services provided to individuals with significant mental illness, as well as measuring outcomes, present numerous challenges because of the periodic and chronic nature of the illness, and the ongoing need for intensive therapeutic services and long-term support. Practitioners, policy makers, and consumers continue to ask questions about how to adequately meet the multifaceted needs of individuals with significant mental illness.

Generally, family members and consumers want community-based support services and treatment programs that are accessible and designed to meet long-term needs. The potential for individuals with serious mental illness to be maintained in the community rather than in institutions, work productively, live independently, and participate in rehabilitation planning is increased when a comprehensive support system is available in community settings. Research on consumer participation and community-based programs has provided evidence that there is a positive relationship between the level of consumer participation and therapeutic outcomes (Kent & Read, 1998).

Proponents of community-based service programs and support systems long have advocated that consumers be empowered to participate in the decisionmaking process. However, one reason individuals with disabilities have limited opportunities to participate in decisions about their services is related to the lack of consensus on a definition for self-determination. Self-determination is defined and implemented differently (Ward, 1999) depending on the program, philosophy, and purposes for implementing a self-determination model. However, there are some common concepts in the definitions for self-determination, in particular, consumer control, choice, self-direction, empowerment, leadership, and self-advocacy (Ward & Roger, 1999) as potential elements of self-direction. While most mental health professionals support the concept of self-determination, not all agree that individuals with psychiatric disabilities should have control over or participate in planning and decisionmaking activities (Kent & Read, 1998).

Individuals with psychiatric disabilities are not yet full participants in the disability self-determination movement. It is widely alleged that professionals in the psychiatric disabilities community continue to use medical compliance as a control mechanism and as a determining factor for awarding patients certain privileges. The right to choose among treatment options is often regarded as a privilege that is earned through medical compliance (Chamberlain & Powers, 1999).

Obstacles to the development and implementation of self-determination efforts include controversy over whether severe mental illness is a lifelong process or whether recovery is possible. Some discussions of this issue suggest that the need for extensive, lifelong support and the severity of the illness preclude using a self-determination approach. In addition, the impact of self-determination approaches on quality of services is unknown. Methodologies, indicators, and standards for measuring quality of care within self-determination models would facilitate understanding the impact of this approach on rehabilitation outcomes. In particular, research that addresses questions about the ability of individuals with serious mental illnesses to make decisions about treatment and medication management is lacking.

Traditionally, program planning and treatment decisions in the mental health field have been made by clinicians, and often involve maintaining patients on medication without consumer input or choice. Policies and service systems tend to be based on a paternalistic model that restricts consumer control and input. However, there is evidence that consumer and family involvement in decisionmaking and program planning have the potential to foster higher quality services and responsiveness from providers.

The quality of services can potentially be improved by using information technology to involve consumers and families in decisionmaking. Efforts to support individual choice can be enhanced by using emerging technologies to improve access to services, particularly for individuals in remote areas, reduce information dissemination barriers, improve employment training and job opportunities, and enhance training options for service providers. Although recent studies have discussed the digital divide for individuals with disabilities (New York Times, 2000; Disability Statistics Center, 2000) there is a paucity of research on the benefits of using technology to support self-determination. Research addressing consumer benefits and satisfaction with uses of technology for activities associated with improving their independence, barriers that prevent access and expanded use of technology, service provider knowledge and experience using technology to support self-determination, and the effectiveness of technology to improve or enhance self-determination is limited.

Similarly, the effectiveness service models incorporating self-determination and their relationship to rehabilitation outcomes have not been evaluated. In addition, there has not been adequate study of the impact of the various components of self-determination models on the rehabilitation process.

Better understanding of the implications of self-determination for rehabilitation outcomes potentially will answer questions related to competency, patient rights, recovery, outcomes, and policies. Research addressing these issues, describing standards for quality, and establishing outcome measures for consumer driven decisions is lacking in the research literature. Studies evaluating self-determination will potentially further the understanding of the rehabilitation process for individuals with significant mental illness, and identify strengths,

weaknesses, and needed improvements in the existing models.

The Plan emphasizes the importance of independent living and community integration. Central to independent living is the recognition that each individual has a right to independence that comes from exercising maximal control over his or her life. These activities include making decisions involved in managing one's own life, sustaining the ability and opportunity to make choices in performing everyday activities, and minimizing physical and psychological dependence on others. Independent living is a concept that also emphasizes participation and equity in the right to share in the opportunities, risks, and rewards available to all citizens.

Priority: Improving Services and Supports for Individuals With Long-Term Mental Illness

The Assistant Secretary, in collaboration with the Substance Abuse and Mental Health Services Administration and the Center for Mental Health Services, will establish an RRTC for the purpose of improving services and supports for individuals with long-term mental illness. In carrying out these purposes, the Center must:

(1) Develop measures that can be applied to evaluate self-determination activities in terms of rehabilitation outcomes, quality of services, and availability of community resources;

(2) Identify and assess self-determination direction theories, models, and activities, as well as the barriers to participation in self-determination activities for individuals with disabilities;

(3) Develop and evaluate management tools to enable service providers to support self-determination;

(4) With significant and persistent mental illness and publish a comprehensive report in the fourth year of the grant; and

(5) Address in its research the specific needs of minority populations with LTMI.

Two Priorities on Independent Living

Background

The mission of NIDRR emphasizes developing knowledge that will ''improve substantially the options for disabled individuals to perform regular activities in the community, and the capacity of society to provide full opportunities and appropriate supports for its disabled'' as stated in the Plan. Much of NIDRR's work reflects the components of the Independent Living (IL) philosophy: consumer control, self-help, advocacy, peer relationships and peer role models, and equal access to society, programs, and activities. NIDRR has funded subject-specific RRTCs in IL since 1980 and supports other projects that incorporate principles of IL.

Most recently, NIDRR has funded one RRTC on Centers for Independent Living (CIL) management and services and a second on IL and disability policy. The last year of the five-year project period for the awards was 1999. In light of the research agenda established in the Plan, and input obtained from the Rehabilitation Services Administration (RSA) and other Federal agencies and constituents, in various meetings that addressed related themes, NIDRR has identified critical issues in independent living to be addressed at this time. There is a continuing need to fund two Centers that study independent living and community integration.

Independent living and achieving community integration to the maximum extent possible are issues at the crux of NIDRR's mission. NIDRR is committed to the creation of a theoretical framework with measurable outcomes that is based upon the experiences of individuals with disabilities. The new paradigm of disability embodied in the Plan requires analysis of the extent to which socioenvironmental factors help or hinder individuals with disabilities in attaining full participation in society. Questions as basic as defining independent living in the context of diverse socioeconomic factors must be addressed. Current challenges to independent living derive from the changing characteristics of both the IL service system and the disability population.

Substantial administrative, advocacy, strategic and service-delivery issues affect the daily activities of Centers for Independent Living (CILs). Critical issues include funding and resource management, quality staffing, and relationships with other agencies key to the success of CILs. The issue of financial management of CILs calls for a balanced approach to identify existing policies, regulations, models, and programs that serve to hinder or help in establishing sound fiscal operation. Financial management requires expertise in fiscal analysis, budgeting, understanding grant requirements and program rules, accounting, auditing, and fundraising.

CILs, which spend substantial amounts of money on personnel, are subject to staffing problems typical of human service organizations and small businesses, including recruitment problems, training and competency development, and retention problems. Staffing problems may impede the ability of CILs to deliver individualized information and support services. An essential step in strengthening continuity in services is to recruit, train, and retain first line managers.

CILs lack documentation of the competencies required for IL management. Awareness of competency needs is key to developing successful recruitment strategies and staff development programs. For example, innovative recruitment strategies are needed to attract youth with disabilities that are transitioning from school to independent living to obtain employment expeiences in CIL service programs. Creative efforts to attract young persons entering the job market as employees could assist the CILs in understanding the needs of youth with disabilities as consumers as well, including work experience opportunities while still in school, upon graduation and after college. Career development, with pathways to more responsible positions in CILs, can be a key to the retention of competent staff.

CILs exist in a framework of public agencies, nonprofit organizations, and the local business sectors. The ability to form effective partnerships and cooperative working relationships with appropriate entities is essential to successful CIL operation. Historically, relationships with State governments, including Vocational Rehabilitation agencies, Statewide Independent Living Councils, State Consumer Advocacy Organizations and County and City governments have been at the heart of CIL operations and responsibilities. Recent developments in the area of employment services and entitlement benefits for individuals with disabilities pose additional opportunities and challenges for CILs by introducing new actors, new clients, and new rules. Passage of the Workforce Investment Act of 1998 and the Work Incentives Improvement Act of 1999 might provide new opportunities for CILs to play a role in the process of vocational rehabilitation and employment.

A challenge to facilitating independent living and community integration is the changing universe of disability. Demographic, social and environmental trends affect the prevalence and distribution of various types of disability as well as the demands of those disabilities on social policy and service systems. Within the universe of disabilities are: (1) Changing etiologies for existing disabilities; (2) growth in segments of the population with higher prevalence rates for certain

disabilities; (3) the consequences of changes in public policy and in health care services and technologies; and (4) the appearance of new disabilities. Some of the RRTCs sponsored by NIDRR that address these issues including the following: Aging with a Disability, Measuring Rehabilitative Outcomes, and Economic Research on Employment Policy for Persons with Disabilities.

The CILs and consumer organizations can prepare to address changing needs of diverse populations with attention to the infrastructure of resource availability and management strategy. At the same time, there is a need to frame the history and role of the independent living movement within the context of theories of society and social movements and organizational and group structure. Such a framework could identify ways to: (1) Reach out to underserved populations, (2) collaborate with key organizations that might not be perceived as traditional disability advocates, and (3) recognize the role of environmental factors on successfully independent living and achieving community integration. A sound theoretical base can be drawn upon to develop policy and service-delivery models that can help maximize social participation for individuals with disabilities.

Researchers have identified an association between disabilities and poverty, especially among youth (Fujiura G *et al.,* ''Disability Among Ethnic and Racial Minorities in the United States,'' *Journal of Disability Policy Studies,* Vol. 9, No. 2, pgs. 112–130, 1998). The growing number of individuals aging with long-standing disabilities, as well as the increase in the population of older persons who acquire disabilities as they age, is another aspect of a changing disability population. Newer etiologies of disability, such as HIV/AIDS, multiple chemical sensitivity and environmental illness, challenge IL concepts, services, and research. CILs and other organizations can serve as a resource to teach youth, aging persons, and underserved populations, including those from cultural and linguistic diversity about independent living. There may be an opportunity for CILs to develop strong alliances with parent information training centers and schools (from pre-school through postsecondary programs) and with the aging and underserved populations through appropriate partnerships.

As an example of the role of demographic factors, disability has a disproportionate impact upon African Americans, Hispanic Americans, and American Indians. An array of culturally-sensitive service-delivery models, community organizations, and other resources is necessary to provide services to individuals from minority backgrounds. Organizations with grassroots orientations, including CILs, are in a unique position to help identify the specific needs of individuals from those affected populations. Model strategies in other countries might be adapted to reach unserved and underserved populations in the United States.

Physical environment, including the built environment, can pose numerous obstacles that confound living independently. Individuals with disabilities living in rural communities may be isolated from CILs and vocational rehabilitation services. Isolation resulting from distance, lack of available transportation, lack of monetary resources to support social services, limited job opportunities, lack of a health care delivery system, the digital divide due to a lack of technology, and unavailability of accessible and affordable housing can be problems for rural Americans. Similar problems may confront persons from minority backgrounds in inner cities and remote areas, persons who are homeless, and migrants. For all populations, and for all salient issues that affect independent living and community integration, the social and economic costs and benefits of various strategies must be evaluated.

The Plan discusses research on physical inclusion, including the identification and evaluation of models that facilitate housing that are consistent with consumer choice. In addition to physical and economic accessibility, model housing approaches must maximize community integration and ability to participate in a range of normative activities.

Priority 1: Improved Management of CIL Programs and Services

The Assistant Secretary will establish an RRTC on IL management, services and strategies that will conduct research and training activities and develop and evaluate model approaches to enhance the capacity of CILs to operate and manage effective advocacy, service programs and businesses, and develop and maintain effective external partnerships. In carrying out this purpose, the Center must:

(1) Develop a database of existing CIL funding and economic resources, and identify innovative and best practices in creating secure economic foundations for CILs;

(2) Working in collaboration with appropriate entities, design and test several options for generating funding from alternative sources, including business development strategies and analyze policy-related and programmatic consequences of various funding options, especially those independent of public financing;

(3) Identify best practices and develop and test programs for CILs in expanding services to youth with disabilities and their families, including those from diverse cultural backgrounds, and in interfacing with education and transition programs to prepare children and youth for independent living, including life long learning;

(4) Develop and test strategies to enable CILs to benefit from management models of other successful community-based organizations or business organizations. Develop and test innovative models of cost-effective training to improve core competency skills of CIL staff, including geographically dispersed and culturally and linguistically diverse CIL staff, including but not limited to those from Indian tribes and tribal organizations, and evaluate strategies for improved recruitment and retention of CIL staff, including those from diverse backgrounds;

(5) Review CIL and vocational rehabilitation agency policies related to collaborations, and design strategies for innovative partnerships to promote employment outcomes for individuals with disabilities;

(6) Coordinate activities with and provide instruments, curricula, methodologies, and resource guides, as well as research findings, including but not necessarily limited to distance learning and web-based technologies, to the RSA training and technical assistance provider under Part C of Title VII of the Rehabilitation Act; and

(7) Provide training and information for CILs, policy makers, including business leaders and educators, administrators, and advocates on research findings and identified strategies.

In carrying out these purposes, the Center must coordinate with other NIDRR, including Section 21 Leadership Training and the RRTCs on Disability Statistics and Persons with Disabilities from Minority Backgrounds, and OSERS grantees and community-based organizations that focus upon independent living and with the National Center for the Dissemination of Disability Research. The RRTC on improved management of CIL programs and services will be funded jointly by NIDRR and RSA and will be required to work closely with the RSA grantee providing training, technical assistance,

and transition assistance to CILs and Statewide Independent Living Councils under Part C of Title VII of the Rehabilitation Act.

Priority 2: IL and the New Paradigm of Disability

The Assistant Secretary will establish an RRTC on IL and the New Paradigm of Disability that will facilitate the development of innovative independent living strategies to meet the challenges of the 21st century. This Center will promote an understanding of independent living concepts and practices in the context of the physical and social environments noted in the new paradigm of disability, including assessment of the application of independent living to the changing universe of disability. In carrying out these purposes, the Center must:

(1) Develop an analytical framework for research on living independently that incorporates the definition of IL, the contextual framework of disability and an accessible community, and the changing universe of disability as articulated in the Plan, and is grounded in social science theory and methods;

(2) Identify and evaluate strategies to promote accessible cost-effective advocacy and generic community services for individuals with significant disabilities, and address specifically at least one changing universe population;

(3) Evaluate the use of peer networks and communication channels to assist individuals with disabilities to maintain wellness, access community services, and participate in community life, including education and employment;

(4) Assess the concept and application of independent living for diverse populations of cultural and linguistic minorities, including but not limited to those from Indian tribes and tribal organizations, Latinos and Asians and identify and evaluate culturally appropriate independent living approaches and strategies to assist individuals within these groups to attain self-determined independent living goals; and

(5) Provide training and information for CILs, policy makers, including business leaders and educators, administrators, and advocates on research findings and identified strategies.

In carrying out these purposes, the project must coordinate with other NIDRR, including Section 21 Leadership Training and the RRTCs on Disability Statistics and Persons with Disabilities from Minority Backgrounds, and OSERS grantees and community-based organizations that focus on independent living, the Center on Emergent Disability, the National Center for the Dissemination of Disability Research, and the RSA training and technical assistance provider under Part C of Title VII of the Rehabilitation Act.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C. area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

Applicable Program Regulations: 34 CFR Part 350

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Centers)

Dated: May 11, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–12502 Filed 5–17–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B]

Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research, Notice Inviting Applications for New Rehabilitation Research Training Centers for Fiscal Year 2000

NOTE TO APPLICANTS: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

APPLICABLE REGULATIONS: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; Disability and Rehabilitation Research Projects and Centers—34 CFR Part 350, and the Notice of Final Priority published elsewhere in this issue of the **Federal Register**.

PRE-APPLICATION MEETINGS: Interested parties are invited to participate in a pre-application meeting to discuss the funding priority for the two RRTCs on Improved Management of Centers for Independent Living (CIL) Programs and Services and Independent Living (IL) and the New Paradigm of Disability and to receive technical assistance through individual consultation and information about the funding priorities.

A pre-application meeting for the RRTC on Improving Service and Supports for Individuals with Long-Term Mental Illness will be held on June 13, 2000 at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St. SW, Washington, DC between 10:00 a.m. and 12:00 a.m.

The pre-application meeting for the Independent Living priorities will be held on June 15, 2000 at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St. SW, Washington, DC between 10:00 a.m. and 12:00 a.m.

NIDRR staff will also be available at this location on from 1:30 p.m. to 5:00 p.m. on that same day of the meeting to provide technical assistance through individual consultation and information about the funding priorities. NIDRR will make alternate arrangements to accommodate interested parties who are unable to attend the pre-application meeting in person. For further information or to make arrangements to attend either in person or by telephone contact the following: for the pre-application meeting on the Long-Term Mental Illness priority contact Connie Pledger, Switzer Building, room 3423, 400 Maryland Avenue, SW, Washington, DC 20202. Telephone (202)

205–4352. And for the pre-application meeting on the Independent Living priority contact David Keer, Switzer Building, room 3431, 400 Maryland Avenue, SW, Washington, DC 20202. Telephone (202) 205–5633. If you use a Telecommunication Device for the Deaf (TDD), you may call (202) 205–4475.

Assistance to Individuals with Disabilities at the Public Meetings

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (e.g. other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this Notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

APPLICATION NOTICE FOR FISCAL YEAR 2000 REHABILITATION RESEARCH AND TRAINING CENTERS

[CFDA No. 84–133B]

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Award amount (per year)*	Project period (months)
84.133B–1 Improved management of CIL programs and services.	July 17, 2000	1	$500,000	60
84.133B–5 IL and the new paradigm of disability	July 17, 2000	1	500,000	60
84.133B–7 Improving service and supports for individuals.	July 17, 2000	1	550,000	60

Program Title: Rehabilitation Research and Training Center.

CFDA Number: 84.133B.

Purpose of Program: RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Selection Criteria: The Assistant Secretary uses the following selection criteria to evaluate applications for RRTCs on Improved Management of CIL Programs and Services, IL and the New Paradigm of Disability and Improving Service and Supports for Individuals with Long-Term Mental Illness (See section 350.54). The total maximum score for the criteria is 100 points.

(a) *Importance of the problem* (9 points total). (1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total). (1) The Secretary considers the responsiveness of the application to an absolute or competitive priority published in the **Federal Register**.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers the extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (4 points).

(c) *Design of research activities* (35 points total). (1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and (E) The data analysis methods are appropriate (5 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) *Design of training activities* (11 points total). (1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) *Design of dissemination activities* (8 points total). (1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) *Design of technical assistance activities* (4 points total). (1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) *Plan of operation* (4 points total). (1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(h) *Collaboration* (2 points total). (1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (2 points).

(i) *Adequacy and reasonableness of the budget* (3 points total). (1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(j) *Plan of evaluation* (7 points total). (1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) *Project staff* (9 points total). (1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been

underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (2 points).

(l) *Adequacy and accessibility of resources* (3 points total). (1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Instructions for Application Narrative

The Assistant Secretary strongly recommends the following:

(a) A one-page abstract;

(b) An application narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than 125 pages double-spaced (no more than 3 lines per vertical inch) 8–1/2′× 11″pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(c) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.133B [Applicant should include title]), Washington, DC 20202–4725, or

(2) Hand deliver or express mail the original and two copies of the application by 4:30 p.m. [Washington, DC time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.133B [Applicant should include title]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes:

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department *must* include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 1/12/1999) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Certification of Eligibility for Federal Assistance in Certain Programs (ED Form 80–0016).

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue S.W., room 3317, Switzer Building, Washington, D.C. 20202 or call (202) 205–8207. Individuals who use a Telecommunications Device for the Deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3414, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880 or TDD (202) 205–4475. Internet: Donna_Nangle@ed.gov

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To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

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http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Numbers: 84.133B, Rehabilitation Research Training Centers)

Program Authority: 29 U.S.C. 760–762.

Dated: May 11, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes. You may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What Is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application. The Rehabilitation Research Training Centers are limited to a 15% indirect cost rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise me Whether my Project is of Interest to NIDRR or Likely to be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How do I Assure That my Application Will be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting my Application Can I Find Out if it Will be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR to Find Out if my Application is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If my Application is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will all Approved Applications be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

Estimated Public Reporting Burden

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

Rehabilitation Research Training Center

(CFDA No. 84.133B) 34 CFR Part 350.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

Applicant Information

1. Name and Address
   Legal Name: _____
   Address: _____
   _____
   City _____ State _____ County _____ ZIP Code + 4 _____-_____

   Organizational Unit

2. Applicant's D-U-N-S Number [ ][ ][ ][ ][ ][ ][ ][ ][ ]
3. Applicant's T-I-N [ ][ ]-[ ][ ][ ][ ][ ][ ][ ]
4. Catalog of Federal Domestic Assistance #: 8 4 [ ][ ][ ][ ] ➡ Title: _____
5. Project Director: _____
   Address: _____
   City _____ State _____ ZIP Code + 4 _____-_____
   Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____
   E-Mail Address: _____
6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
   (If "Yes," attach an explanation.)
7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

8. Novice Applicant ☐ Yes ☐ No

Application Information

9. Type of Submission:

—PreApplication	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
    ☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____
    ☐ No *(If "No," check appropriate box below.)*
    ☐ Program is not covered by E.O. 12372.
    ☐ Program has not been selected by State for review.

11. Proposed Project Dates:

Start Date:	End Date:
___/___/_____	___/___/_____

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
    a. If "Yes," Exemption(s) #: [ ] **OR** b. Assurance of Compliance #: [ ]
    c. IRB approval date: _____ { ☐ Full IRB **or** ☐ Expedited Review
13. Descriptive Title of Applicant's Project:

Estimated Funding

14a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address:

e. **Signature of Authorized Representative** Date: ___/___/_____

REV. 11/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

OR

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ _____
(Signature) (Date)

_____
(Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

ED 80-0016 (9/92)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

[FR Doc. 00–12503 Filed 5–17–00; 8:45 am]

BILLING CODE 4000–01–C

Federal Register

Thursday,
May 18, 2000

Part VI

Department of Housing and Urban Development

24 CFR Parts 3280 and 3282
Manufactured Home Construction and Safety Standards: Smoke Alarms; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 3280 and 3282

[Docket No. FR–4552–P–01]

RIN 2502–AH48

Manufactured Home Construction and Safety Standards: Smoke Alarms

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Federal Manufactured Home Construction and Safety Standards to revise the requirements for the location and placement of smoke alarms. The purpose of these amendments is to improve the effectiveness and performance of smoke alarms in early warning detection of manufactured home fires and to reduce the rate of fire fatalities in new manufactured housing.

DATES: *Comments Due Date:* July 17, 2000.

ADDRESSES: Address all comments concerning this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the docket number and title listed above. A copy of each comment submitted will be available for public inspection and copying weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Comments submitted by facsimile (FAX) will not be accepted.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Holtz, Acting Director, Office of Consumer and Regulatory Affairs, Room 9156, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0502 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) (''the Act'') authorizes the Secretary to establish and amend the Federal Manufactured Home Construction and Safety Standards (''the Standards'' or ''HUD Code''), codified in 24 CFR part 3280. The purpose of the Act is to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents, and to improve the quality and durability of manufactured homes (42 U.S.C. 5401).

One of the most significant factors in meeting these objectives, from the perspective of fire safety, is the requirement in the Standards for the installation of permanently wired smoke detectors in manufactured homes (24 CFR 3280.208). The enforcement program for this requirement is designed to ensure that a manufactured home is not labeled or shipped without such smoke alarms. Nevertheless, fire data studies conducted for HUD by the National Fire Protection Association (NFPA) have continued to indicate that in about 40% of HUD-code homes where fatal fires have occurred smoke alarms were not present or operational.

This fact suggests a high rate of occupant disabling of smoke alarms. This may be a result of frequent false and nuisance alarms caused, for example, by the close proximity of these devices to cooking appliances. In addition, findings from the National Smoke Detector Project conducted by the Consumer Product Safety Commission (CPSC) indicated that for all homes investigated only about 70% of the smoke alarms were working.

The NFPA also reported that the rate of fire fatalities for all manufactured homes was cut nearly in half when alarms were operational. This emphasizes the importance of reducing the occupant disabling problem and improving the reliability and effectiveness of smoke alarms.

HUD had also previously designated the NFPA to undertake a consensus process to develop recommendations for new manufactured housing standards. The Department has received both a proposal (TIA 97–1) and the NFPA 501 Standard (1999 edition) developed through that process. The proposal and relevant provisions in NFPA 501 contained recommendations that would revise the present smoke alarm requirements in HUD's Standards. The Department also commissioned the National Institute of Standards and Technology (NIST) to evaluate the adequacy of the current requirements for smoke alarms in the Standards and to recommend alternatives that are consistent with national fire safety standards for other types of housing and that would reduce the incidence of nuisance alarms.

The findings and recommendations from the NFPA and NIST evaluations were compatible and have formed the basis for the proposed revisions to the smoke alarm requirements in the Standards contained in this rule. In addition, HUD has included provisions in the rule for testing smoke alarms to ensure that all installed smoke alarms are operational. These testing provisions are based in part on recommendations in the NFPA study on manufactured home fire data and other proposals now being considered by the NFPA Consensus Committee.

II. Proposed Changes

The proposed rule would make the following major changes to the Standards:

—The proposed rule would replace the term ''smoke detector'' with the term ''smoke alarm''. While these terms are commonly used interchangeably, other housing codes generally define a ''smoke detector'' as a device that detects visible or invisible particles of combustion but does not include an alarm. By contrast, a ''smoke alarm'' is a self-contained unit that is responsive to smoke and incorporates a sensor, controls, and an alarm-sounding device.

—The proposed rule would revise all of the current location requirements contained in the Standards to enhance performance, improve audibility, and minimize the potential for false alarms. In general, the proposed rule would require more smoke alarms per home.

—The proposed rule would require manufacturers to install a smoke alarm that protects the living room and kitchen areas. However, the proposed rule would restrict manufacturers from installing a smoke alarm in the kitchen to minimize false alarms due to cooking and the potential for occupants to disable the alarm. If installed within 20 feet of a cooking appliance, the proposed rule would require that the smoke alarm include a temporary silencing feature (hush button) to provide consumers with a mechanism to shut off the alarm temporarily for about 15–20 minutes (e.g., if the alarm sounds frequently during periods of cooking). Alternatively, the proposed rule would permit manufacturers to install photoelectric type smoke alarms, which are less sensitive to cooking fumes.

—The proposed rule would require manufacturers to install a smoke alarm in each bedroom rather than outside each bedroom because occupants are most vulnerable when asleep.

—The proposed rule would permit manufacturers to mount smoke alarms on ceilings to avoid other locations

that may be more vulnerable to false alarms. The proposed rule would prescribe clearance distances, and manufacturers would not be able to modify them, even if permitted by the listing for the alarm. In rooms with sloping ceilings, the proposed rule would require manufacturers to mount smoke alarms within the distance determined by the hypotenuse of a right triangle whose horizontal leg measures 3 feet and whose vertical leg is perpendicular to its horizontal leg from the highest point of the ceiling.

—The proposed rule would require manufacturers to install smoke alarms that are interconnected so that the operation of any one alarm activates all other alarms in the home to maximize the likelihood of being awakened to nighttime fires. In addition, as recommended by both the NFPA and NIST evaluations, the proposed rule would permit the use of smoke alarms powered by a battery rated for a 10-year life as an alternative to permanently wired alarms with battery back-up. While HUD is aware that there are currently no commercially available 10-year battery-powered alarms that include an interconnection feature, HUD decided to include the 10-year battery alarm option in this proposed rule as an incentive to develop the interconnection feature. HUD is interested in receiving comments on the use of 10-year battery smoke alarms, including any suggestions regarding methods to encourage homeowners to maintain or replace these alarms as needed.

—The proposed rule would establish separate operational, location, and connection requirements for visual and tactile appliances that can benefit hearing- and sight-impaired persons.

—The proposed rule would require additional restrictions on the placement of smoke alarms for bathrooms, kitchens, and areas where forced air equipment is located to improve the effectiveness and functionality of the alarms.

—The proposed rule would require operational testing at the factory to ensure that all alarms are responding. The proposed rule would also require manufacturers to replace any alarm that, though correctly wired, does not function properly during testing. The proposed rule would also require manufacturers to provide installers with specific written instructions for inspecting and testing smoke alarms during installation of the home, and to provide homeowners with the smoke alarm manufacturer's information describing the operation, method and frequency of testing, and proper maintenance of the smoke alarm.

In addition to addressing these changes, commenters are encouraged to submit other recommendations that would make smoke alarms more tamper resistant and less susceptible to nuisance alarms, and to suggest methods that would encourage homeowners to replace smoke alarms because of their age or other factors that may hinder their performance.

A conforming change to the terminology used in 24 CFR part 3282, Manufactured Home Procedural and Enforcement Regulations, substituting ''alarms'' in place of ''detectors'' is also made by this rule.

III. Findings and Certifications

Regulatory Planning and Review

The Office of Management and Budget (OMB) has reviewed this rule in accordance with Executive Order 12866, (captioned ''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 to the rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

Paperwork Reduction Act

The proposed new information collection requirements contained in § 3280.208(f) have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this Act, 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. OMB has issued HUD the control number 2502–0253 for the information collection requirements under the current Manufactured Housing Construction and Safety Standards Program.

The public reporting burden for this new collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in the following table.

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
§ 3280.208(f) Manufacturer's Alarm Instructions	340	1,088	370,600	.0833	30,833

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received by July 17, 2000. Comments must refer to the proposal by name and docket number (FR–4552–P–01) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) 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 (FONSI) with respect to the environment was made 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 FONSI is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, 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 proposed rule and in so doing certifies that the rule would not have a significant economic impact on a substantial number of small entities. The rule would revise HUD's existing regulations for the placement and installation of smoke alarms in new manufactured housing. The requirements would ensure that smoke alarms installed in new homes will be more effective in warning of the presence of smoke. This is accomplished primarily by changing the location requirements to ensure that alarms operate more effectively. Because manufacturers are already required to provide working smoke alarms in manufactured homes, the costs associated with complying with new requirements would be minimal.

HUD has conducted a material and labor cost impact analysis for this rule. The potential cost impact, based on a per home cost determined to be approximately $28.05, multiplied by 350,000 homes produced in a year (assuming conservatively that no manufacturer currently uses AC smoke alarms with battery backups), is $9.8 million annually. This does not represent a significant economic effect on either an industry-wide or per unit basis.

The following chart provides a comparison of cost based on HUD's existing regulation and this proposed rule, and the estimate of the approximate cost increase of this new rule.

	Current rule	New rule	Change	Cost increase
(1) Smoke alarm	2 × $5.50=$11 2 AC powered alarms (Ionization).	2 × $8.50=$17.00 2 × $8.50=$17.00 4 AC+Battery alarms (Ionization).	34 − 11=23	$23
(2) Wiring	40′ × $0.06=$2.40	40′ × $0.07=$2.80 20′ × $0.07=$1.40	4.20 − 2.40=1.80	1.80
(3) Labor	$3.25	6.50	6.50 − 3.25=3.25	3.25
Total				28.05

In estimating the cost under the current regulation and proposed new regulation, HUD used the following assumptions based on an average home (28″ × 60″) that contains three bedrooms: (1) The home has a smoke alarm in each bedroom and one in the common area (all four smoke alarms have battery backups); (2) installation involves 40 feet of 14–2 wiring for two smoke detectors (current rule), and an additional 20 feet of 14–3 wiring for the two newly required alarms in each bedroom); (3) the cost of installation of 14–2 wiring = $0.06 per lineal foot; (4) the cost of installation of 14–3 wiring = $0.07 per lineal foot; (5) the labor costs are lump sum costs that were obtained from manufactured home builders; (6) the prices reflected in the table were obtained from manufactured home producers (i.e., close to actual costs incurred by manufactured home builders); (7) the cost obtained from smoke alarm manufacturers are generally higher than costs paid by home producers (the costs do not include larger quantity discounts); and (8) approximately 30% of manufactured home producers currently are using AC+ battery smoke alarms.

Notwithstanding HUD's determination that this rule would not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Federalism Impact

This 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 Executive Order 13132.

List of Subjects

24 CFR Part 3280

Fire prevention, Housing standards, Manufactured homes.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements, Warranties.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 3280 and 3282 as follows:

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for 24 CFR part 3280 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5403, and 5424.

2. Amend § 3280.202 as follows:

a. Remove from the definition of ''Single-station alarm device'' the word ''detector'' and add in its place the word ''alarm'';

b. Remove the definition of ''Smoke detector''; and

c. Add the definition of ''Smoke alarm'' to read as follows:

§ 3280.202 Definitions.

* * * * *

Smoke alarm: A single- or multiple-station alarm device that is responsive to smoke.

3. Revise § 3280.208 to read as follows:

§ 3280.208 Smoke alarm requirements.

(a) *Labeling.* Each smoke alarm required under this section must conform with the requirements of ANSI UL 217–1993, Single and Multiple Station Smoke Alarms, or ANSI UL 268–1989, Smoke Detectors for Fire Protective Signaling, and must bear a label to evidence conformance.

(b) *Required smoke alarm locations.* (1) At least one smoke alarm must be installed in each of the following locations:

(i) To protect the living room and kitchen space. When located within 20 feet horizontally from cooking appliances, the smoke alarm must incorporate a temporary silencing feature or be of a photoelectric type.

(ii) In each sleeping room.

(iii) On the ceiling of the upper level above each stairway, other than a basement stairway, in any multistory home completed in accordance with this part or part 3282 of this chapter. The alarm must be located so that smoke rising in the stairway cannot be prevented from reaching the alarm by an intervening door or obstruction.

(iv) For each basement stairway, the instructions for installers and information for homeowners required in paragraph (f) of this section must clearly indicate that a smoke alarm is to be located on the basement ceiling near the stairway.

(2) A smoke alarm required under this section must not be placed in a location that impairs its effectiveness or in any of the following locations:

(i) Kitchens, garages, and any space where the temperature can reasonably be expected to fall below 40 °F or exceed 100 °F;

(ii) Within 3 feet horizontally from a door to a kitchen, a bathroom containing a tub or shower, or a supply grille of a forced-air heating or cooling system or appliance;

(iii) Within 3 feet horizontally from any discharge grille when a home is equipped or designed for future installation of a roof-mounted evaporative cooler or other equipment discharging conditioned air through a ceiling grille into the living space; and

(iv) Any location that is not in accordance with the listing, unless required under this section.

(c) *Mounting requirements.* (1) Except in rooms with sloped ceilings or as permitted pursuant to paragraph (e) of this section, smoke alarms must be mounted either on the ceiling at least 4 inches from each wall or on a wall with the top of the alarm not less than 4 inches or more than 12 inches below the ceiling.

(2) Except as permitted pursuant to paragraph (e) of this section, in rooms with sloped ceilings, smoke alarms must be mounted on the ceiling within 3 feet, measured horizontally, from one of the highest points of the ceiling and at least 4 inches from any structural element.

(d) *Connection to power source.* (1) Each smoke alarm must be powered from:

(i) The electrical system of the home as the primary power source and a battery as a secondary power source; or

(ii) A battery rated for a 10-year life, provided the smoke alarm is listed for use with a 10-year battery.

(2) Each smoke alarm whose primary power source is the home electrical system must be mounted on an electrical outlet box and connected by a permanent wiring method to a general electrical circuit. The wiring circuit for the alarm must not include any switches between the over-current protective device and the alarm and must not be protected by a ground fault circuit interrupter.

(3) Smoke alarms must be interconnected such that the operation of any one smoke alarm causes the alarm to be triggered in all smoke alarms in the home.

(e) *Visible and tactile notification appliances.* (1) In addition to the smoke alarms required pursuant to this section, the manufacturer must provide visible and listed tactile notification appliances when ordered by the purchaser. These appliances are required to operate from the primary power source, but are not required to operate from a secondary power source.

(2) A visible notification appliance in a sleeping room:

(i) Must have a minimum rating of 177 candela, except that where the visible notification appliance is wall-mounted or suspended more than 24 inches below the ceiling, a minimum rating of 110 candela is permitted; and

(ii) Must be located within 16 feet of the pillow, in any sleeping room that is larger than 14 × 16 feet.

(3) A visible notification appliance in an area other than a sleeping room must have a minimum rating of 15 candela.

(f) *Testing and maintenance.* (1) After being installed by the home manufacturer at the factory, each smoke alarm must be tested in accordance with the alarm manufacturer's instructions. Any smoke alarm that is correctly wired and does not function as designed during the test must be replaced. Any smoke alarm that is replaced by the home manufacturer also must be tested in accordance with this paragraph.

(2) Home manufacturers must provide specific written instructions for installers on how to inspect and test the operation of smoke alarms during installation of the home. These instructions must indicate that any smoke alarm that does not meet the inspection or testing requirements needs to be replaced and retested.

(3) Home manufacturers must provide the homeowner with the alarm manufacturer's information describing the operation of the smoke alarm, method and frequency of testing, and proper maintenance. This information shall be placed in a conspicuous location within the manufactured home in a manner likely to assure that it is not removed until removed by the purchaser. No dealer, distributor, construction contractor, or other person shall interfere with the distribution of this information.

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

4. The authority citation for 24 CFR part 3282 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5424.

5. Amend § 3282.203(b)(4) by removing the word ''detectors'' and adding in its place the word ''alarms''.

Dated: April 21, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–12563 Filed 5–17–00; 8:45 am]

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S.J. Res. 40/P.L. 106–198
Providing for the appointment of Alan G. Spoon as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 249)

S.J. Res. 42/P.L. 106–199
Providing for the reappointment of Manuel L. Ibanez as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 250)

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